



Access Now, Espacio Público & Venezuela Inteligente Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 40th Session Third Cycle for Venezuela (Bolivarian Republic of)

15 July 2021

About Access Now

Access Now is an international organisation that works to defend and extend the digital rights of users at risk around the world. Through representation around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions, and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organisation, Access Now routinely engages with the United Nations (U.N.) in support of our mission to extend and defend human rights in the digital age.

About Espacio Público

Espacio Público (EP) is a Venezuelan civil association, founded in 2002, whose objective is the investigation, promotion and defense of freedom of expression, the right to information and social responsibility in the media. EP conducts national and international litigation, as well as accompaniment of victims of violations of freedom of expression in Venezuela. For more than 10 years the organization has been a regular user of the Inter-American and Universal System for the Protection of Human Rights.

About Venezuela Inteligente

Venezuela Inteligente (VEI) is a civil society organization that defends human rights in the digital space and promotes new forms of civic engagement through the use of technology in Venezuela. Venezuela Inteligente has been documenting, analyzing and gathering evidence of internet censorship in Venezuela since 2014 through the VE Sin Filtro program. VEI has analyzed and documented state-sponsored digital attacks against dissidents, journalists and citizens in general, providing assistance, training, guidance and best practices to protect the exercise of human rights online in Venezuela.

Follow-up from Venezuela's second UPR cycle

1. The Universal Periodic Review (UPR) is an important U.N. mechanism aimed at addressing human rights issues across the globe. Access Now, Espacio Público, and Venezuela Inteligente welcome this opportunity to contribute to Venezuela's third review cycle.¹ This submission examines the state of digital rights in Venezuela, including the rights to freedom of opinion and expression, access to information, the safety of journalists, and the right to privacy.
2. During the second UPR cycle, Venezuela received a total of 274 recommendations, of which 193 were accepted and 81 noted.² Regarding digital rights, Venezuela received:
 - a. 17 recommendations on the right to freedom of expression, of which 12 were accepted and 5 noted;
 - b. 3 recommendations on the right to freedom of opinion, of which all were accepted;
 - c. 8 recommendations on the right to access information, of which 6 were accepted and 2 noted;
 - d. 10 recommendations on the safety of journalists, of which 9 were accepted and 1 noted;
 - e. 1 recommendation on the right to privacy, which was accepted.
3. In 2017, the state of digital rights in Venezuela sunk to an all time low. In addition to the surveillance of activists,³ and authorisation of government policing and filtering of online content, civil society organizations and activists regularly reported problems with internet connectivity in the region, that by 2019 devolved into partial and full internet shutdowns.⁴
4. Journalists and human rights defenders in Venezuela are further endangered by the harsh policies, laws, and regulations which target them. Such policies, laws and regulations include:

¹ Venezuela was last reviewed in November 2016 (second UPR cycle) and October 2011 (first UPR cycle) See OHCHR, *Universal Periodic Review - Venezuela (Bolivarian Republic of)*, available online: <https://www.ohchr.org/en/HRBodies/UPR/Pages/VEindex.aspx>

² UPR Info, *2PR Responses to Recommendations and Voluntary Pledges: Venezuela*, available online: https://www.upr-info.org/sites/default/files/document/venezuela_bolivarian_republic_of/session_26_-_november_2016/recommendations_and_pledges_venezuela_2016.pdf.

³ Access Now, *The "Doubleswitch" social media attack: a threat to advocates in Venezuela and worldwide*, available online: <https://www.accessnow.org/doubleswitch-attack/>, 9 June 2017.

⁴ Vesinfiltró, *Resumen preliminar del incidente de bloqueo del 28 de junio de 2017*, available online https://vesinfiltró.com/noticias/resumen_preliminar_2017-06-28/, 28 June 2017; See also Access Now, *Social media shutdown in Venezuela is a warning of what is to come as political tensions rise*, available online: <https://www.accessnow.org/social-media-shutdown-in-venezuela-is-a-warning-of-what-is-to-come-as-political-tensions-rise/>, 22 January 2019.

- a. On May 16, 2017, the Venezuelan government issued Executive Order 2489, which extended the state of emergency in Venezuela that was in place since May 2016 (as of July 2021, the state of emergency is still in place), authorizing internet policing and content filtering.⁵ The Executive Order eventually became the foundation for the Law Against Hatred for Peaceful Coexistence and Tolerance (known as the Law Against Hatred), which passed in November 2017, and has since been used to persecute countless individuals, mostly for political dissent.⁶ As such, the law requires intermediaries to remove content containing “hate speech” within 6 hours, or face fines, and also empowers authorities to block websites that are alleged to promote hatred or intolerance.

- b. In January 2019, the bill for the “Constitutional Law of Cyberspace” proposed to justify and expand the powers of the government to control and monitor the use of the internet without institutional checks, threatening the human rights of all Venezuelans. The bill would create a national cyber defense system, with the authority over a vaguely defined “Cyberspace of the Bolivarian Republic of Venezuela,” effectively limiting Venezuelans to a controlled, isolated, and fragmented network. After being proposed, the law was not approved but the draft proposal resurfaced again in 2021.⁷ The passage of this law would cement the securitisation approach to the access and use of information, at the cost of human rights.

Venezuela’s international, regional, and domestic human rights obligations

5. Venezuela has signed the Universal Declaration of Human Rights (UDHR), and ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Optional Protocols.⁸ Article 23 of the Venezuelan Constitution affirms that ratified and executed international treaties relating to human rights, such as the ICCPR and ICESCR, “have a constitutional rank, and prevail over internal legislation, insofar as they contain provisions concerning

⁵ Access Now, *Civil society unites against internet censorship in Venezuela*, available online: <https://www.accessnow.org/civil-society-letter-against-internet-censorship-in-venezuela/>, 1 June 2017.

⁶ Reuters, *Venezuela wields a powerful “hate” law to silence Maduro’s remaining foes*, available online: <https://www.reuters.com/investigates/special-report/venezuela-politics-hatelaw/>, 14 December 2020; See also Freedom House, *Freedom of the Net Report 2019: Venezuela*, available online: <https://freedomhouse.org/country/venezuela/freedom-net/2019>, 2019; Freedom House, *Freedom of the Net Report 2020 Venezuela*, available online: <https://freedomhouse.org/country/venezuela/freedom-net/2020>, 2020.

⁷ El Comercio, *Gobierno de Venezuela pretende aprobar la Ley del Ciberespacio; opositores temen que regule las redes sociales*, available online: <https://www.elcomercio.com/actualidad/mundo/venezuela-ley-ciberespacio-redes-sociales.html>, 21 abril 2021; Espacio Público, *Análisis del anteproyecto de Ley del Ciberespacio: control, vigilancia y eliminación de la privacidad*, available online: <http://espaciopublico.org/analisis-del-anteproyecto-de-ley-del-ciberespacio-control-vigilancia-y-eliminacion-de-la-privacidad/>, 17 enero 2019.

⁸ OHCHR, *UN Treaty Body Database*, available online: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=191&Lang=SP, 2021.

the enjoyment and exercise of such rights that are more favourable than those established by [the] Constitution and the laws of the Republic” therefore affording domestic application.⁹

6. On April 28, 2017 the Secretary General of the Organisation for American States (OAS) received a note dated April 27, 2017, in which Venezuela expressed its decision to denounce the Charter of the Organisation of American States in the terms established in said note.¹⁰
7. Venezuela’s Constitution¹¹ affirms the right to privacy (Articles 47, 48, and 60), freedom of expression and opinion (Article 57), access to information (Articles 28 and 58), and peaceful assembly and association (Article 53). While Venezuela lacks specific data protection legislation, and does not have a data protection authority, Article 28 of the Constitution, and other laws, enshrine the right to *habeas data*, which is the only data protection principle in the Constitution.

Freedom of expression and opinion, access to information, and safety of journalists

8. Venezuela misuses its existing legal framework to quell opposition leaders, dissidents, and those caught in the digital “crossfire.” For instance, the **Law on Social Responsibility on Radio, Television, and Digital Media (Resorte Law)** is being misused for the purpose of censoring speech and violating people’s rights to freedom of expression and opinion.¹² Notably the provisions contained in Resorte Law forbid messages that promote anxiety among the population, alter public order, disregard legal authorities, or promote violation of existing laws. Under the guise of this law, the government forces down any content that it deems fit into any of these broad categories.
9. In addition to Resorte Law’s power to censor content, Venezuela also uses the **Constitutional Law against Hate, for Peaceful Coexistence and Tolerance (Law**

⁹ Constitute, *Venezuela (Bolivarian Republic of)’s Constitution of 1999 with Amendments through 2009*, available online: https://www.constituteproject.org/constitution/Venezuela_2009.pdf.

¹⁰ OAS, *Charter on the Organization of American States (A-41) Signatories and Ratifications*, available online: http://www.oas.org/es/sla/ddi/tratados_multilaterales_interamericanos_A-41_carta_OEA_firmas.asp, 2021.

¹¹ Constitute, *Venezuela (Bolivarian Republic of)’s Constitution of 1999 with Amendments through 2009*, available online: https://www.constituteproject.org/constitution/Venezuela_2009.pdf.

¹² First enacted in 2005, and later amended in 2010 to include digital media Freedom House, *Freedom of the Net Report 2020: Venezuela*, available online: <https://freedomhouse.org/country/venezuela/freedom-net/2020>, 2020.

against Hatred) passed in 2017 to repress and prosecute dissent, particularly online.¹³ Oftentimes, people are arrested simply for expressing their opinions on social networks and end up detained for months.¹⁴ In 2020 alone, the government detained at least 18 people who used social networks to denounce the inefficiency of the government's response to COVID-19 pandemic.¹⁵ The law is also used to prosecute political opposition, members of the socialist parties, as well as those who merely make comments on the topics that the governments construed to be "hate speech" within the very broad definition of such in the law. Effectively, the law seeks to silence and punish those whose opinions are not aligning with the government. Those who are arrested and charged with the violations of the Law Against Hatred are being imprisoned and tortured, further violating their human rights.¹⁶

10. In 2019, journalist and activist Luis Carlos Díaz, who consistently reported on the acts of censorship by the Maduro government (as described above, including internet shutdowns, blocking of the Tor network and phishing attacks by state-owned ISP CANTV) as well as ongoing electricity blackout, was falsely accused by Diosdado Cabello of participating in a right-wing conspiracy he claimed caused an extended nationwide electrical outage. Mr. Díaz was arrested on 11 March, 2019, and charged with "cybercrimes," facing cruel and degrading treatment during his detention. Following global outrage over Mr. Díaz' arrest, he was conditionally released, but still charged with an instigation to commit a crime and prohibited from leaving Venezuela.¹⁷ Mr. Diaz and his defense team are also prohibited from making any statements about the case, with this state-imposed gag order effectively assuring that Mr. Diaz is silenced and censored.¹⁸

¹³ Derechos Digitales, *Discurso De Odio En America Latin: Tendencias de regulacion, rol de los intermediarios y riesgos para la libertad de expresion*, available online: <https://www.derechosdigitales.org/wp-content/uploads/discurso-de-odio-latam.pdf>, Febrero 2020.

¹⁴ Derechos Digitales, *Encarcelado por tuitear*, available online: <https://www.derechosdigitales.org/12273/encarcelado-por-tuitear/>, 28 de junio, 2018.

¹⁵ Access Now, *Fighting Misinformation and Defending Free Expression During COVID-19: Recommendations for States*, available online: <https://www.accessnow.org/cms/assets/uploads/2020/04/Fighting-misinformation-and-defending-free-expression-during-COVID-19-recommendations-for-states-1.pdf>, April 2020; See also Espacio Público. Marzo: cuarentena informativa en Venezuela, <http://espaciopublico.org/marzo-cuarentena-informativa-en-venezuela/>, 2020; Espacio Público, *A tres años de la "ley contra el odio"*, available online: <http://espaciopublico.org/a-tres-anos-de-la-ley-contra-el-odio/>, 2 mayo 2021.

¹⁶ The facts of brutal torture of arrested dissidents were confirmed in the report of the U.N. High Commissioner for Human Rights on the situation of Human Rights in the Bolivarian Republic of Venezuela. See U.N. High Commissioner for Human Rights, Human rights in the Bolivarian Republic of Venezuela, Report, U.N. Doc A/HRC/41/18, paras. 41, 43, available online: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18.docx, 5 July 2019.

¹⁷ Access Now, *Venezuelan journalist Luis Carlos Diaz facing arbitrary detention*, available online: <https://www.accessnow.org/venezuelan-journalist-luis-carlos-diaz-facing-arbitrary-detention/>, 12 March 2019.

¹⁸ Espacio Público, *Luis Carlos Diaz tiene dos años silenciado sin pruebas, y sin sentencia*, available online: <http://espaciopublico.org/luis-carlos-diaz-tiene-dos-anos-silenciado-sin-pruebas-y-sin-sentencia/>, 11 marzo 2021.

11. Since the last UPR cycle, numerous Venezuelan citizens have faced retaliation or intimidation for expressing political opinions online, sharing publicly available information after government officials were made aware of them. This includes messages posted to social media such as Twitter, private group chats, and shared via WhatsApp messages or statuses.¹⁹

Internet shutdowns, online censorship, and blocking social media

12. The #KeepItOn Coalition — composed of more than 240 organisations from 105 countries around the world — track internet shutdowns worldwide. The 2021 #KeepItOn Report, authored by Access Now, noted an alarming government-trend to shut down the internet as a tool to suppress peoples' human rights amid conflict, as well as during pivotal moments, such as protests and elections.²⁰
13. Governments often attempt to justify internet shutdowns by claiming they are necessary to restore “public order” or “national security,” to “prevent the spread of misinformation/disinformation,” to “curb cheating on exams,” or for “technical reasons.” Yet governments typically order internet shutdowns under circumstances that reveal the shutdowns are in fact aimed at quelling protests, gagging citizens, or limiting access to news during important national events like elections.²¹
14. In alignment with its human rights obligations²² Venezuela must refrain from blocking or shutting down the internet and mobile communications services, particularly during elections and protests. Several U.N. bodies and independent experts have condemned internet shutdowns as a violation of international human rights law.²³ Despite clear international and regional guidance that internet shutdowns are never justified under

¹⁹ See, e.g., Espacio Público, *Excarcelado Pedro Jaimes tras un año y cinco meses de detención arbitraria*, available online: <http://espaciopublico.org/excarcelado-pedro-jaimes-tras-detencion-arbitraria/>, 17 octubre 2019 (describing torture of Pedro Jaimes, amateur aeronautics and meteorology fan, who tweeted an image of the flight path of the presidential plane on 3 May 2019); Espacio Público, *Excarcelan con cautela a escritores detenidos por difundir un artículo por Whatsapp*, available online: <http://espaciopublico.org/excarcelan-con-cautela-a-escritores-detenidos-por-difundir-un-articulo-por-whatsapp/>, 1 abril 2021 (reporting on the release of the journalist Milagros Mata Gil and writer Juan Manuel Muñoz from prison after they were arrested for sending a satirical article on WhatsApp, and their cell phones have been confiscated and data deleted); Espacio Público, *Detienen a médico por publicar una imagen contra Maduro en su Whatsapp*, available online: <http://espaciopublico.org/detienen-a-medico-por-publicar-una-imagen-contra-maduro-en-su-whatsapp/>, 28 mayo 2020.

²⁰ Access Now, *Shattered Dreams and Lost Opportunities: A year in the fight to #KeepItOn*, available online: https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf, March 2021.

²¹ Access Now, #KeepItOn FAQ, available online: <https://www.accessnow.org/keepiton-faq/>, 2021.

²² Articles of the Universal Declaration of Human Rights (Article 20), and affirmed in the ICCPR (Articles 21, 22), as well as Venezuela's own Constitution that protects rights to freedom of assembly, expression and opinion.

²³ Most recently summarized in the 15 June 2021 Report *Ending Internet shutdowns: a path forward*, the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/47/24/Add.2, available online: <https://undocs.org/A/HRC/47/24/Add.2> at paras 13 - 14. See also, Access Now, *U.N. propels internet shutdowns into the spotlight, calls on key stakeholders to act*, available online: <https://www.accessnow.org/un-internet-shutdowns/>, 1 July 2021.

international human rights law, internet shutdowns became a regular occurrence in Venezuela, particularly during elections.

15. Since the previous UPR cycle, Venezuela experienced internet shutdowns, online censorship, and the blocking of social media platforms and news sites, thereby infringing the rights to freedom of expression and opinion, the right to freedom of association, access to information, and the safety of journalists, among others, throughout the region:²⁴
 - a. In the first half of 2017, the Venezuelan government blocked 3 streaming TV providers²⁵ without obtaining a court order, in the midsts of increasing protests that were covered live by their streaming news programs.
 - b. VE Sin Filtro's data shows the existence of on-and-off blocks to social media and streaming platforms timed to coincide with newsworthy events.²⁶ This was especially true in 2019 with 64 individual instances of such blocking events being documented.
 - c. A dramatic increase of indefinite blocks of the websites of various NGOs and digital news outlets, and limiting access to different censorship circumvention tools.²⁷ For instance, the news outlet "El Pitazo" has been blocked for the most part since September 2017.²⁸
 - d. On April 26, 2017, the former Special Rapporteurs for freedom of expression and opinion of the U.N. and the Inter-American Commission on Human Rights (IACHR) issued a joint statement rejecting "the official censorship and blocking of new spaces in Venezuela."²⁹ The Special Rapporteurs also condemned the "censorship and blocking of information both in traditional media and on the internet."³⁰

²⁴ Access Now, *Connectivity problems raise red flags ahead of Venezuelan elections*, available online:

<https://www.accessnow.org/connectivity-problems-raise-red-flags-ahead-venezuelan-elections/>, 28 July 2017.

²⁵ Vesinfiltro, *Bloqueos de internet en Abril de 2017*, available online: https://vesinfiltro.com/noticias/bloqueos_abril_2017/, 24 mayo 2017.

²⁶ Vesinfiltro, *Venezuela bloquea las noticias y a los medios en internet*, available online:

https://vesinfiltro.com/noticias/venezuela_bloquea_las_noticias-2019-05/, 3 May 2019.

²⁷ Vesinfiltro, *Limited access to circumvention tools in Venezuela*, available online: https://vesinfiltro.com/noticias/2020-10-30-limited_access_circumvention_tools/, 30 October 2020.

²⁸ Caracas Chronicles, *The Government Blocks El Pitazo for a Third Time*, available online:

<https://www.caracaschronicles.com/2018/08/13/the-government-blocks-el-pitazo-for-a-third-time/>, 13 August 2018.

²⁹ OAS, *Joint Press Release Venezuela Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists*, available online: <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1062&IID=2>, 26 April 2017.

³⁰ *Id.*

- e. In June 2018, Access Now and partners confirmed that, along with the blocking of the independent media websites, the Tor network — a widely used tool allowing users to browse the internet anonymously — was blocked in Venezuela over the government-owned Internet Service Provider (ISP) CANTV, which is the largest in the country.³¹ Tor is a crucial tool for activists, independent journalists, and civil society actors to stay safe online. The inability to browse and publish while remaining anonymous, censorship, including instances of self-censorship, intensified throughout the region.³²
- f. On 21 January 2019, two days before Juan Guaidó, the president of the National Assembly, made his disputed claim to assume the office as the interim president of Venezuela, Nicolás Maduro's government blocked access to Twitter and Instagram on mobile and fixed-line connections, lasting for about two hours. The blockings only ramped up after Guaidó announced his claim to the presidency.³³ Like this in 2019, In the midst of the political turmoil in the country, Venezuela shut down the internet, blocking access to social media platforms at least 12 times.³⁴ Most commonly affected platforms were Facebook and Instagram with instances of blocking occurring whenever Juan Guaidó would livestream, the National Assembly convene, or opposition leaders would conduct public activities. The blocking would seize once the activity was finished.³⁵
- g. In 2019, when the U.N. High Commissioner Michelle Bachelet was visiting Venezuela, CANTV (state-owned and dominant internet service provider) and other ISPs blocked independent media web pages.³⁶
- h. In 2019, Venezuela was one of global "leaders" of internet shutdowns.³⁷ No transparency exists as to why Venezuela shuts down the internet. In fact,

³¹ Access Now, *Venezuela Blocks access to the Tor network*, available online: <https://www.accessnow.org/venezuela-blocks-tor/>, 25 June 2018. See also, Vesinfiltró, *CANTV bloquea la red Tor, usada para evadir bloqueos y proteger la privacidad*, available online: https://vesinfiltró.com/noticias/CANTV_bloquea_Tor_2017-06-26/, 26 June 2018.

³² Derechos Digitales, *#Venezuela: ¿Qué está pasando con los bloqueos en internet?*, available online: <https://www.derechosdigitales.org/12791/venezuela-que-esta-pasando-con-los-bloqueos-en-internet/>, 24 enero 2019.

³³ Access Now, *Targeted, Cut Off, And Left in the Dark, The #KeepItOn report on internet shutdowns in 2019*, available online, <https://www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf>, 2019.

³⁴ *Id.*

³⁵ *Id.*, at p.7.

³⁶ During the visit of Michelle Bachelet, U.N. High Commissioner for Human Rights, there were many websites that stayed blocked. Azpúrua, A. (2019, June 21). *Censura en #InternetVE no se detiene por visita de Bachelet*, retrieved February 17, 2020, from https://vesinfiltró.com/noticias/la_censura_no_se_detiene_por_visita_de_bachelet/, 17 February 2020.

³⁷ Access Now, *Targeted, Cut Off, And Left in the Dark, The #KeepItOn report on internet shutdowns in 2019*, available online, <https://www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf>, 2019.

Venezuela has systematically ignored civil society requests for information regarding the total number of blocked websites.³⁸

16. Internet shutdowns hurt the safety and security of citizens, limit access to information and emergency services, negatively impact small and large businesses, and interfere with access to health, education, and e-services. Additionally, election time is one of the most important periods when free access to information is crucial and with repeated internet shutdowns, this crucial right is violated. Such internet shutdowns further put at risk people, who already were suffering from food and medicine shortages, unreliable sources of electricity and water, all while experiencing rampant violence on the streets.³⁹ Overall, before, during, and after the 2020 elections, various media outlets, journalists, human rights activists, members of opposition parties and, in general, dissidents of the ruling party, in Venezuela have been strongly impacted by digital attacks and censorship strategies on the part of the government.⁴⁰
17. All incidents of internet shutdowns in Venezuela documented by the #KeepItOn Coalition indicated that Venezuela specifically targeted those who disagreed with the government or presented different points of view, such as opposition leaders, journalists, or citizens. The measures Venezuela has taken to restrict internet access and online content, as described above, infringe on individual's fundamental human rights.
18. In addition to more permanent blocking of many media and news sites, including local and international news websites as well as Venezuelan streaming news media, described above, social media platforms have been frequently blocked temporarily during political events, affecting platforms such as YouTube, Twitter, Periscope and Instagram, and mostly on the main ISP, state-owned CANTV.⁴¹ Streaming platforms such as YouTube and Periscope are used in Venezuela by the independent news media, dissidents and members of the opposition to broadcast live news, address the people, spread information and communicate, and they have been blocked even to impede access to the National Assembly sessions.⁴²

³⁸ Access Now, *Civil society unites against internet censorship in Venezuela*, available online: <https://www.accessnow.org/civil-society-letter-against-internet-censorship-in-venezuela/>, 1 June 2017; See also Espacio Público, *Demanda contra Conatel y Cantv por fallas en el servicio de Internet en Venezuela*, available online: <http://espaciopublico.org/demanda-conatel-cantv-acceso-a-internet/>, 17 octubre 2017.

³⁹ Access Now, *Social media shutdown in Venezuela is a warning of what is to come as political tensions rise*, available online: <https://www.accessnow.org/social-media-shutdown-in-venezuela-is-a-warning-of-what-is-to-come-as-political-tensions-rise/>, 22 January 2019.

⁴⁰ Access Now, *Elecciones en Venezuela: Kit de Defensa Digital*, available online: <https://www.accessnow.org/elecciones-en-venezuela-kit-de-defensa-digital/>, 2 December 2020.

⁴¹ Vesinfiltro, *ALERT: Streaming and social media platforms blocked in Venezuela during uprising*, available online: <https://vesinfiltro.com/noticias/alert-2019-04-30>, 30 April 2019.

⁴² Vesinfiltro, *YouTube bloqueado en CANTV durante sesión de la Asamblea Nacional 2019-05-28*, available online: <https://vesinfiltro.com/noticias/alerta-2019-05-28/>, 28 May 2019.

19. Other important platforms have been blocked more indefinitely manner, such as streaming video provider livestream.com,⁴³ audio hosting site soundcloud.com,⁴⁴ and petitions website change.org,⁴⁵ with some interruptions to the long-term censorship applied to these platforms. For days in 2019 Wikipedia was also blocked by state-owned CANTV,⁴⁶ social media platform reddit.com is blocked by private telephone operator Movistar, after it was ordered to be blocked by all ISPs and later unblocked by the rest of providers.
20. Social media blocking not only affects freedom of expression and the free flow of information, but also the right to peacefully assemble and associate, which are activities conducted on social media as well as on the streets, particularly during the ongoing COVID-19 pandemic.

The right to privacy and data protection

21. The right to privacy is a fundamental human right that is enshrined in multiple international human rights instruments.⁴⁷
22. Since the last UPR cycle, the government of Venezuela created a legal framework that allows for collection of personal data. In October 2017, administrative order No. 171 of the National Telecommunication Commission of Venezuela went into effect, sanctioning the retention of personal data without any need for legislative or regulatory controls that are necessary to guarantee the right to privacy.⁴⁸

⁴³ VE sinFiltro, *Venezuela bloquea las noticias y a los medios en internet*, available online: https://vesinfiltro.com/noticias/venezuela_bloquea_las_noticias-2019-05/, 3 May 2019

⁴⁴ VE sin Filtro, *Digital censorship against the press in Venezuela worsens*: https://vesinfiltro.com/noticias/2021-06-04-internet_censorship_to_media_worsens/, 4 June 2021

⁴⁵ VE sin Filtro, *Levantados bloqueos sofisticados de CANTV luego de incendio en una de sus instalaciones*, available online: https://vesinfiltro.com/noticias/2020-04-06-levantados_multiples_bloqueos_cantv/, 7 April 2020; see also: *30 nuevos eventos de bloqueo: CANTV reactiva bloqueos HTTP*, available online: https://vesinfiltro.com/noticias/2020-10-12-30_nuevos_bloqueos_cantv/, 12 October 2020.

⁴⁶ VE sin Filtro, *Twitter, Youtube e Instagram bloqueados por CANTV en la mañana del 21 de enero*, available online: https://vesinfiltro.com/noticias/twitter_youtube_instagram_2019-01/, 21 January 2019; see also: Andrés Azpúrua (Venezuela Inteligente / VEsinFiltro), Mariengracia Chirinos (IPYS Venezuela), Arturo Filastò (OONI), Maria Xynou (OONI), Simone Basso (OONI), Kanishk Karan (Digital Forensic Research Lab), *From the blocking of Wikipedia to Social Media: Venezuela's Political Crisis*, available online: <https://ooni.org/post/venezuela-blocking-wikipedia-and-social-media-2019/> <https://vesinfiltro.com/noticias/report-jan-2019/>, 29 January 2019

⁴⁷ Universal Declaration of Human Rights, Article 12; International Covenant on Civil and Political Rights, Article 17; American Convention on Human Rights, Article 11; African Union Principles on Freedom of Expression, Article 4; European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8; Johannesburg Principles on National Security, Free Expression and Access to Information; Camden Principles on Freedom of Expression and Equality.

⁴⁸ Derechos Digitales, *Sin lugar donde esconderse: retencion de datos de telefonia en Venezuela*, available online: <https://www.derechosdigitales.org/11932/sin-lugar-donde-esconderse-retencion-de-datos-de-telefonía-en-venezuela/>, 15 febrero 2018.

23. In 2018, the Venezuelan government, under Nicolás Maduro, issued **Regulation for the Protection of the Rights of Users in the Provision of Telecommunication Services 2018** that abrogated the Regulation on the Provision of Telecommunication Services 1992, emphasizing constitutional and other legal principles that guarantee privacy of content transmitted by network as well as personal data of the subscribers.⁴⁹ It also includes the opt-in principle prohibiting any use of personal data without explicit written consent from those whose data it is.
24. No data privacy regulatory body exists in Venezuela. Rather, the enforcement of privacy and data protection principles falls to the courts. While those using the telecommunication services expect their personal data to remain private, once they opt-in and with the already existing legal framework ensuring long retention of the data, nothing prevents the government from accessing it -- without any regulatory oversight. Despite seemingly moving forward with developing principles of data protection in the law, Venezuela continues to use the law to infringe on the right to privacy by collecting more data and making receipt of certain services conditional on providing the data.

Venezuela's Digital Identity Programme

25. Venezuela seeks to collect more personal data from citizens, notably through its national identity programme. It is imperative that digital identity systems, particularly those backed by the state's resources and legal powers, are designed around sound principles of governance, data protection, privacy and security. Establishing digital identity programmes is often set within the context of making the delivery of services, including welfare benefits more efficient and accurate, and reducing corruption by using technology to assist in clear identification and secure authentication. However, depending on that design and context these programmes can themselves become impediments to governance and harm the provision of welfare services and the wider inclusion of citizens.

⁴⁹ Article 7 requires providers of telecommunication services to faguard secrecy and inviolability of private communications on their networks; Article 8 requires telecommunication providers to use additional tools and implement appropriate procedures to prevent cybercrime; Article 30 mandates telecommunication providers to adopt mechanisms to guarantee confidentiality of personal data of those who use their services, and prohibits the use of that personal data for commercial and advertising purposes without their expressed written consent ("opt-in" principle). See Gaceta Oficial de la República Bolivariana de Venezuela, *Reglamento para la protección de los derechos de los usuarios en la prestación de los servicios de telecomunicaciones*, available online: <http://www.conatel.gob.ve/wp-content/plugins/pdfjs-viewer-shortcode/pdfjs/web/viewer.php?file=/wp-content/uploads/2018/12/Reglamento-Prestaci%C3%B3n-de-Servicios.pdf&download=true&print=true&openfile=false> , 27 noviembre 2018.

26. In the last decade, it has been mandatory in Venezuela to provide an identity document that includes: a signature, fingerprint, full name, and address of the person who seeks to gain access to a phone, whether mobile or landline. Administrative order No. 171 increased not only the amount of data collected, but also the data retention period. Providers are now mandated to retain data for 5 years after the termination of contract.⁵⁰
27. Since the last UPR, in 2016 Venezuela also increased efforts to collect more data on the population through the use of a new digital identification system, "Carnet de la Patria." This new voluntary identification card captures multiple pieces of information about the person and provides every holder with a unique and personalised QR code. To receive this card, information about one's health and socioeconomic status is requested. Holders of the cards then gain access to some basic resources such as food and medicine.⁵¹ While the purpose of this new digital identification system was to streamline government aid, such as government-administered distribution of food, there is a concern that this system develops into a type of social control mechanism.
28. During the 2018 elections, the ruling party deployed a strategy of tracking voters in real time by installing stations near polling locations that would scan and renew voters' "Carnet de la Patria" cards. This was seen as an attempt to influence and intimidate voters.⁵²
29. In November 2018, concerns that the national identity programme in Venezuela is evolving into a social control mechanism grew after it was reported that Venezuela contracted Chinese telecom company ZTE to build a system of monitoring of "citizen behaviour" through "Carnet the la Patria."⁵³
30. Venezuela keeps finding new ways of making more people sign up for the digital identification system, including rewarding avid "tweeters" with money sent to their digital wallets that are also part of "Carnet de la Patria," In April 2021, the government announced that COVID-19 vaccines would be administered through a lottery system via

⁵⁰ Derechos Digitales, *Sin lugar donde esconderse: retencion de datos de telefonía en Venezuela*, available online: <https://www.derechosdigitales.org/11932/sin-lugar-donde-esconderse-retencion-de-datos-de-telefonía-en-venezuela/>, 15 febrero 2018.

⁵¹ Derechos Digitales, *Identity Systems and Social Protection in Venezuela and Bolivia: Gender Impacts and Other Inequalities*, available online: https://www.derechosdigitales.org/wp-content/uploads/identity-systems_ENG.pdf,

⁵² The World, *Venezuelans fear 'Fatherland Card' may be a new form of social control*, available online: <https://www.pri.org/stories/2018-12-28/venezuelans-fear-fatherland-card-may-be-new-form-social-control>, 28 December 2018.

⁵³ Reuters, *How ZTE helps Venezuela create China-style social control*, available online: <https://www.reuters.com/investigates/special-report/venezuela-zte/>, 14 November 2018.

the "Carnet de la Patria" database.⁵⁴

Surveillance, state sponsored attacks and data collection

31. While seeking to collect more data on Venezuelans, the government further continues to increase efforts in surveilling, identifying and collecting data on those who disagree with them via State-sponsored online attacks:
 - a. In 2018, the government of Nicolas Maduro purchased phone-hacking technology from Cellebrite, an Israeli digital intelligence firm. Specifically the government approved the purchase of Cellebrite's UFED Touch2 units. These high-tech devices are used to hack and extract all data from mobile phones, including conversations, photos, documents, and emails.⁵⁵
 - b. In 2019-2020, the number of reports of journalists, activists and opponents to the government being arbitrarily forced to hand over cell phones have been increasing. Many cases include them being forced or intimidated, generally by the State security forces, into unlocking devices to review the contents or deleting data.⁵⁶
 - c. In 2018, Inter-American Court of Human Rights condemned Venezuela for its illegal creation of the database of political opposition, infringing on people's rights to political participation and freedom of expression.⁵⁷ Yet, despite the Court's opinion, Venezuela continued to seek to illegally obtain personal information of those whom they considered opposition.

⁵⁴ AS/COA, *CovidCheck-in: Venezuelans in the Dark on Vaccines*, available online: <https://www.as-coa.org/articles/covid-check-venezuelans-dark-vaccines>, 24 June 2021.

⁵⁵ Access Now, *What spy firm Cellebrite can't hide from investors*, available online: <https://www.accessnow.org/what-spy-firm-cellebrite-cant-hide-from-investors/>, 26 May 2021; See also Vesinfiltró, *Urgent: Stop Cellebrite sales to Venezuela*, available online: https://vesinfiltró.com/noticias/stop_cellebrite_sales_Venezuela/, 15 November 2019; See also Asi Somos, *Jefe de Estado aprueba mas de 12 millones de euros o su equivalente en petros para modernización del CICPC*, available online: <http://web.archive.org/web/20191115014106/https://www.vtv.gob.ve/millones-euros-petros-modernizacion-cicpc/>, 14 noviembre 2019.

⁵⁶ Espacio Público, *Dgcim detuvo al fotógrafo William Urdaneta*, available online: <http://espaciopublico.org/dgcim-detuvo-al-fotografo-william-urdaneta-en-puerto-ordaz>, 31 julio 2020; ee also Espacio Público, *Funcionarios policiales les quitan los teléfonos a personas que grababan una emergencia en Maracaibo*, available online: <http://espaciopublico.org/funcionarios-policiales-les-quitan-los-telefonos-a-personas-que-grababan-una-emergencia-en-maracaibo/>, 7 agosto 2020; See also Espacio Público, *GNB detiene al reportero gráfico Carlos Padilla en Guarico*, available online: <http://espaciopublico.org/gnb-detiene-al-reportero-grafico-carlos-padilla-en-guarico/>, 8 junio 2020; See also Espacio Público, *Funcionario agrade a periodista de El Pitazo en San Juan de los Morros*, available online: <http://espaciopublico.org/funcionario-agrede-a-periodista-de-el-pitazo-en-san-juan-de-los-morros/>, 19 noviembre 2019.

⁵⁷ Corte Interamericana de Derechos Humanos, *Caso San Miguel y Otras vs. Venezuela*, Sentencia de 8 de febrero de 2018 (Fondo, Reparaciones y Costas), Resumen Oficial Emitido por la corte interamericana, available online: https://www.corteidh.or.cr/docs/casos/articulos/resumen_348_esp.pdf, 8 febrero 2018.

- d. In February 2019, while the political crisis in Venezuela continued to unfold, the humanitarian aid website of VoluntariosxVenezuela was targeted in another type of a technically sophisticated attack.⁵⁸ On February 12, 2019, people trying to access the website when using the services of Venezuela’s state-owned ISP CANTV were automatically redirected to a “cloned” website that looked indistinguishable from the real one. The purpose of the real website was to allow people to register to volunteer to distribute aid. The cloned website sought to collect the same personal data of those who wanted to volunteer that the real one would but with a different purpose. Technical evidence gathered and reported by internet researchers at VE Sin Filtro⁵⁹ indicated that the redirect resulted from a DNS spoofing maneuver, with the likely objective of “phishing” or collecting the personal data of people interested in volunteering opposition activities.^{60 61}
- e. Thousands of victims of the phishing attack had their personal information published on a pro-government website alongside messages intended to intimidate the victims and other dissidents⁶²
- f. Researchers also confirmed that multiple other phishing websites pretending to be popular services, such as social media and email, existed in the past, managed by the same group or persons as the fake VoluntariosxVenezuela site. These other phishing sites appeared to have been designed to “phish” – or obtain – login credentials to those services.⁶³
32. This state-sponsored phishing attack, conducted by the Venezuelan Telecom regulator, CONATEL, with the active participation of the state-owned ISP CANTV aimed to capture personal data from those who were trying to register on the website for

⁵⁸ Global Voices Advox, *Venezuelans see the politics of humanitarian aid play out in online attacks*, available online: <https://advox.globalvoices.org/2019/02/15/venezuelans-see-the-politics-of-humanitarian-aid-play-out-in-online-attacks/>, 15 February 2019.

⁵⁹ Vesinfiltro, *Alerta: CANTV impulsa phishing contra plataforma de voluntariado, poniendo en riesgo a disidentes y opositores*, available online: https://vesinfiltro.com/noticias/alerta-phishing_voluntariado/, 12 February 2019.

⁶⁰ Vesinfiltro, *Phishing by Venezuelan government puts activists and internet users at risk*, available online: https://vesinfiltro.com/noticias/Phishing_by_Venezuelan_government_targets_activists/, 15 February 2019.

⁶¹ Global Voices Advox, *Venezuelans see the politics of humanitarian aid play out in online attacks*, available online: <https://advox.globalvoices.org/2019/02/15/venezuelans-see-the-politics-of-humanitarian-aid-play-out-in-online-attacks/>, 15 February 2019. See also Derechos Digitales, *#Venezuela: Cuando el atacante es el gobierno*, available online: <https://www.derechosdigitales.org/12841/venezuela-cuando-el-atacante-es-el-gobierno/>, 20 febrero 2019.

⁶² DFR Lab, *Venezuelan Pro-Regime Accounts Publish Personal Data of Phishing Victims*, available online: <https://medium.com/dfrlab/venezuelan-pro-regime-accounts-publish-personal-data-of-phishing-victims-1b41ffc256bd>, 18 March 2019.

⁶³ Global Voices Advox, *Venezuelans see the politics of humanitarian aid play out in online attacks*, available online: <https://advox.globalvoices.org/2019/02/15/venezuelans-see-the-politics-of-humanitarian-aid-play-out-in-online-attacks/>, 15 February 2019.

VoluntariosxVenezuela.⁶⁴ As the website was used as a database for volunteers in support of Juan Guaido, this phishing attack via CANTV collected their personal information effectively creating a detailed database of dissidents.⁶⁵

33. In April 2020 a similar state-sponsored phishing attack was performed against users wanting to register for Heroes de la Salud, a platform to distribute financial aid to healthcare during the COVID-19 pandemic. The phishing attack also obtained the highly personal information of users who registered in the fake website, the attack relied on network manipulations by CANTV. Heroes de la Salud was an initiative led by the opposition in the National Assembly and thousands had their personal information exposed in the same way.⁶⁶
34. These attacks are a severe violation of the right to privacy. Individuals visited the website seeking to volunteer their help, and instead, they ended up in a government database, without providing consent to the government obtaining their data, often unaware of what was happening. Phishing attacks by the government cause internet users to live with the constant fear that providing personal information on any website might lead to government obtaining this information; this creates understandable fears and can lead people to stop not only engaging with the volunteer and opposition activities, but also deter them from exercising their rights to expression and opinion, assembly, voting, and more, out of fear that their privacy would be violated and their data misused.

Recommendations

35. We urge that freedom of expression and opinion, access to information, and the right to privacy be prominent issues in the upcoming UPR review cycle. We therefore recommend that Venezuela:
 - a. Adhere to international human rights standards and uphold its commitments to promote and protect the right to freedom of expression and opinion, allowing people to access the internet freely and without fear of surveillance or censorship;
 - b. Recognise and commit to guarantee the rights to freedom of peaceful assembly and association on and offline, particularly during elections and mass protests;

⁶⁴ Vesinfiltro, *Phishing by Venezuelan government puts activists and internet users at risk*, available online: https://vesinfiltro.com/noticias/Phishing_by_Venezuelan_government_targets_activists/, 15 February 2019.

⁶⁵ Hipertextual, *El régimen de Maduro está usando webs falsas para robar datos personales a venezolanos*, available online: <https://hipertextual.com/2019/02/gobierno-venezuela-paginas-phishing>, 16 febrero 2019.

⁶⁶ Vesinfiltro, *Preliminar report: State sponsored phishing against healthcare workers amid COVID-19 pandemic in Venezuela*, available online: https://vesinfiltro.com/noticias/2020-04-26-phishing_healthcare_heroes, 27 April 2020.

- c. Commit to ending violations of freedom of expression and opinion, and the right to privacy online by state and non-state actors and refrain from slowing, blocking or shutting down the internet and telecommunications services;
- d. Review the identity systems to and set up and ensure functionality of the accountability mechanisms to guarantee the identity systems robustly ensure data and privacy protection, non-discrimination, privacy, integrity and self-determination, among others;
- e. Review and improve the mechanisms to obtain the official identity document and passports based on the context of each person;
- f. Take proactive steps towards establishing a comprehensive legal framework around its digital identity programmes. These frameworks should evolve from healthy public discussion centered on meaningful engagement with civil society, and should include important questions related to: the purpose of the program, the safeguards for user rights, protections against surveillance, the role of private actors, centralization of identification and authentication mechanisms, and security measures, especially in case of biometrics-based authentication;
- g. Refrain from using biometric identification systems and the carnet patria as the sole or de facto method to access social services, including to food programmes and money stipends;
- h. Make a public commitment to ensure that any biometric identification or drone programs do not interfere with the fundamental freedoms of individuals, particularly their privacy and autonomy as the use and implementation of technological tools must meet human rights standards;
- i. Minimise the amount of and type of data the government and associated service providers could collect through the identification systems. Further, restrict lawful interception and monitoring of digital identity use and implement measures for accountability;
- j. Take proactive steps to prevent further state-sponsored phishing campaigns and other digital attacks perpetrated against individuals that expose their intended affiliations or private online activity, compile lists of individuals that oppose the

government or their policies, extracts login credentials, or limits human rights in any way;

- k. Investigate and prosecute those responsible for illegally approving, executing and facilitating massive phishing attacks that expose citizens's online actions and intended association, whether they worked for the government at the time or not;
 - l. Implement new policies, to train security forces to ensure they do not confiscate mobile phones arbitrarily, that they respect the privacy of individuals, and do not force the deletion of recordings or other content. Venezuela should make such policies publicly accessible;
 - m. Ensure the prompt, impartial, and effective investigation into and stop the arbitrary detention, harassment and persecution of human rights defenders, activists, journalists and civil society, including NGOs, that document and denounce acts via digital platforms;
 - n. Abolish the ban on anonymity enshrined in the Venezuelan Constitution's Article 57 as possibility of anonymity is crucial to privacy, freedom of expression, and safe internet access;
 - o. Cooperate with U.N. and O.A.S. mechanisms and issue standing invitations to Special Rapporteurs on freedom of opinion and expression, freedom of peaceful assembly and association, and the right to privacy.
36. The UPR is an important U.N. process aimed to address human rights issues worldwide. It is a rare mechanism through which citizens around the world get to work with the government to improve human rights and hold them accountable to international law. *For more information, please contact: un@accessnow.org and info@veinteligente.org*