

Overall Score:

59 - Very Weak

Legal Framework Score:

89 - Strong

Actual Implementation Score:

33 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁵⁷Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

33

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

The law states: "Every person has the right to associate with lawful purposes. ..." Further, every citizen has the right to participate in public affairs, either directly or through their elected representatives. Finally, "All citizens have the right to associate for political purposes, through democratic means of organization, operation and direction. ..."

Although the right to form NGOs is clearly established in the Carta Magna, in December 2010, the National Assembly approved the Organic Law for the Popular Power (LOPP) and subsequent articles of the same law seemingly contradict it. Article 2 states that the Popular Power "edifies the communal state." Article 5 states that the principles and values of the Popular Power are "socialist"; and, Article 7 states that the principal aim of the Popular Power is to "consolidate the revolutionary protagonist democracy and building the grounds for the socialist society..."

The LOPP recognizes the comptroller role of society, stating that it is a "field of action within the Popular Power to exercise vigilance, supervision and control over the Public Sector administration, authorities and activities of the private sector that affect common welfare, practiced by citizens in an individual or collective manner." Given that the Popular Power encompasses all ways of citizen participation and organization, this newly approved law, in practice, requires organizations to follow the socialist principles in violation of the principle of plurality guaranteed in the National Constitution.

Additionally, previous draft laws aimed to inhibit NGOs from forming. For example, the draft International Cooperation Law provided for a cumbersome registry system and mandatory re-registration at the discretion of the executive branch. This draft was not approved; instead, the LOPP and the Political Sovereignty and National Self Determination Defense Law were adopted. Notably, the Political Sovereignty and National Self Determination Defense law include most of the restrictions proposed in the draft.

References:

National Constitution, Articles 52, 62, 67.

Organic Law for the Popular Power (LOPP), Article

19, http://www.superior.consejos.usb.ve/sites/default/files/LEY_ORGANICA_DEL_PODER_POPULAR_09_12_10.pdf

Draft International Cooperation Law, http://repository.upenn.edu/cgi/viewcontent.cgi?article=1002&context=think_tanks&sei-redir=1#search=%22NGO%20Pushback%3A%20Use%20Legal%20ExtralegalMeans%20Constrain%20Think%20Tanks%20%26%20Civil%20SocietyOr

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within

last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | **No**

Comments:

Articles 4 and 5 of the Political Sovereignty and National Self Determination Defense Law state that the wealth and income of organizations with political purposes is to be shaped exclusively by national goods and resources. Also, any donation to these organizations has to be received by nationals within the national territory.

Funding is still allowed in Venezuelan Legislation such as the Public Administration Law Decree Article 112, which indicates the assets that form the patrimony. Other laws such as the Civil Code establish all aspects of civil association, however, the Political Sovereignty and National Self Determination Defense Law, passed in December 2010, clearly goes against National Legislation, yet it stands to reason that this law can and would be applied despite its contradiction.

References:

Political Sovereignty and National Self Determination Defense Law, Articles 4 and 5, <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | **No**

Comments:

The only specific provision for financing is the exclusivity of national funding within the national territory.

The dismissed International Cooperation Draft Law, Article 20, intended to regulate this issue: All organizations have to submit to the authorities all the information and data about their constitution, statutes, activities, administration and resources with a "specific detail of their funding sources."

This provision, however, was not included in the Sovereignty and National Self Determination Defense Law.

References:

Political Sovereignty and National Self Determination Defense Law, Article 4.

Public Administration Law Decree, Article 112.

Venezuela, Anticipated Lay of International Cooperation, <http://www.sumate.org/democracia-retroceso/attachments-spanish/T6%20ST05%20P7V2proyecto%20de%20ley.htm>

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

The approval of the Organic Law for the Popular Power (LOPP) and the Political Sovereignty and National Self Determination Defense Law, and, specifically, the restrictions on funding, constitute a major barrier when creating and maintaining an NGO.

The Society and Press Institute (IPYSS) reports that during the discussion of this law, official Mario Isea stated that this legislation was necessary, because there were organizations such as "Súmate," "Cedice," "Instituto Prensa y Sociedad," among others, "give and receive financing to do whatever they want without any regulation."

President Hugo Chávez, in the Fox News Latino story cited above, stated, "The Law for the Defense of Political Sovereignty and National Self-Determination empowers the government to fine a group double the sum it receives from abroad, bar offenders from running for office, and impose similar penalties for inviting foreigners who publicly give 'opinions that offend state institutions.' "

References:

The Society and Press Institute (IPYSS) regarding the approval of the Political Sovereignty and National Self-Determination Defense Law, January 5, 2011, <http://www.ipys.org/index.php?q=alerta/159>

Fox News Latino, Chávez Introduces New Law To Ban Foreign Funding For Activist Organizations, January 31, 2011, <http://latino.foxnews.com/latino/news/2011/01/31/chavez-s-new-threat-funding-risk-activists/>

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

The sources indicate a clear rejection of good governance and anti-corruption activities by NGOs. NGOs are denied input to the policy-making processes and face coercion. It is evident that they have been restricted in their participation as free associations, not only through discrediting and by ignoring them as interlocutors, but especially through the discriminatory recognition and interaction with other social organizations.

For example, the Venezuelan Ambassador to the Organization of American States objected to the participation of three organizations: Transparencia Venezuela (Transparency Venezuela), Espacio Civil (Civil Space) and Ciudadanía Activa (Active Citizenship), accusing them of having been involved in the 2002 coup by calling for civil disobedience.

The General Comptroller stated publicly his belief that the international NGO Transparency International (TI) lies and that TI's information is "biased" with intent to "discredit the Venezuelan government."

In another instance, the civil association CIVILIS was denied its request to legalize its status because the document made reference to terms such as "democracy" and "politics."

References:

Aporrea, "Clodosbaldo Russian Refutes Transparency International's Report." News Report, December 15, 2010, <http://www.aporrea.org/venezuelaexterior/n171481.html>

Sinergia, "Threats to Democracy, the Rule of Law and Human Rights in Venezuela," June 2009, http://www.sinergia.org.ve/wp-content/uploads/2009/09/venezuelan_situation_june_2009-2.pdf

Corte Interamericana de Derechos Humanos (CIDH), Venezuela, 2010, Page 553, Document Attached.

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

O2c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

Although no NGOs have been effectively shut down, or ordered to cease activities permanently, the case of Human Rights Watch (HRW) represents coercive measures taken against NGO representatives.

As stated in the Sinergia report: "The expulsion of Jose Miguel Vivanco and Daniel Wilkinson of Human Rights Watch (HRW) from Venezuelan territory is an emblematic case. On September 19, 2009, on the same day of the launching of the HRW Report on Venezuela, HRW members were expelled from Venezuelan territory."

Also the new Sovereignty and National Self Determination Defense Law is a mechanism to shut down NGOs or force them to cease activities due to funding regulations.

A Human Rights Watch report confirms this: "In the absence of a judicial check on its actions, the Chávez government has systematically undermined freedom of expression and the ability of human rights groups to promote basic rights. It has also prosecuted government critics."

References:

Sinergia, "Venezuela Situation," June 2009, http://www.sinergia.org.ve/wp-content/uploads/2009/09/venezuelan_situation_june_2009-2.pdf

Human Rights Watch, Universal Periodic Review of Venezuela, Human Rights Watch Submission to the Human Rights Council, March 2011, <http://www.hrw.org/news/2011/03/21/universal-periodic-review-venezuela>

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

67

O3a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

The PROVEA report confirms that no NGO activists were imprisoned specifically because of their activism in the NGO.

References:

PROVEA-ACSOL, Universal Periodic Review of Venezuela, March 19, 2011, <http://www.derechos.org/ve/pw/wp-content/uploads/EPU-VENEZUELA-Informe-Provea-y-otros.pdf>

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

Fox News Latino's Carlos Correa, whose Espacio Publico group defends free speech issues, was attacked outside the National Assembly, when someone hurled a traffic cone at his head. As he was getting ice to put on his head, a man approached, cursed and threatened to kill him, he recalled.

IPYSS reported that an unknown person beat a journalist, allegedly as revenge for denouncing. The editor and owner of the digital newspaper Enfoque365.net was physically attacked by an unknown man whose motivation the editor thinks was revenge for denouncing corruption.

References:

Fox News Latino, January 31, 2011, <http://latino.foxnews.com/latino/news/2011/01/31/chavez-s-new-threat-funding-risk-activists/#ixzz1VrnPApjg>

IPYSS, May 13, 2011, <http://www.ipys.org/index.php?q=alerta/595>

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

Information on human rights, specifically economic, social and cultural Rights: No NGO activists have been killed because of their activism.

References:

PROVEA-ACSOL, Universal Periodic Review of Venezuela, March 19, 2011, <http://www.derechos.org/ve/pw/wp-content/uploads/EPU-VENEZUELA-Informe-Provea-y-otros.pdf>

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

LOT Article 400 states that both "employers and workers have the right to associate in a free manner into labor unions..."

National Constitution Article 95 states that "without distinction or previous authorization, workers have the right to establish in a free manner the labor unions they consider convenient for the best defense of their rights and interests..."

There is also a proposal to reform the Organic Law for Labor by creating "labor councils." The proposed labor councils would have power over both companies and labor unions.

References:

National Constitution, Article 95, document attached.

Organic Law for Labor (LOT), Article 400,
<http://www.tsj.gov.ve/legislacion/lot.html>

Sinergia, "Report on the Situation of Freedom of Association in Venezuela," 2010, paragraphs 15 and 16,
<http://civilisac.files.wordpress.com/2011/03/epu-venezuela-sinergia-asociacion-venezolana-de-organizaciones-de-sociedad-civil1.pdf>

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are able to organize into trade unions; however, there have been systematic attacks against labor union leaders and their activities. The PROVEA report provides many examples of these attacks, including constant threats and imprisonments. Labor unions' rights have been increasingly deteriorating.

References:

Provea, "Cases of labor discrimination and labor protest criminalization including imprisonment of strike leaders and labor rights defenders in labor unions," 2010, p. 3, 11, 12, 16, 17,
<http://www.derechos.org/ve/provea/web/wp-content/uploads/2010Laborales.pdf>

AOL News, "Deterioration of labor union rights in Venezuela," January 21, 2011,
<http://noticias.aollatino.com/2011/01/21/deterioro-derechos-sindicales-venezuela/>

IPYSS, "Secretary of the National Press Workers' Syndicate was threatened of death," January 26, 2011,
<http://www.ipys.org/index.php?q=alerta/204>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

National Constitution Article 58 states: "Communication is free and plural ... every person has the right to timely, truthful impartial information without censorship..."

Organic Telecommunications Law (LOTEL) Article 1 guarantees the human right to communication and the economic activities of telecommunications. Moreover, the National Commission on Telecommunications (CONATEL) is the 'Main ruling organism' under the rule of the LOTEL and the Ministry of the Popular Power for Telecommunications and Information Technology.

Although freedom of the media is guaranteed, LOTEL Article 208 grants the executive the right to interfere: "Until there is a law that rules transmissions and communications ... the executive through regulations can continue to establish the regulations it considers necessary." Further, Article 209 states, "Until a pertinent law is dictated, the executive can, when it deems it necessary to the nation's interest, or when demanded by public order or security, suspend transmission of communications broadcasted by media..."

Moreover, Article 29 of the Social Responsibility in Radio and Television Law establishes that media service providers will be sanctioned or suspended if they "promote, defend or incite disturbances of public order," or spread messages "against national security."

Finally, a 2010 Human Rights Watch report found that the Venezuelan legislature approved laws threatening free speech and the work of civil society.

References:

National Constitution Article 58.

Organic Telecommunications Law (LOTEL), Article 1,
http://www.tsj.gov.ve/legislacion/lt_ley.htm

National Commission on Telecommunications (CONATEL),
<http://www.conatel.gob.ve>

Ley de Responsabilidad Social en Radio y Televisión,
http://www.derechos.org.ve/proveaweb/wp-content/uploads/ley_RSRTV.pdf

Human Rights Watch, Legislative Assault on Free Speech, Civil Society, December 22, 2010, <http://www.hrw.org/news/2010/12/22/venezuela-legislative-assault-free-speech-civil-society>.

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

National Constitution Article 57 states: "Every person has the right to freely express their thoughts, ideas or opinions out loud, written or through any other form of expression ... without censorship." Further, Article 61 states: "Every person has the right to freedom of thought and to express it."

Article 3.2 of the Social Responsibility in Radio and Television Law states that one of the purposes of the law is to guarantee freedom of expression without censorship within the boundaries of a democratic state; however, although freedom of speech is protected in the national constitution, the Social Responsibility in Radio and Television Law regulates media entities' content. Further, Article 20 of a Draft Reform for the LOTEL grants CONATEL discretion to establish "general conditions" to approve administrative authority to media.

References:

National Constitution, Articles 57, 61.

Social Responsibility in Radio and Television Law, Article 3.2,
http://www.derechos.org/ve/proveaweb/wp-content/uploads/ley_RSRTV.pdf

National Assemble of Venezuela, <http://www.asambleanacional.gob.ve/>

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

69

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Venezuela has one of the highest concentrations of government media. According to Elides Rojas, there are three types of barriers to forming print media entities: legal barriers that seek to indirectly regulate the press and delay or deny government permits, repression through the use of public security forces and system, and through threats, which induce "extreme caution" (another way of saying self-censorship).

The law draft mentioned aims to redistribute the radio-electric spectrum among the public, private and "popular sectors," as well as sustainability, financing and publicity. It proposes democratic distribution of the spectrum in three equal parts: 33.3 percent to the state, 33.3 percent private and 33.3 percent to the "alternative community sector."

There also are now explicit prohibitions, such as the violent images ban. Media is able to operate in Venezuela, but as of August 2011, the weekly newspaper 6to Poder was sanctioned. It was temporarily closed for "instigating hate" when the newspaper portrayed a caricature resembling a cabaret with the faces of the "powerful women of the revolution." A judicial case was also initiated.

References:

El Universal, "Court prohibits the publishing of violent images," August 17, 2010,
http://playball.eluniversal.com/2010/08/17/pol_ava_tribunal-prohibe-pub_17A4349093.shtml
See also: http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg

El Carabobefío, "Press Bloc condemns official obstacles to work, from access to official sources to persecution of reporters and trials against media," February 9, 2011, <http://www.el-carabobeno.com/portada/articulo/8194/bloque-de-prensa-denuncia-obstaculos-oficiales-para-trabajar>

El Universal, "InterAmerican Press Society warns about freedom of the press in Venezuela," July 17, 2011, <http://www.eluniversal.com/2011/07/17/sip-preocupada-por-libertad-de-prensa-en-venezuela.shtml>

Ministry of Communications and Information, "Public legislator will debate the Law for Alternative and Community Media," June 8, 2011, http://www.minci.gob.ve/pagina/1/205374/pueblo_legislador_debatirley.html

Interview with Elides Rojas, editor in chief, El Universal, Caracas, Venezuela, October 14, 2011.

Diario Crítico, "Oposicion Exige Que Sea reabierto el Semanario 6to Poder," August 2011, <http://www.diariocritico.com/venezuela/2011/Agosto/noticias/286535/oposicion-exige-que-sea-reabierto-el-semanario-6to-poder.html>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

The Organic Administrative Proceedings Law, Article 97, establishes the appeal of review against definitive administrative actions before the according ministry.

The Organic Supreme Court of Justice Law, Articles 34 and 35, discuss nullification and review: Constitutional courtroom can order a nullify proceeding according to the specifications of the law, and will determine immediate effects of its decision when reviewing definitive sentences.

Print media entities do not need a license because the Commerce Code and the Criminal Code declare them to be a private company; however, appeals are possible if administrative procedures such as government permits and so on are denied or revoked.

References:

Organic Administrative Proceedings Law, Article 97, <http://www.tsj.gov.ve/legislacion/lopa.html>

Organic Supreme Court of Justice Law, Articles 34 and 35.

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

During 2010, temporary closures of print media entities took place, such as Notillanos in Apure state for 180 days and La Jornada in Valle de la Pascua city. Both closures were alleged by the authorities for tax debt, but the owners of the media claim the sanctions were imposed because they had denounced nepotism in the state government and the bad functioning of public services, respectively.

Print media entities do not have problems when being created; many official newspapers have been created in the past two years both by the government and individuals. Difficulties for new editorial lines are not present in the moment of its creation, but rather at the moment of publishing content.

Print media entities do not need a specific license per se because, according to indirect laws, they work as private companies; however, press paper is not produced in the country, so it has to be imported. This implies that there has to be a request to the government for funding to buy the necessary press paper. Delays are very common, which means obtaining press paper can be unpredictable and it sometimes does not come in time for print.

References:

PROVEA, Annual Report 2010, Right to Freedom of Expression and Information, October 2009-September 2010, http://www.derechos.org.ve/pw/wp-content/uploads/2010_expresion.pdf

Interview with anonymous newspaper editorial council member, Caracas, Venezuela, Oct. 13, 2011.

Interview with Elides Rojas. editor in chief, El Universal newspaper, Caracas, Venezuela, Oct. 14, 2011.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Licenses are not required. The costs relate more to operating and publishing content. There are problems related to independence. For example, during 2010, temporary closures of print media entities took place, such as Notillanos in Apure state for 180 days and La Jornada in Valle de la Pascua city. Both closures were alleged by the authorities for tax debt, but the owners of the media claim the sanctions were imposed because they had denounced nepotism in the state government and the bad functioning of public services, respectively.

References:

PROVEA, Annual Report 2010, Right to Freedom of Expression and Information, October 2009-September 2010, http://www.derechos.org.ve/pw/wp-content/uploads/2010_expression.pdf

Interview with Elides Rojas. editor in chief, El Universal newspaper, Caracas, Venezuela, Oct. 14, 2011.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Free and plural communication is gravely threatened. Continuous attacks on media and reporters defy official policies. For example, in the last eight years, there were 1,777 cases against freedom of speech and eight deaths. In the same time period, two regional and one national TV stations and 34 radio stations closed.

The 2010 Committee to Protect Journalists Report states that Venezuela is one of the countries where freedom of the press relates more to political matters than to a profound commitment to the principle.

In December 2010, the government announced the acquisition of 20 percent of Globovisión's shares, which will make it the principal shareholder.

The main barrier when creating a media entity is therefore the government's response to perceived political interest or threats.

References:

La Patilla, "Freedom of Speech Alliance declares against grave violations of freedom of speech," January 21, 2011, <http://www.lapatilla.com/site/2011/01/21/alianza-para-la-libertad-de-expresion-se-pronuncia-ante-las-graves-violaciones-a-la-libertad-de-expresion/>

Monica Medel, National Endowment for Democracy's Center for International Media Assistance, The Knight Center for Journalism in the Americas, Journalism Unions in Venezuela Unite to Demand Less Restrictions on the Media, January 24, 2011, <http://www.ned.org/cima/journalism-unions-venezuela-unite-demand-less-restrictions-media>

IPYS, The 2010 Committee to Protect Journalists Report, <http://www.ipys.org/index.php?q=noticia/294>

Reporters Without Borders, 2010 annual report on freedom of the press in the world, February 22, 2011, <http://www.rsf-es.org/news/reporteros-sin-fronteras-publica-su-informe-anual-2010/>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

By law, there is an appeals mechanism when a media broadcast license is denied or revoked, but in practice this is subject to political considerations.

Article 25 of the Organic Telecommunications Law (LOTEL) states that everyone interested in providing one or more telecommunications services should request through CONATEL the according administrative authorization. Article 27 of LOTEL states that CONATEL can declare inadmissibility of a request if it is obscure, inexact or incomplete, and the petitioner has failed to correct it after previous instructions by CONATEL.

Article 28 of LOTEL states that CONATEL has 45 days to announce whether the request meets the specified requirements.

The December 2010 decision of the Supreme Court of Justice, rejecting RCTV's permission to operate by cable, suggests that the appeals mechanism is politically biased.

References:

Organic Telecommunications Law (LOTEL), Articles 25, 27, 28,
<http://www.nuestracomunicacionpopular.org.ve/comunidad/archivos/54/Ley%20Organica%20de%20Telecomunicaciones.pdf>

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No licenses have been granted in the past two years and all processes are delayed. According to the official CONATEL webpage, the last license was granted on March 14, 2009. During 2009, CONATEL did not grant licenses to community radio or TV licenses.

On July 14, 2011, National Assembly representatives and NGOs demanded the reopening of media registries. They claimed that no audiovisual media entities had been able to register since March 2010.

The government has full discretion when granting licenses. Since most media cases are subject to political considerations, it has been suggested that licenses have not been granted for political reasons. In any case, government media is growing each year, and opposition (or non-governmental media outlets) is diminishing.

References:

Fundeapro, "Media registration reopening is demanded to CONATEL," July 15, 2011,
http://www.fundeapro.com.ve/fundeapro/index.php?option=com_content&view=article&id=690:exigen-reabrir-inscripcion-de-medios-a-conatel

PROVEA, Annual Report 2010, The Right to Freedom of Expression and Information, October 2009-September 2010.

Interview with newspaper editorial council member, Caracas, Venezuela, Oct. 13, 2011.

CONATEL, "Derecho a la Libertad de Expresión e Información," October 2009-September 2010, http://www.derechos.org.ve/pw/wp-content/uploads/2010_expresion.pdf

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are no original licensing costs but a series of related permits. There are many subsequent fiscal fees, which amount to practically half of the average income.

Note that according to the official CONATEL webpage, the last license was granted on March 14, 2009. During 2009, CONATEL did not grant licenses to community radio or TV licenses.

References:

Interview with Elides Rojas. editor in chief, El Universal newspaper, Caracas, Venezuela, Oct. 14, 2011.

Fundepro, "Media registration reopening is demanded to CONATEL," July 15, 2011, http://www.fundepro.com.ve/fundepro/index.php?option=com_content&view=article&id=690:exigen-reabrir-inscripcion-de-medios-a-conatel

PROVEA (October 2009-September 2010), Annual Report 2010, the Right to Freedom of Expression and Information, http://www.derechos.org/ve/pw/wp-content/uploads/2010_expresion.pdf

Interview with newspaper editorial council member. October 13th, 2011, Caracas, Venezuela.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

63

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

In December 2010, the bill to regulate "All content accessible in Internet within Venezuela" was approved. CONATEL has the authority to block all content that is prohibited by Articles 28 and 29 of the Social Responsibility in Radio and Television Law, which relates to "appropriate" content of information.

Despite this new bill, no actual restrictions limit access to the Internet yet. The only webpages restricted in the past two years are related to black market currency exchange, but there still is the availability of this information on the web. However, the laws passed on December 2010 point toward an intention to regulate online content.

References:

Global Voices Advocacy, "Venezuela: The bill to regulate internet has been approved," Dec. 22, 2010 <http://advocacy.globalvoicesonline.org/2010/12/22/venezuela-the-bill-to-regulate-internet-has-been-approved/>

Social Responsibility in Radio and Television Law, Articles 28 and 29, http://legislaciones.item.org.uy/files/VEN_ley_radio_tv_medios_electronicos.pdf
See also: <http://www.hrw.org/news/2010/12/22/venezuela-legislative-assault-free-speech-civil-society>

Freedom House (2011), Freedom on the net 2011: Venezuela, <http://www.freedomhouse.org/images/File/FotN/Venezuela2011.pdf>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government has taken actions regarding censorship of content online, such as in the case of two Twitter users. In that case, the Agency of Scientific Investigations, Enforcement and Crimes detained two people for disseminating false rumors with respect to the national banking system over Twitter. The government also censored online content on at least three occasions in the last year.

This is a grave situation but it is not yet systematic. The great majority of opposition political messages is constantly flowing on the Internet through many social networks and webpages.

References:

U.S. Department of State, 2010 Country Reports on Human Rights Practices, <http://www.state.gov/documents/organization/160483.pdf>

Correo del Orinoco, "Two Tweepers detained for spreading false rumors about banking system," July 8, 2010, <http://www.correodelorinoco.gob.ve/judiciales-seguridad/dos-tweepers-detenido-difundir-falsos-rumores-sobre-sistema-bancario/>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

17

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

Article 5.2 of the Social Responsibility in Radio and Television Law defines informative programs as information spreading programs about "people or events" ... in an "unbiased, truthful and accurate" way.

Article 28.2.e) of the Social Responsibility in Radio and Television Law establishes sanctions to radio and television service providers if they spread real violence images in information programs during "all user" hours.

Article 29 of the Social Responsibility in Radio and Television Law establishes sanctions of suspension on those media service providers that, among other things, "... promote, defend or incite disturbances of public order ..." and spread messages "... against National security ..."

Although the law states that informative programs have to be accurate, unbiased and truthful, if the "accurate news" includes facts that "promote, defend or incite disturbances of public order" (among others listed above), then it will be subject to sanctions. Articles 28 and 29 of this law are highly interpretative.

References:

Social Responsibility in Radio and Television Law, Article 5.2,
http://www.derechos.org/ve/proveaweb/wp-content/uploads/ley_RSRTV.pdf

Social Responsibility in Radio and Television Law, Article 28.2.e),
http://www.derechos.org/ve/proveaweb/wp-content/uploads/ley_RSRTV.pdf

Social Responsibility in Radio and Television Law Article, 29,
http://www.derechos.org/ve/proveaweb/wp-content/uploads/ley_RSRTV.pdf

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Self-censorship is more common in reporters than editors and owners; generally corruption stories are published without any restriction. However, in Venezuela, self-censorship is more common when the corruption is related to smuggling, prostitution and kidnapping-related stories. In these cases, editors and owners practice self-censorship because they would receive many threats and there is no protection from the authorities.

The National Reporters Association warns about self-censorship in Venezuela. It believes self-censorship is necessary because of the government's measures against the rights to freedom of expression, maximum transparency and public freedom.

UCV Professor Marcelino Bisbal affirms that the Venezuelan government has been efficient in creating self-censorship mechanisms, such as constant attacks on reporters, coercion of media and limiting sources of information, among others.

Espacio Público (NGO Public Space) warns about the increase of self-censorship, for denunces of freedom of speech have lessened.

References:

Interview with Elides Rojas. editor in chief, El Universal newspaper, Caracas, Venezuela, Oct. 14, 2011.

El Universal, "National Reporter's Association warns about the virus of self-censorship in Venezuela," Sept. 29, 2009,
http://www.eluniversal.com/2009/09/29/pol_ava_cnp-alerta-sobre-el_29A2812371.shtml

Sobre Política, "Self-censorship in Venezuela," February 20, 2010,
<http://sobrepolitica.com/la-autocensura-en-venezuela/>

El Universo, "Self-censorship in Venezuela is increasing," May 3, 2011,
<http://www.eluniverso.com/2011/05/03/1/1361/aumenta-autocensura-venezuela.html> See also: <http://canaldenoticia.com/espacio-p%C3%BAblico-aument%C3%B3-censura-en-medios>

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There is no formally established mechanism through which the executive exercises prior censorship. The government usually declares publications “censored” after they have become public. After offending material is public, the government imposes sanctions according to an interpretation of regulations.

The current legal system indirectly allows the government to establish regulations on content prior to publication. Corruption-related stories can be considered by the government to be defamatory and inciting hate or anything it can relate to the existing laws. Many media entities will refrain from publishing certain stories for fear of being recriminated.

In the criminal code, there were amendments that criminalize actions in the media, such as “vilifying” and “inciting anxiety.” These amendments provide wide discretion.

References:

Organic Telecommunications Law, Article 208,
www.analitica.com/bitlibioteca/omago/nulidad.asp

El Universal, “Court prohibits the publishing of violent images,” Aug. 17, 2010,
http://playball.eluniversal.com/2010/08/17/pol_ava_tribunal-prohibe-pub_17A4349093.shtml

El Universal, Protection Order. August 17, 2010. http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg

Interview with Elides Rojas, editor in chief, El Universal newspaper, Caracas, Venezuela, October 14, 2011.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

60

10a. In law, print media companies are required to publicly disclose their ownership.

Yes | No

Comments:

According to the Code of Commerce (Código de Comercio), all companies must register in a public registry. The information must include the names and number of shares of the shareholders.

According to Article 13 of the Law on Public Registries and Notary’s Offices, information in these offices must be accessible to anyone.

Although companies that own media must register their ownership structure in public registries (like any other company), in fact it is extremely difficult for the common citizen to access precise information on media shareholders.

References:

Código de Comercio, (Gaceta No. 475 Extraordinaria del 21 de diciembre de 1955), Articles 213-217, <http://fpantin.tripod.com/index-65.html>

Ley de Registro Público y del Notariado. Gaceta Oficial de la República Bolivariana de Venezuela No. 37333 del 27 de noviembre de 2001, Article 13,

Interview with Elides Rojas. editor in chief, El Universal newspaper, Caracas, Venezuela, October 14, 2011.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to "sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

Alba TV affirms that "the objective is to show a vision ... about the social and political reality ... breaking away from the agenda carried out by public and private media."

According to the AVN, in addition to the national audiovisual and print media, international media will be attending, such as Iran Radio Television, EFE, Reuters, the German Press Agency, the Associated Press, NTN24, the Latin Press and the BBC, among others.

According to Elides Rojas, media coverage during elections is rather favorable to the government. Private media is accused of being unbalanced, but in electoral campaign matters it is more a matter of focus instead of coverage. There are much more official newspapers, and denouncement and critiques are labeled as an opposition stand instead of a citizen right.

References:

Alba TV, "Communitary media prepare for 2010 parliamentary elections coverage," Sept. 24, 2010, <http://www.albatv.org/Medios-Comunitarios-se-articulan.html>

Venezuelan News Agency, "National Assembly Installation Act will relieve national and International media coverage," Jan. 4, 2011, http://www.avn.info.ve/node/36678?quicktabs_5=2

Interview with Elides Rojas. editor in chief, El Universal newspaper, Caracas, Venezuela, Oct. 14, 2011.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

According to Medianálisis, El Nacional (opposition) is the newspaper that incorporates the most variety of actors (types of

sources), while Correo del Orinoco and La Nación left out 18 of the 32 types of actors. Correo del Orinoco (official) was the one that used most public employees and communal councils and movements (p. 28). Also, in its conclusion (p. 36), the report states that there is an unbalanced use of live sources according to their political views.

According to Fernando Egaña, opposition political parties and candidates have no access whatsoever to state-owned media outlets. This network is reserved for official parties and candidates. Moreover, these media outlets have permanent campaigns to disqualify and distort the executive and leadership of opposition political parties and candidates.

References:

Medianálisis Elsa Cecilia Piña y Fatima Arevalo, "Contribution of print media to Venezuelan democracy through plurality of sources, citizen participation and media accountability," 2010, http://issuu.com/cic-ucab/docs/informe_medianalisis_versi_n_web?mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Fdark%2Flayout.xml&showFlipBtn=true&AID=10752329&PID=3662453&SID=skim725X;

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Oct. 10, 2011.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

33

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes | **No**

Comments:

According to Human Rights Watch, in June 20, 2010, journalist Francisco Perez was sentenced to three years and nine months in prison. He had published two articles in the El Carabobeño newspaper accusing the mayor of nepotism and corruption.

Venezuela Awareness stated that Oswaldo Alvarez Paz was imprisoned for "instigating hatred, treason, media terrorism," among other reasons, after he discussed on national TV alleged connections between the Venezuelan government and the ETA, the FARC, and drug trafficking activity. In his statements, he urged the government to facilitate an investigation into his accusations, to explain any connection to these groups and to debate the issue publicly.

Reporters Without Borders reported several cases: Gustavo Azocar (news anchor of Tachira TV and ex-correspondent of El Universal) was imprisoned for "illegal profit," but was granted parole afterward. Francisco Perez of El Caraboneño was prohibited from exercising his profession for "slandorous allegations" toward a government officer.

Yet the organization reports that no reporters, collaborators or cyber-dissidents were imprisoned on professional proven causes. This means that the reason for imprisonment is not directly related to denouncing or investigating corruption. The government resorts to other legal arguments to justify the decision. Reporters and journalists are not explicitly imprisoned or prosecuted for "freedom of expression" charges; instead, their anti-corruption efforts are labeled as "instigating hate," "disturbing public order" or "defamation."

References:

Human Rights Watch, World Report 2011, <http://www.hrw.org/en/world-report-2011/venezuela>

Venezuela Awareness, "Oswaldo Alvarez Paz is imprisoned," March 18, 2010, <http://www.venezuelaawareness.com/oapaz/caso1.htm>

Instituto Prensa y Sociedad, "Sentencian a dirigente opositor por delito de opinión," July 14, 2011, <http://www.ipys.org/index.php?g=alerta/725>

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes | **No**

Comments:

Reporters in Apure were covering a protest of state government employees when they were beaten by National Guard officials.

According to Elides Rojas, these situations were more common a few years ago.

References:

Instituto Prensa y Sociedad (IPYS), "The Military attack reporters in Apure," Dec. 9, 2010, <http://www.ipys.org/index.php?q=alerta/162>

Instituto Prensa y Sociedad (IPYS), "Carlos Correa, reporter and director of Espacio Público (Public Space) is attacked and threatened," Dec. 16, 2010, <http://www.ipys.org/index.php?q=alerta/160>

Interview with Elides Rojas, editor in chief, El Universal newspaper, Caracas, Venezuela, Oct. 14, 2011.

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes | No

Comments:

No reporters or collaborators were killed.

References:

Reporters Without Borders, 2010 Annual Report, <http://www.rsf-es.org/news/reporteros-sin-fronteras-publica-su-informe-anual-2010/>

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

12. Do citizens have a legal right to request information?

100

12a. In law, citizens have a right to request government information and basic government records.

Yes | No

Comments:

The National Constitution establishes the right to access public information, yet the new regulations contradict the Carta Magna.

The National Constitution articles state:

51: "every person has the right to submit or direct requests before any authority...and obtain accurate response..."

57: "censorship is prohibited to public employees when accounting for issues under their responsibility"

58: "every person has the right to accurate, truthful, unbiased and uncensored information..."

141: "Public Administrations is at the service of the citizens under the principles of honesty...transparency...accountability..."

143: "Citizens have a right to be informed accurately and truthfully by the Public Administration on matters that are directly of interest to them...censorship will not be allowed to public employees when informing on issues under their responsibility"

325: "The executive has the authority to classify or disclosure all issues related to...National Security..."

337: "Circumstances...that gravely affect National security will be specifically classified..."

Moreover, the Organic Public Administration Law articles state: "...every person can...submit complaints...easy access to updated information..."

Article 7: "Every person in relation to Public Administration have the right to: ...have knowledge at any moment the status of procedures they have interest in...knowledge of public employees identity...have access to Public Administration archives..."

However, the Official Journal No. 39.578 establishes new regulations to Classification and Information Treatment: "every information generated by the institution [government institutions] cannot be published or disclosed to the general public without the according and formal previous authorization of the Responsible Unit of the Institutional Image or the Maximum Authority of the Institution." Thus, it seems the new regulations aim to restrict access to public information.

References:

National Constitution, Articles 51, 57, 58, 141, 143, 325, 327.

Organic Law for Public Administration, Articles 6, 7,

<http://www.tsj.gov.ve/legislacion/lopa.html>

Official Journal No. 39.578, Dec. 21, 2010, <http://www.proacceso.org.ve/Noticias-%281%29/2011/Nueva-normativa-limita-el-acceso-a-la-informacion-.aspx> See also: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/945-dictan-normativa-de-clasificacion-y-tratamiento-de-la-informacion-en-la-administracion-publica>

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes | No

Comments:

Organic Law for Administration Procedures, Articles 3, 4, 5, state that the parties concerned can claim before the immediate hierarchical superior of any procedure or term in which public employees incur.

References:

Organic Law for Administration Procedures, Articles 3, 4, 5, <http://www.tsj.gov.ve/legislacion/lopa.html>

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | No

Comments:

From Organic Law for Simplification of Administrative Procedures, Article 37: Public Administration organisms should establish in a public space every requirement for every specific requirement.
Article 40: Every Public Administration organism shall create a customer service in order to provide people with all support related to administrative procedures.

References:

Organic Law for Simplification of Administrative Procedures, Article 37, 40,
<http://www.minci.gob.ve/doc/leyorganicasimplificaciontr.pdf>

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

21

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Almost seven months after Control Ciudadano (an NGO for citizen control over the security and defense sector in Venezuela) submitted approximately 100 requests for information, the authorities did not know the status of these requests. The authorities had agreed to call when they had the information, but they never called.

New 2010 regulations, such as Presidential Decree No. 7.454 and the Classification and Treatment of Information in the Public Administration framework of October 21, 2010, further restrict the access to public information because they grant authorities the power to classify information as "confidential" if it is politically relevant or alters their public image. Additionally, any information disclosure has to be made after approval by the authorities.

References:

Control Ciudadano, "Second Access to Information request to the Ministry of the Popular Power of Foreign Affairs and the Presidential Dispatch," 2008-2009,
<http://controlciudadano.org/documentos/detalle.php?catid=1>
<http://controlciudadano.org/documentos/detalle.php?mrdstartid=0&catid=1>

Universal Periodic Review Espacio Público, "About the compliance of the Venezuelan State in fulfilling its obligations of guaranteeing freedom of expression and information," 2011, paragraphs 4-11, <http://www.derechos.org/ve/pw/wp-content/uploads/Venezuela-EPU-OCT-2011-Espacio-P%C3%BAblico.pdf>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are no costs associated with requesting information, but it seems irrelevant because access is very limited.

For example, despite over 100 information requests made by the Control Ciudadano EPU, no information is available to date about arms control and registry.

New 2010 regulations, such as Presidential Decree No. 7.454 and the Classification and Treatment of Information in the Public Administration framework of October 21, 2010, further restrict access to public information. They grant authorities the power to classify information as confidential because of political relevance or alteration of their own public image. Additionally, any disclosed information requires prior approval of the authorities.

References:

Universal Periodic Review Espacio Público, "Venezuelan State Compliance to its obligations of guaranteeing freedom of expression and information," 2011, paragraphs 4-11, <http://www.derechos.org/ve/pw/wp-content/uploads/Venezuela-EPU-OCT-2011-Espacio-P%C3%BAblico.pdf>

Universal Periodic Review Control Ciudadano, 2011, <http://www.derechos.org/ve/pw/wp-content/uploads/EPU-Control-Ciudadano.pdf>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Access to information is openly denied in some cases. New 2010 regulations, such as Presidential Decree No. 7.454 and the Classification and Treatment of Information in the Public Administration framework of October 21, 2010, further restrict access to public information. They grant authorities the power to classify information as confidential because of political relevance or alteration of their public image. Additionally, any information disclosure has to be made after approval by the authorities.

For example, the Control Ciudadano requested information from General Henry Rangel Silva on July 18, 2011. General Rangel Silva's response stated that the information request was confusing and did not state the reasons the Control Ciudadano requested the information. Moreover, the general stated that a simple affirmation of rights vulnerability does not imply any conviction in them. This was not a high-quality response.

Apart from General Rangel Silva's response to Control Ciudadano's information request, it is difficult to judge the quality of the responses to information requests because information requests are often denied or overlooked. In some cases, there are useful responses, but this is not typical.

Some information is exempt or excepted from access to information requests. For example, Sentence 745 declares that information regarding public employees salary is confidential.

References:

Acceso a la Justicia, Sentence 745 of the Supreme Court of Justice of July 15, 2010, <http://accesoalajusticia.org/documentos/detalle.php?mrdstartid=20&catid=8>

Control Ciudadano, "Strategic Command of the National Armed Forces denies right of petition," June 13, 2011, <http://www.controlciudadano.org/documentos/detalle.php?catid=20>

Universal Periodic Review Espacio Público, "Venezuelan State Compliance of Obligation to Guarantee Freedom of Expression and Information," 2011, paragraphs 4-11, <http://www.derechos.org/ve/pw/wp-content/uploads/Venezuela-EPU-OCT-2011-Espacio-P%C3%BAblico.pdf>

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no estimated average time for responses and appeals. Sometimes the government answers and sometimes it does not. Sometimes it takes many months for an appeal, other times appeals are overlooked. Thus, a reasonable time period cannot be estimated.

References:

Universal Periodic Review Espacio Público, "Venezuelan State Compliance to Guarantee Freedom of Expression and Information," 2011, paragraphs 4-11, <http://www.derechos.org/ve/pw/wp-content/uploads/Venezuela-EPU-OCT-2011-Espacio-P%C3%BAblico.pdf>

Universal Periodic Review Control Ciudadano, 2011, <http://www.derechos.org/ve/pw/wp-content/uploads/EPU-Control-Ciudadano.pdf>

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In law, a citizen's appeal of a denied information request should be free, but costs seem irrelevant because they are not used as a means to restrict information.

Denials are absolutely discretionary and, for the most part, there will be no response to the appeal if the organism to which the information was requested is not interested in responding.

References:

Universal Periodic Review Espacio Público, "Venezuelan State Compliance of Obligation to Guarantee Freedom of Expression and Information," 2011, paragraphs 4-11, <http://www.derechos.org/ve/pw/wp-content/uploads/Venezuela-EPU-OCT-2011-Espacio-P%C3%BAblico.pdf>

Universal Periodic Review Control Ciudadano, 2011, <http://www.derechos.org/ve/pw/wp-content/uploads/EPU-Control-Ciudadano.pdf>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

In Venezuela, the judiciary does not guarantee access to public information. In fact, the presumption is otherwise: the Supreme Court of Justice ruled that citizens should state the reasons and purposes they are requesting any kind of information.

Specifically, there are no requirements for accessing public information about stating the purposes or reasons the information is petitioned. Venezuela is not updated regarding access to public information matters. One media report states: "Normally, information about security and defense is the exception (when providing information), but not everything the public employee considers that should be classified."

Many NGOs have asked for the creation and discussion of an Access to Information Law. For instance, according to The Institute for Press and Society (IPYSS), which submitted 84 information requests to public employees, only eight replied and only five effectively replied to the request. Two of the responses stated the reasons they couldn't provide the information required, and one simply denied the request.

However, government officials state that it is not necessary. Congressman Manuel Villalba stated that Venezuela does not need an Access to Information Law: "It is completely false that there is restriction to public information in Venezuela; in every state organism there is access to information."

References:

Periodismo para el Acceso de la Información Pública, "Venezuela: Judiciary does not guarantee the right to access public information," July 22, 2010, <http://www.periodismo-aip.org/caso-detalle.php?id=70>

IPYSS, "Report on the situation of access to public information in Venezuela, in the field of exercising journalism, freedom of speech and information," 2008, <http://www.controlciudadano.org/documentos/getbindata.php?docid=374&fieldname=documento>

http://www.asambleanacional.gov.ve/index.php?option=com_content&task=view&id=20349&Itemid=27

El Carabobeño, May 27, 2011, <http://www.el-carabobeno.com/impreso/articulo/t270511-b14/venezuela-no-se-ha-actualizado-en-acceso-a-informacin-pblica>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

2.1. ⁵⁶Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes | No

Comments:

Article 63 states: "Suffrage is a right. It will be exercised through free, universal, direct and secret voting." Moreover, it defines voters as all Venezuelans over 18 years old (Article 64).

Note that according to Sinergia, in the Electoral Processes Law there is no explicit reference to the secrecy, universal and direct characters of the vote acknowledged in international legislation.

References:

National Constitution, Articles 5, 63, 64, 293.

Sinergia, "The Organic Electoral Processes Law and the right to elect and be elected," February 2010, <http://www.sinergia.org.ve/wp-content/uploads/2010/03/lo-procesos-electorales-diagramado.pdf>

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes | No

Comments:

From Organic Electoral Processes Law (LOPE), Article 2: "The electoral process constitutes all the actions carried out in a successive manner by the National Electoral Council and its subordinate electoral organisms, directed to guarantee the right to vote..."

References:

Organic Electoral Processes Law (LOPE), Article 2.

http://www.sumate.org/Especiales/ProyectoLeyElectoral/20090825_Cuadro_Comparativo_LOPE.pdf

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

58

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

In Venezuela, according to Article 64 of the National Constitution, every Venezuelan older than 18 years is allowed to vote, barring civil interdiction or political prohibition. Foreigners over 18 year old with more than 10 years of residence in the country can vote with legal restrictions.

According to PROVEA, citizen participation in the parliamentary elections was significant. A broad range of social sectors was mobilized. The electoral authorities reported the participation of 11,615,590 people, representing 66.45 percent of total registered voters. It was a calm voting process and only 28 minor electoral offenses were registered.

References:

PROVEA, Annual Report 2009-2010, http://www.derechos.org/proveaweb/wp-content/uploads/2010_participacion.pdf

Ojo Electoral, OE regarding 26-S parliamentary elections, September 30, 2010, <http://www.ojoelectoral.org/admin/informes/APropositoDel26S.pdf>

Correo del Orinoco, "CNE: Parliamentary elections' participation was of 66,45%," September 27, 2010, <http://www.correodelorinoco.gob.ve/nacionales/cne-participacion-durante-elecciones-parlamentarias-fue-6645/>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ojo Electoral election observers perceived a significant number of actors (from different political ideologies) pressuring voters at the voting centers.

Sumate states that some of the most frequent claims made during the parliamentary elections were related to obstruction, coercion or intimidation when voting, representing 29.1 percent (71 out of 244) of the claims related to voting centers' external situations (which also represent 21 percent of the entirety of claims, or 244 out of 1,164). There was a total of 1,164 claims, of which 55.8 percent (649) related to the voting machine and political propaganda.

References:

Ojo Electoral, I Report on Parliamentary Elections' Electoral Observation, September 26, 2010, <http://www.ojoelectoral.org/admin/informes/Boletin2609am.pdf>

Sumate, Parliamentary 2010 Analysis, October 2010, p. 42-43, <http://www.sumate.org/Especiales/Parlamentarias/AnalisisSumateParlamentarias2010.pdf>

Sumate, "Sumate confirms that the secrecy of the vote is guaranteed," September 2010, <http://www.sumate.org/>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Since the 1998 presidential elections, there have been 11 electoral processes, including regional elections (December 2010) and parliamentary elections (September 2010).

Elections scheduled for 2010 were carried out in a regular way; however, there have been modifications in the past on election dates without a formal legal justification.

References:

Ojo Electoral, Summary of last 11 electoral processes, 2011, <http://www.ojoelectoral.net/pdf/Resumen%2011%20Proc.pdf>

National Electoral Council Official Webpage 2011, Electoral Results 2004/2005/2006/2008/2010, http://www.cne.gov.ve/web/estadisticas/index_resultados_elecciones.php

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

70

16a. In law, all citizens have a right to form political parties.

Yes | No

Comments:

National Constitution, Article 62, grants every citizen the right to participate in public affairs, either directly or through elected representatives. Article 67: "All citizens have the right to associate for political purposes, through democratic means of organization, operation and direction..." Finally, Article 8 of the Law for Political Parties, Public Meetings and Demonstrations mandates, "The group of citizens wishing to constitute a political party shall communicate this to the District or Department's civil authority."

References:

National Constitution, Articles 62, 67.

Law for Political Parties, Public Meetings and Demonstrations, Article 8,
<http://docs.venezuela.justia.com/federales/leyes/ley-de-partidos-politicos-reuniones-publicas-y-manifestaciones.pdf>

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes | No

Comments:

Article 3 of the Law for Political Parties, Public Meetings and Demonstrations states: "In order to become a political party member, it is required to be Venezuelan, eighteen years old or older, and not be under political disqualification."

Note that Article 7 of the LOPE grants the right to nominate candidates for electoral processes only to these groups: 1. Organizations with political purposes, 2. Groups of electors, 3. Citizens on their own initiative, 4. Indigenous communities or organizations.

References:

Organic Electoral processes Law (LOPE), Article 47,
http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo1.php

Law for Political Parties, Public Meetings and Demonstrations, Article 3

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

The Consejo Nacional Electoral (CNE) document specifies 31 organizations with political purposes that are approved by the CNE.

The forming of Voluntad Popular with Leopoldo Lopez as its leader denotes the possibility to form political parties in the country. Leopoldo Lopez previously was disqualified from running for office.

References:

Radio Nacional de Venezuela, "CNE extends space to update payroll of political parties members," July 6, 2011, <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=160634>

Voluntad Popular, "The National Electoral Council formally accepts 'Voluntad Popular' as a political party, January 14, 2011, <http://www.voluntadpopular.com/index.php/quienes-somos>

Consejo Nacional Electoral, (CNE), Approved Provisional Denominations, Parliamentary Elections 2010, February 1, 2010, http://www.cne.gov.ve/web/normativa_electoral/elecciones/2010/parlamentarias/documentos/DENOMINACIONES_APROBADAS.pdf

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Not everyone can run for political office. There has been a constant process of political disqualifications (prohibition to run for political office) in furtherance of the government's interests.

According to Sumate, electoral authorities denied citizens their right to run for political office. For example, Leopoldo Lopez is sanctioned by Venezuela's judiciary and cannot run for public office until 2014; however, in 2010, Lopez filed suit at the Inter-American Court of Human Rights against Chávez for violating the human rights of opposition candidates (by disqualifying them from running for election for "administrative reasons"). The court reached a unanimous decision in favor of Lopez. President Chávez said that his "haircut" was more valuable than any decision of the court. This means that Chavez thinks the international court's decision in favor of Leopoldo Lopez is completely irrelevant and has no value.

References:

Sumate, "Political prohibition to hold public office during elections," 2010, p.3, <http://www.sumate.org/Especiales/Parlamentarias/20100728-ResumenEjecutivoInformeVigilanciaElectoralParlamentarias2010.pdf>

Diariocrítico de Venezuela, "IACHR initiates a two-day audience to revise Leopoldo Lopez's case who's been banned to run for political office," January 3, 2011, <http://www.sumate.org/Especiales/Parlamentarias/20100728-ResumenEjecutivoInformeVigilanciaElectoralParlamentarias2010.p>

El Nuevo Herald, "Chavez Corte de Pelo Vale Mas," September 17, 2011, <http://www.elnuevoherald.com/2011/09/17/1027035/chavez-corte-de-pelo-vale-mas.html>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Names and political parties of representatives in the National Assembly are available on the NA's webpage. It shows multiple parties' representation in the NA, including PSUV, UNT, MPJ, PROYECTO VENEZUELA, AD, among others; however, representation by the opposition in the National Assembly is not proportionate. Opposition votes amounted up to 51.88 percent of the votes, yet only 40.61 percent are represented in the assembly. This is due to a reform of the Organic Law for Electoral Processes (2009), which eliminates proportional representation established in the national constitution. Also, electoral circuits are modified in order to provide more representatives to less-populated states.

Notably, the CNE shows evidence of a variety of opposition political parties as newly elected representatives — parties such as AD, MPJ, COPEI, among others.

References:

National Assembly, 2011, Main Representatives 2010-2015, http://www.asambleanacional.gob.ve/index.php?option=com_ficha&sw=diputado&Itemid=88&lang=es

National Electoral Council, Parliamentary Elections Disclosure, September 26, 2010, http://www.cne.gob.ve/divulgacion_parlamentarias_2010/

Ojo Electoral, "OE regarding parliamentary elections 26-S," September 30, 2010, <http://www.ojelectoral.org/admin/informes/APropositoDel26S.pdf>

ODH Consulting, "Analysis of parliamentary election' results 2010," September 30, 2010, <http://www.slideshare.net/alayon20/anlisis-resultados-elecciones-parlamentarias-venezuela-2010-odhcg>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes | No

Comments:

Organic Electoral Processes Law, Article 4, mandates: "The National Electoral Council as ruling body and maximum authority of the Electoral Power, will directly and through its subordinate bodies exercise supreme direction, leadership, supervision, surveillance and control of electoral processes."

References:

Organic Electoral Processes Law, Article 4, http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo1.php

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

60

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes | No

Comments:

Electoral Power Law, Article 3, mandates that electoral power is ruled by the principles of organic independence, functional and budgetary autonomy, independence in regard to political parties, impartiality and citizen participation, decentralization of electoral administration, cooperation, transparency and swiftness in all its actions and decisions.

References:

Electoral Power Law, Article 3, http://www.derechos.org/ve/proveaweb/wp-content/uploads/ley_poderelectoral.pdf

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Although the newly appointed authorities of the CNE have professional qualifications, their former membership of the official party and participation in the government point toward political consideration in their appointment.

For example, in violation of Article 296 of the Constitution, new CNE authorities were appointed as principal chancellors despite their connection with the PSUV (Socorro Hernandez, Tania D'Amelio and substitute Iván Zerpa) in December 2009. Both newly appointed authorities maintain that their former PSUV memberships will not influence their performance in the CNE. Hernandez, for example, quit the party once she was nominated for the position. Socorro Hernandez was also minister for telecommunications and the president of the state-owned communications company CANTV.

References:

Sumate, Executive Summary, Electoral Surveillance Report, Parliamentary Elections 2010, July 28, 2010
<http://www.sumate.org/Especiales/Parlamentarias/20100728-ResumenEjecutivoInformeVigilanciaElectoralParlamentarias2010.pdf>

Noticias24, "Socorro Hernandez and Tania D'Amelio sworn in as CNE chancellors," December 3, 2009,
<http://www.noticias24.com/actualidad/noticia/123885/juramentadas-socorro-herandez-y-tania-damelio-como-rectoras-del-cne/>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The CNE webpage presents in detail all the authorities of the CNE, their resumés and their serving periods. Although the staff members have professional qualifications, the CNE does not have enough staffers. The National Electoral Council's authorities are permanent, the CNE is the main ruling body of the electoral power, which is a new branch of the public powers established in the 1999 National Bolivarian Constitution. It has the same hierarchy of the executive, legislative and judicial branch.

References:

CNE, Authorities, August 30, 2011, http://www.cne.gov.ve/web/la_institucion/autoridades.php

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The National Electoral Council (CNE) publishes a list of events each year with election-cycle specifics. Results are also published. Information can be delayed, but access is available through the Internet on CNE's official website at no cost.

For example, Ojo Electoral reported that CNE took more than six extra hours to deliver the first official bulletin. CNE authorities claimed they announce results once they had the majority of the votes counted and had an irreversible tendency, but according to AVN, "just hours" after the elections CNE had the results of up to 98 percent of the vote count.

The results for Parlatino (the Latin American Regional Parliament) from voters outside the country were released on August 2011, 11 months after elections.

References:

CNE, Documents per event, 2011, http://www.cne.gov.ve/web/normativa_electoral/documentos_por_evento.php

Ojo Electoral, "OE regarding parliamentary elections of 26-S, September 30, 2010, <http://www.ojoelectoral.org/admin/informes/APropositoDel26S.pdf>

CNE, "Electoral Power issued the first Official Parliamentary Elections' Bulletin," September 27, 2010, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=1868

AVN (Venezuelan News Agency), "CNE delivered irreversible parliamentary results in record time," September 28, 2011, <http://www.avn.info.ve/node/20124>

El Universal, "CNE issues parliamentary elections' results," September 27, 2010, http://www.eluniversal.com/2010/09/27/v2010_ava_cne-ofrece-resultado_27A4525091.shtml

VotoJoven, "CNE discloses foreign results to the Latin America Regional Parliament," August 23, 2011, <http://votojoven.com/site/2011/08/cne-publica-resultados-del-exterior-para-el-parlatino/>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The National Electoral Council (CNE), along with other state agencies, is working to establish regulations that sanction political parties that do not account for their electoral campaign funds. CNE imposes penalties on offenders, but sometimes they are discretionary. Some official candidates were penalized, but high-level officials were not.

The CNE has started investigations, yet no significant sanctions have been imposed. This is not due to a lack of authority in enforcing its decisions, but rather to inconclusive investigations. For example, Noticias 24 Zuloaga (Globovision) reported that no sanctions were imposed on Televen. Upon investigation of tax identification numbers, CNE declared that the TV stations had complied with regulations and no sanction should be imposed; however, during 2011 the president made use of official nationwide broadcasts for electoral campaign purposes and no investigation or warning has been made.

References:

PSUV, "CNE will impose sanctions to political parties that do not account for their funds," November 16, 2010, <http://www.psuv.org.ve/portada/cne-aplicara-sanciones-partidos-rindan-cuenta-fondos/>

Noticias24, "CNE, Globovision and Televen had a meeting," September 15, 2010, <http://www.noticias24.com/actualidad/noticia/172435/autoridades-del-cne-se-reunen-este-miercoles-con-representantes-de-globovision-y-televen/>

National Obligatory Broadcast, Chavez Elecciones, April, 2011, http://www.youtube.com/watch?v=yXk7qZBZ5Xc&feature=player_embedded#

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

67

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The registration system and database are open and available to the public on the CNE webpage.

The CNE will carry out the electoral registry's auditing with the participation of organizations with political purposes, candidates, groups of electors and indigenous communities.

El Nuevo Herald states that according to experts, the number registered in the Permanent Electoral Registry (REP), 17.7 million voters, is artificially high due to irregularities within CNE. For example, a high number of voters have two or three different identification numbers: 1.33 million people who were born on the exact same day and hour, and more than 39,000 people are more than 100 years old. Moreover, UNT, a political party, was worried about the update process for the Permanent Electoral Registry because REP announced the availability of 1,300 registration centers, but to date, only a dozen registration centers exist across principal cities.

These statistics point to serious flaws. There is a database of reports of irregularities in the registration process (<http://votojoven.com/denuncias/>), yet there is no mechanism to ensure that errors are corrected in a timely fashion.

References:

El Nuevo Herald, "Integrity of the Venezuelan Electoral Registry is questioned," September 20, 2010, <http://www.elnuevoherald.com/2010/09/20/v-fullstory/805277/cuestionan-integridad-de-registro.html>

Informe21, "Political party Un Nuevo Tiempo (UNT) asked the CNE for improvements in the registration process," July 20, 2010, <http://informe21.com/politica/partido-nuevo-tiempo-solicito-al-cne-mejora-del-proceso-inscripcion-re>

Globovisión, "Electoral Registry Auditing will be held on May 25th," May 19, 2010, <http://www.globovision.com/news.php?nid=149506>

Database of reports of irregularities in the registration process, <http://votojoven.com/denuncias/>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes | No

Comments:

From Organic Electoral Processes Law, Article 213: "The time frame limit to lodge the Electoral Litigation Claim against the actions or omissions of the National Electoral Council will be fifteen days." Article 214 states that the Electoral Litigation Claim is ruled by the Organic Law of the Supreme Justice Court's legal requirements,"

Organic Law of the Supreme Justice Court, Article 27, addresses "Competences of the Electoral Chamber 1. Attend to electoral litigation claims lodged against actions or omissions of the Electoral Power bodies... ."

However, in practice, CNE declared inadmissible 11 parliamentary elections' objections. These objections were brought upon the CNE and were made against electoral results in some of the constituencies during the September 26 parliamentary elections.

References:

Organic Electoral Processes Law, Articles 213, 214, http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo18.php

Organic Law of the Supreme Justice Court, Article 27, http://www.tsj.gov.ve/legislacion/GO_39522_011010.pdf

CNE, December 2, 2010, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=1908

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Litigation Claim has indeed been lodged several times, but not on major elections like presidential or governmental; in any case, the court's decision on this claim may depend on political interests.

References:

Globovision, "Supreme Justice Court declared inadmissibility of the Electoral Litigation Claim against representative Alemán," July 28, 2011,
<http://www.globovision.com/news.php?nid=196990>

Supreme Justice Court, July 20, 2011 Decision, "The Electoral Litigation Claim lodged on February 2nd, 2011 is declared inadmissible,"

<http://www.tsj.gov.ve/decisiones/selec/Julio/67-20711-2011-2011-000008.html>

Noticiero Legal, "Electoral litigation claim lodged by the 'Caja de ahorro' of the Miranda government associates is admitted," January 8, 2010,

http://www.noticierolegal.com/index.php?option=com_content&view=article&id=1281:admiten-recurso-contencioso-electoral-interpuesto-por-asociados-de-la-caja-de-ahorro-de-la-gobernacion-de-miranda&catid=20:tribunal-supremo-de-justicia&Itemid=25

<http://www.tsj.gov.ve/decisiones/selec/Diciembre/182-141209-2009-09-000076.html>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

Comments:

According to Ojo Electoral, the presence of Plan República (the military) was noticed in all voting centers, both inside and outside. That is permitted to maintain election security. However, there were some centers in which the military was present at the voting tables. This is strictly forbidden by the regulations.

Plan República, the military entity in charge of election security, reportedly generated 135 of the 1,164 (11.6 percent) citizen claims recorded.

References:

Ojo Electoral, Report on Parliamentary Elections' Electoral Observation, September 26, 2010,
<http://www.ojelectoral.org/admin/informes/Boletin2609am.pdf>

Sumate, Parliamentary 2010 Analysis, October 2010, p. 45,

<http://www.sumate.org/Especiales/Parlamentarias/AnalisisSumateParlamentarias2010.pdf>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

Comments:

Organic Electoral Processes Law, Article 157, states: Organizations with political purposes ... have the right to have witnesses before the electoral subordinate bodies ... as well as the right to accredit witnesses in the elections auditing process and its stages. Article 158 of the same law states: "witnesses cannot be constricted when fulfilling their functions."

Electoral Power Law, Article 66.7/66.8, states that the Political Participation and Financing Commission has within its duties the processing of national and international observers' credentials, as well as witnesses' credentials.

Although international observers are allowed, they have been restricted in their reporting mechanisms. For example, they cannot reveal totaled numbers before an official CNE is issued.

References:

Organic Electoral Processes Law, Articles 157, 158,
http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/indice.php

Electoral Power Law Articles 66.7/66.8,
http://www.cne.gov.ve/web/normativa_electoral/ley_organica_poder_electoral/titulo3.php#cap6

Sumate, Executive Summary. 2010 Parliamentary Elections' Surveillance Report, . July 28, 2010, <http://www.sumate.org/Especiales/Parlamentarias/20100728-ResumenEjecutivoInformeVigilanciaElectoralParlamentarias2010.pdf>

Sumate, Parliamentary Analysis 2010,
<http://www.sumate.org/Especiales/Parlamentarias/AnalisisSumateParlamentarias2010.pdf>

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Sumate reported that the new regulation about national and international observers, in practice, limits the observation process. It states that observers should keep the content of opinions and suggestions made to the electoral authority under strict confidentiality. Sumate also reported that observers generated 11.6 percent of the election complaint claims recorded (p. 45).

References:

Venelogía, "International observers deliver report on Parliamentary elections to the CNE," September 28, 2010, <http://www.venelogia.com/archivos/4630/>

Correo del Orinoco, "Attorney General urged international observers to be alert during parliamentary elections," September 23, 2010,
<http://www.correodelorinoco.gob.ve/nacionales/fiscal-general-into-a-observadores-internacionales-estar-alerta-durante-elecciones-parlamentarias/>

Sumate, Executive Summary. 2010 Parliamentary Elections' Surveillance Report, July 28, 2010,
<http://www.sumate.org/Especiales/Parlamentarias/20100728-ResumenEjecutivoInformeVigilanciaElectoralParlamentarias2010.pdf>

CNE, Reglamento en Materia de Observación Nacional Electoral y Acompañamiento Internacional Electoral. (Regulations on National and International Electoral Observation), May 26, 2010,
http://www.cne.gov.ve/web/normativa_electoral/elecciones/2010/parlamentarias/documentos/Reglamento_Observacion.pdf

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

76
2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

33

20a. In law, there are limits on individual donations to political parties.

Yes | **No**

Comments:

There is no specification of numerical ban, but there are several limitations on the origin of the donations.

References:

Organic Electoral Processes Law, Article 75.13/14/15: Electoral campaigns will not be allowed if they are financed either by public funds other than those specified in the law, foreign funds or private funds not declared to the National Electoral Council and the Integrated National Service for Customs and Trinary Administration (SENIAT)

http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo6.php

Organic Electoral Processes Law N° 5 Regulation, Article 9: restrictions to financing of Organizations with Political Purposes, Elector Groups, among others, including anonymous contributions or donations, as well as contribution from public entities, foreign companies, public service companies, foreign governments, organisms or foreign individuals without residence, national organizations that receive contributions from foreign states or organizations, illicit activities, foundations with national government or foreign government resources, and contributions made through a system that makes it difficult or impossible to determine the identification of the contributor.

http://www.cne.gov.ve/web/normativa_electoral/elecciones/2010/parlamentarias/documentos/REGLAMENTO_5.pdf

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | **No**

Comments:

The restrictions refer to the origin of the donation, not a numerical limit.

References:

Law for Political Parties, Public Meetings and Demonstrations Article 25, 4): political parties cannot "...accept donations or benefits from public institutions autonomous or not, from foreign companies or with international headquarters, from public works dealer companies or of any government's goods service, from foreign states or foreign political organizations."

<http://docs.venezuela.justia.com/federales/leyes/ley-de-partidos-politicos-reuniones-publicas-y-manifestaciones.pdf>

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | **No**

Comments:

No pertinent provisions in the law exist.

The applicable law does not include a section referring to expenditures of finances other than the limitations previously mentioned about the origins of donations.

References:

Consejo Nacional Electoral, http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo6.php

Consejo Nacional

Electoral, http://www.cne.gov.ve/web/normativa_electoral/elecciones/2010/parlamentarias/documentos/REGLAMENTO_5.pdf

Congress of Venezuela, Gaceta Oficial de la Republica de Venezuela, Law of Political Parties, Public Meetings, and Demonstrations, <http://docs.venezuela.justia.com/federales/leyes/ley-de-partidos-politicos-reuniones-publicas-y-manifestaciones.pdf>

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

Comments:

The Law for Political Parties, Public Meetings and Demonstrations, Article 25 (5), mandates that political parties will "... carry accountant documentation with income and the party's resource investment."

The accountability documentation has to be presented only to the authorities; however, in theory, citizens could exercise the right to access public information in order to obtain these documents. The effectiveness of these requests requires another evaluation.

References:

Law for Political Parties, Public Meetings and Demonstrations, Article 25 (5),

<http://docs.venezuela.justia.com/federales/leyes/ley-de-partidos-politicos-reuniones-publicas-y-manifestaciones.pdf>

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

Comments:

Electoral Processes Law Title VI (Articles 71-90) ,The Consejo Nacional Electoral (CNE), holds exclusive jurisdiction to initiate investigations when irregularities in electoral campaigns occur.

References:

Consejo Nacional Electoral, http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo6.php

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

Comments:

From Electoral Power Law, Article 33.25: it is within the duties of the National Electoral Council to "... watch over the compliance of legal dispositions regarding origin and management of political organizations' funds"

From Article 66: The Political Participation and Financing Commission will "watch over compliance of constitutional and legal regulations related to funds and financing of electoral campaigns carried out by political organizations..." and "investigate the origin and allocation of economic resources used in electoral campaigns...".
Also Article 69.

References:

Electoral Power Law, Articles 33.25, 66, 69,
http://www.derechos.org.ve/proveaweb/wp-content/uploads/ley_poderelectoral.pdf

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

40

21a. In law, there are limits on individual donations to political candidates.

Yes | No

Comments:

The legal situation remains the same for political parties: There are regulations on the origins of the funding and financing, yet no numerical limits are established.

Organic Electoral Processes Law, Article 75.13/14/15 states: Electoral campaigns will not be allowed if they are financed either by public funds other than those specified in the law, foreign funds or private funds not declared to the National Electoral Council and the Integrated National Service for Customs and Tributary Administration (SENIAT).

Organic Electoral Processes Law No. 5 Regulation, Article 9 states: Restrictions to financing political candidates, among others, including anonymous contributions or donations, as well as contribution from public entities, foreign companies, public service companies, foreign governments, organisms or foreign individuals without residence, national organizations that receive contributions from foreign states or organizations, illicit activities, foundations with national government or foreign government resources, and contribution made through a system that makes it difficult or impossible to determine the identification of the contributor.

References:

Organic Electoral Processes Law, Article 75.13/14/15, http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo6.php

Organic Electoral Processes Law No. 5 Regulation, Article 9, http://www.cne.gov.ve/web/normativa_electoral/elecciones/2010/parlamentarias/documentos/REGLAMENTO_5.pdf

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | **No**

Comments:

The legal situation remains the same for political parties: There are regulations on the origins of the funding and financing, yet no numerical limits are established.

Organic Electoral Processes Law Article 75.13/14/15 states: Electoral campaigns will not be allowed if they are financed either by public funds other than those specified in the law, foreign funds or private funds not declared to the National Electoral Council and the Integrated National Service for Customs and Tributary Administration (SENIAT).

Organic Electoral Processes Law No. 5 Regulation, Article 9 states: Restrictions to financing political candidates, among others, including anonymous contributions or donations, as well as contribution from public entities, foreign companies, public service companies, foreign governments, organisms or foreigners without residence, national organizations that receive contributions from foreign states or organizations, illicit activities, foundations with national government or foreign government resources, and contribution made through a system that makes it difficult or impossible to determine the identification of the contributor.

References:

Organic Electoral Processes Law, Article 75.13/14/15, http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo6.php

Organic Electoral Processes Law No. 5 Regulation, Article 9, http://www.cne.gov.ve/web/normativa_electoral/elecciones/2010/parlamentarias/documentos/REGLAMENTO_5.pdf

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

Comments:

Organic Electoral Processes Law No. 5 Regulation, Article 17, mandates that political candidates shall present accountability notebooks before the National Financing Office or the according Regional Electoral Office. The accountability documentation has to be presented only to the authorities; however, in theory, citizens also could exercise the right to access public information in order to obtain these documents. The effectiveness of these requests requires another evaluation.

References:

Organic Electoral Processes Law No. 5 Regulation, Article 17, http://www.cne.gov.ve/web/normativa_electoral/elecciones/2010/parlamentarias/documentos/REGLAMENTO_5.pdf

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

Investigations are to be carried out by the Consejo Nacional Electoral (CNE).

Organic Electoral Processes Law, Chapter IV, About Electoral Campaign Administrative Inquiries, states: The National Electoral Council, under petition of an interested party, can initiate inquiries on alleged violations of the electoral campaign's regulations. This reports have to be brought upon in written form to the Political Participation and Financing Commission or corresponding Regional Electoral Office.

References:

Organic Electoral Processes Law, Chapter IV, About Electoral Campaign Administrative Inquiries, http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo6.php

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | No

Comments:

Organic Electoral Processes Law, Article 71, mandates that the National Electoral Council will establish, for every electoral process, the electoral campaign time frame and all its specifics.

References:

Organic Electoral Processes Law, Article 71, http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo6.php

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Numerical limits on donations do not exist.

Illegal financial sources are established, but actions are taken according to political interest. For example, a well-known drug-trafficker, Walid Makled, points toward an illegal source of financing for the ruling party. Makled publicly announced that he financed at least \$2 million for the pro-referendum presidential campaign. Makled was detained in Colombia and extradited to Venezuela at the request of the Venezuelan and U.S. governments. There are no public details or information about the progress of the case.

References:

Analitica.com, "About foreign financing of electoral campaigns," March 23, 2011, <http://www.analitica.com/va/politica/opinion/5406542.asp>

El Universal, "Makled says he gave money to referendum's official campaign," September 30, 2010, http://www.eluniversal.com/2010/09/30/pol_ava_makled-dice-que-dio_30A4540451.shtml

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

No numerical limitations exist. According to Fernando Egaña, though, the law establishes severe informal and formal limitations. For example, if an important company finances an opposition political party, it is very likely that measures will be taken to the company's detriment. The use of economic mechanisms, such as sanctions, is a common tool for the government to dissuade or discourage private financing of opposition political parties.

According to Humberto Njaim, limitations are effective depending on the political context. As a whole, they are ineffective because they are not applicable to the ruling political party. The statization policy of the government is also a tool to neutralize the financing of opposition parties.

References:

Interview with Fernando Egaña, professor at Universidad Metropolitana, Caracas, Venezuela, October 10, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

No numerical limitations exist regarding political party expenditures during elections, but some announcements have been made regarding the existing limitations on the origins of funding and financing.

Allegations against Maria Corina Machado that she and some other opposition candidates have received funding from the United States have not been investigated. Maria Corina Machado was effectively elected without problem. This takes credibility away from the ruling party's declarations.

Using state resources for campaigns is also strictly forbidden, although no numerical limitations exist. In this regard, Sumate formally filed a complaint to the CNE and the general comptroller denouncing the use of state resources in favor of the PSUV electoral campaign. Out of 170 official presidential speeches, nine were explicitly in favor of PSUV, and in the remaining 161, the president campaigned in favor of PSUV candidates to the National Assembly and openly talked against the opposition.

References:

Sumate, Executive Summary. Electoral Surveillance Report Parliamentaries 2010, July 28, 2010, p.5, <http://www.sumate.org/Especiales/Parlamentarias/20100728-ResumenEjecutivoInformeVigilanciaElectoralParlamentarias2010.pdf>

PSUV, "Eva Golinger: Last year USA gave 57 million dollars to right wing Venezuelan parties," June 28, 2010, <http://www.psuv.org.ve/temas/noticias/eva-golinger-pasado-eeuu-millones-dolares-venezolana/>

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The CNE has not been rigorous in imposing sanctions, but it has initiated some selective administrative investigations and audits of organizations that did not comply with the law. For example, the CNE ordered investigations after receiving a claim by Raffi

Souki (PSUV) that Manuel Rosales was involved with Eveling Trejo de Rosales' campaign. The CNE also admitted 99 modifications to candidacies, including a temporary measure to suspend all propaganda that includes ex-mayor Rosales.

References:

CNE, "CNE starts administrative investigations on irregularities in Maracaibo's mayor's office campaign," November 25, 2010, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=1904

CNE, "Accountability notebooks' opening starts today for the December 5th elections, November 8, 2010, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=1892

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The National Electoral Council (CNE) supposedly imposes penalties on offenders, according to its declarations, but publicly available reports on these sanctions are not available. Therefore, information is not sufficient to state that sanctions have indeed been imposed.

For example, accountability for 2009 was due in April 2010; therefore, submitting organizations should have been subject to CNE review and penalties. No information on either the review or penalties is available.

References:

CNE, "Political organizations that did not submit their accountability are under administrative measures," May 2, 2011, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=1967

CNE, "87 Organizations with political purposes are indebted before the CNE," February 27, 2011, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=1925

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Authorities stated that the CNE has been rigorous in auditing organizations that did not comply with the law. Also, electoral authorities confirmed that 80 percent of organizations with political purposes had registered in the Automated Accountability System.

References:

CNE, "Accountability notebooks' opening starts today for the December 5th elections," November 8, 2010, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=1892

El Nacional, "CNE studies project to control financing," October 13, 2010, http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/159955/Naci%C3%B3n/CNE-estudia-proyecto-para-controlar-financiamiento

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

5

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

There are no numerical limits for individual donations to political candidates, but there are some tacit limitations, such a fear or recrimination from the government. In general, political candidates' finance information is never transparent and public. According to María Corina Machado, there are no limitations regarding individual financing, only public financing; however, in practice, citizens are afraid to finance opposition candidates due to a possibility of recrimination and consequences.

Fernando Egaña stated that the use of economic mechanisms (e.g., sanctions) is a common tool for the government to dissuade or discourage private financing of opposition political candidates. Thus, if an important company owner or individual finances an opposition political candidate, it is very likely that measures will be taken to the donor's or financier's detriment. Similarly, according to Humberto Njaim, individual financing of political parties has always been an opaque matter with minimal effectiveness in enforcing regulations.

References:

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Venezuela, October 10, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011,

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011,

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

No numerical limitations exist. The only limitations regulating funding relate to donations from foreign governments, companies or political organizations, as well as state-owned companies and public funds.

Regulations appear to be selective when financing a candidate or political party; these do not seem to be applicable to the ruling party or ruling party candidates.

Recrimination is also an important factor. According to Fernando Egaña, if an important company owner or individual finances an opposition political candidate, it is very likely that measures will be taken to the financier's detriment. The use of economic mechanisms such as sanctions is a common tool for the government to dissuade or discourage private financing of opposition political candidates.

Finally, according to Humberto Njaim, it is very hard to determine if the existing regulations are effective, as there is no transparency.

References:

Aporrea, "María Corina Machado received direct financing from the International Republican Institute," September 25, 2010, <http://www.aporrea.org/actualidad/n166289.html>

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Venezuela, October 10, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Inciting investigations depends on the availability of information and political interest. There is little information about campaign's

financing, and the entire process entails political interests. The CNE directive and political considerations make investigations complicated.

References:

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011,

CNE, "Political Organizations that Do Not Present Accountability Will Be Subject to Administrative Measures," May 2, 2011, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=1967

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is a certain application of these sanctions, but it is not sufficient or exemplary. For example, the Ultimas Noticias newspaper had several pages in favor of PSUV candidates, in violation of CNE limits. However, CNE did not specify sanctions or mechanisms to ensure that these limits are observed. On the other hand, according to Humberto Njaim, CNE does impose sanctions. For example, some small organizations were closed because they did not present accountability reports.

References:

Ciudadanía Activa, "Opposition demands prohibition of early start of Chavez's campaign," April 4, 2010, <http://www.ciudadaniaactiva.org/noticias/detalle.php?id=956>

Ojo Electoral, "OE on the first week of electoral campaign," August 31, 2010, <http://www.ojelectoral.org/admin/informes/20100831-OESemana1CampElect.pdf>

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

These records are not publicly available. The existence and allowance of accusations from both sides point to a general lack of effectiveness in CNE's auditing process.

According to Humberto Njaim, political parties tend to maintain secrecy. Venezuelan political parties are far from being audited by the civil society as a way to ensure transparency. Moreover, the government has willfully weakened civil society, NGO sponsorship and activity. NGOs such as Ojo Electoral do not have the same capacity as before, and new measures further limit international observation.

Maria Corina Machado states that her campaign records and personal records were audited, but she believes this is not generalized. In her view, it is most likely that opposition candidates' finances will be audited.

References:

Patria Grande, "Electoral campaign will begin next August 25th," April 15, 2010, <http://www.patriagrande.com.ve/temas/venezuela/campana-electoral-comenzara-proximo-25-agosto/>

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

Interview with Maria Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no disclosure. The PSUV law does not require it.

References:

PSUV, "Dario Vivas: PSUV's self-funding is transparent," May 22, 2011, <http://www.psuv.org.ve/temas/noticias/dario-vivas-autofinanciamiento-psuv-es-transparente/>

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no disclosure.

References:

PSUV Official webpage, 2010/2011, <http://www.psuv.org.ve/>

MUD, Mesa de la Unidad (opposition unity), official webpage, 2010/2011, <http://www.unidadvenezuela.org/>

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no access to this information; however, if there were interest in obtaining these records, it might include going to the authorities, having to pay someone for this information, or even requesting a judicial order. These subsidiary channels entail certain costs that many people are simply not willing to undertake.

According to Fernando Egaña, there is no access. Financial records of political campaigns have to be presented before the CNE, and usually there is a delay in the presentation of these records. However, there is no known effort either by the CNE or political parties to make these records publicly available.

According to Humberto Njaim, information costs are very high due to the fact that many barriers and obstacles have to get passed through, making the cost elevated.

References:

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Venezuela, October 10, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to Humberto Njaim, records are not publicly available. The quality of the reports is unknown because they are not publicly available. There are no means to determine their quality.

References:

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Venezuela, October 10, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to Humberto Njaim and María Corina Machado, there is no disclosure of financial information from individual candidates. Although every candidate has to present to the CNE a detailed report of campaign expenditures and financing, they are not publicly disclosed.

References:

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Venezuela, October 10, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to Fernando Egaña, fiscal and tax information has to be submitted to the authorities by political candidates; however, the public cannot access this information. In general, there is opacity in Venezuela when it comes to electoral campaigns issues. This opacity is encouraged by the fear and distrust, because of the states' threats and sanctions on those who finance political activities of opposition sectors.

According to Humberto Njaim, there is no disclosure of financial information from individual candidates. This would require the involvement of external organisms and a very active civil society.

References:

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Venezuela, October 10, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no access to this information; however, if there were interest in obtaining these records, it might include going to the authorities, having to pay someone for this information, or even requesting a judicial order. These subsidiary channels entail certain costs that many people are simply not willing to undertake.

According to Fernando Egaña, there is no access. Financial records of political campaigns have to be presented before the CNE, and usually there is a delay in the presentation of these records. However, there is no known effort either by the CNE or political parties to make these records publicly available.

According to Humberto Njaim, information costs are very high due to the fact that many barriers and obstacles have to get passed through, making the cost elevated.

References:

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Venezuela, October 10, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to Fernando Egaña, there is no access to financial records of political campaigns. Although they have to be presented before the CNE, there is no known effort either by the CNE or political parties to make these records publicly available.

According to Humberto Njiam, records of political candidates are not publicly available and are not of high quality.

References:

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Venezuela, October 10, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁵¹Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

Comments:

In law, citizens can sue the government for infringement of their civil rights.

Organic Law for the Protection of Fundamental Rights, Article 2: Protection is sustained before any fact, action or omission from the national, state or local Authorities.

National Constitution, Article 49: "Due process will be applied to every judicial and administrative action." The article specifies guarantees to all citizens in their due process, including the right of defense and legal assistance, presumption of innocence and jurisdiction.

Organic Law for the Supreme Court of Justice, Article 25.18: The Supreme Justice Court is the only authority that admits constitutional protection claims noticed against high-ranking national public officials of constitutional status.

References:

Organic Law for the Protection of Fundamental Rights, Article 2,
<http://www.tsj.gov.ve/legislacion/loadgc.html>

National Constitution, Article 49.

Organic Law for the Supreme Court of Justice, Article 25.18.

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

31

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The chief executive gives reasons for his decisions on television. Alo Presidente is the weekly broadcast program in which the president talks about his administration. Yet most of the reasons he gives for his decisions range from vague principles to whims such as "socialist interests." In Aló Presidente, the president announced the possible solutions for the housing problem and asserted that this measure was made to provide health and life to the people.

References:

Alo Presidente, No. 375, "Schedule for the new phase of the 'Gran Misión Vivienda' (great housing mission) is approved," June 5, 2011, http://www.alopresidente.gob.ve/informacion/2/2124/aprobado_cronograma_de.html

Alo Presidente, "863,9 million dollars approved to buy medical and dental equipment from China," May 22, 2011, http://www.alopresidente.gob.ve/informacion/2/2115/aprobados_863,9_millones.html

El Tiempo.com.ve, "Chavez announced a raise of 25% of the minimum wage in two parts," April 26, 2011, <http://eltiempo.com.ve/venezuela/economia/chavez-anuncio-aumento-de-25-de-salario-minimo-en-dos-partes/19575>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

In law, the judiciary can review the actions of the executive.

National Constitution, Article 266. 5, about the functions of the Supreme Justice Court: "Declare absolute or partial nullity of regulations and other general or individual administrative actions of the executive, when appropriate."

Organic Law for the Supreme Court of Justice, Article 24.1/24.2, within the functions of the Supreme Court of Justice: To determine sufficient grounds for the indictment of the authorities including president, vice president and ministers.

References:

National Constitution, Article 266. 5.

Organic Law for the Supreme Court of Justice Article 24.1/24.2.

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary currently works under directions of the executive. The executive dictates actions to be taken by the judiciary and noncompliance with these orders is severely punished (such as the Afiuni case). The judiciary is powerless to review actions taken by the executive, due to political reasons.

For example, according to America Economía, judge Blanca Marmol de Leon announced that the ruling party wants to accelerate the election of at least eight judges, who will assume office before January 2011. After that date, the president will no longer have a majority in the National Assembly.

Moreover, Human Rights Watch stated that judges can face retaliation if they judge against the interests of the government. For example, Universidad Católica's Andres Bello states that on December 10, 2009, judge Maria Lourdes Afiuni decided to substitute the judgment against Eligio Cedeño. Cedeño had been sentenced to prison for two years and 10 months, although at that time the national legislation stated that two years was the maximum time for detention. Hours after this decision was made, judge Afiuni was imprisoned. The next day, President Chavez, on a mandatory national broadcast, said that the judge was a "bandit" and asked for 30 years of imprisonment. The attorney general was present.

In another example, the president urged the judiciary to give benefits to prisoners who are sick, including "prisoners who are politicians." He was "clear" that the public powers are autonomous, yet this was believed to be a form of political pressure.

References:

America Economía, "Hugo Chavez will ensure control of the Judiciary in Venezuela," November 5, 2010, <http://www.americaeconomia.com/politica-sociedad/politica/hugo-el-chavez-asegurara-el-control-del-poder-judicial-de-venezuela>

Univisión Noticias, "HRW: Chavez uses the Judiciary against adversaries," January 25, 2011, <http://noticias.univision.com/americ-latina/venezuela/articulo/2011-01-25/hrw-hugo-chavez-usa-el>.

Human Rights Watch, World Report 2011, p. 268, <http://www.hrw.org/world-report-2011>

Noticiero Digital, "Chavez demands the Judiciary to provide "some benefit" to "prisoners who are politicians" that are sick," July 16, 2011, <http://www.noticierodigital.com/2011/07/chavez-insta-al-poder-judicial-a-otorgar-algun-beneficio-a-politicos-presos-enfermos/>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Executive powers are virtually unlimited, and the executive constantly seeks to broaden the scope of powers. The National Assembly's official webpage shows that 12 laws have been issued by the executive under the Enabling Law.

One of the many instances in which the president made use of executive orders to establish new regulations was the creation of the Law for Fair Costs and Prices, which was dictated directly by the president via the Enabling Law. It sought to regulate all prices based on the principle of eliminating speculation and "exploitation of the people."

Opposition representatives proposed that the president be authorized to legislate by decree only until January 5, when the newly elected assembly will come into effect. But this was rejected by ruling party officials.

References:

El Universal, "National Assembly approved Enabling Law for 18 months," December 17, 2010, http://www.eluniversal.com/2010/12/17/pol_ava_asamblea-nacional-sa_17A4870213.shtml

National Assembly (2010-2011) Decree Laws enacted by the Enabling Law 2010-2011, http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=353&limit=5&limitstart=0&order=name&dir=DESC&Itemid=185 <=es

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

Comments:

National Constitution, Article 25: Government employees have criminal, civil and administrative accountability.

Article 139: The exercise of public duty implies personal responsibility when abusing power or violating the NC.

Organic Law for the Supreme Court of Justice, Article 24.1/24.2, within the functions of the Supreme Court of Justice: To determine sufficient grounds for the indictment of the authorities, including president, vice president and ministers.

Law for the Statute of the Public Duty Article, 79: Government employees will be held responsible for crimes, offenses, illegal actions and administrative irregularities they commit within the exercise of their duties.

Criminal Code Title III, regarding offenses against public affairs, determines criminal accountability to all government employees that infringe the law in the specified crimes; Articles 194-198.

Heads of state are accountable for crimes they commit, but their cases are under the exclusive jurisdiction of the Supreme Court of Justice.

References:

National Constitution, Articles 25, 139.

Organic Law for the Supreme Court of Justice, Article 24.1/24.2.

Law for the Statute of the Public Duty, Article 79,
<http://www.contraloriademaracaibo.gob.ve/portal/archivo.php?archivo=69>

Criminal Code, Articles 194-198.

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

Comments:

In law, ministerial-level officials are accountable for crimes they commit, under exclusive jurisdiction of the Supreme Court of Justice.

National Constitution, Article 25: Government employees have criminal, civil and administrative accountability. Article 139: The exercise of public duty implies personal responsibility when abusing power or violating the NC.

Organic Law for the Supreme Court of Justice, Article 24.1/24.2, within the functions of the Supreme Court of Justice: to determine sufficient grounds for the indictment of the authorities, including president, vice president and ministers.

Law for the Statute of the Public Duty, Article 79: Government employees will be held responsible for crimes, offenses, illegal actions and administrative irregularities they commit within the exercise of their duties.

Criminal Code, Title III, about offenses against public affairs, determines criminal accountability to all government employees that infringe the law in the specified crimes; Articles 194-198.

References:

National Constitution, Article 25, 139.

Organic Law for the Supreme Court of Justice, Article 24.1/24.2.

Law for the Statute of the Public Duty Article 79,
<http://www.contraloriademaracaibo.gob.ve/portal/archivo.php?archivo=69>

Criminal Code, Articles 194-198.

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

56

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

According to the Law Against Corruption, all public officials in all levels must present an asset disclosure form within the first month of taking and leaving office. There are no exceptions to this rule.

References:

National Assembly, Law Against Corruption. (Asamblea Nacional. Ley Contra la Corrupción.) Gaceta Oficial No. 5.637 Extraordinario de fecha 07 de abril de 2003, Article 23,

<http://www.cgr.gob.ve/descarga.php?Nombre=LCCorrupcion.pdf%20&&%20Ruta=pdf/leyes/LCCorrupcion.pdf>

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

Comments:

According to the Law Against Corruption, all public officials in all levels must present an asset disclosure form within the first month of taking and leaving office. There are no exceptions to this rule.

References:

National Assembly, Law Against Corruption. (Asamblea Nacional. Ley Contra la Corrupción.) Gaceta Oficial No. 5.637 Extraordinario de fecha 07 de abril de 2003, Article 23,

<http://www.cgr.gob.ve/descarga.php?Nombre=LCCorrupcion.pdf%20&&%20Ruta=pdf/leyes/LCCorrupcion.pdf>

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

Law of the Statute for the Public Duty, Article 34, forbids government employees from accepting rewards or honors from foreign governments.

Article 56: determination of high ranking government employees' salary.

Article 83: government employees cannot recommend that anyone obtain benefits or advantages in the public duty.

Article 86.11: government employees cannot request or receive money or any other benefit putting forward their status.

Law Against Corruption, Article 60-62, states that there is criminal accountability for those government employees who, within their duty, receive, promise, induce retributions and other utilities that are not owed.

References:

Law of the Statute for the Public Duty, Articles 34, 56, 83, 86.11, <http://www.contraloriademaraibo.gob.ve/portal/archivo.php?archivo=69>

Law Against Corruption, Articles 60-62.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes | No

Comments:

According to the Law Against Corruption, the General Comptroller's Office (Contraloría General de la Nación) may audit the accuracy of the asset disclosures and impose sanctions if it finds it inaccurate.

References:

Law Against Corruption, Asamblea Nacional. Ley Contra la Corrupción. Gaceta Oficial No. 5.637 Extraordinario de fecha 07 de abril de 2003, Articles 26-32,

<http://www.cgr.gob.ve/descarga.php?Nombre=LCCorruccion.pdf%20&&%20Ruta=pdf/leyes/LCCorruccion.pdf>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | No

Comments:

Article 35: Accepting a job other than the exceptions mentioned (academic, accidental, teaching) implies resignation of the previous.

The only restriction refers to incompatibilities while exercising a post in public office.

References:

Law of the Statute for the Public Duty, Article 35.

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that

directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no regulations regarding post-government private sector employment for heads of state and ministers.

The only related restriction refers to incompatibilities while exercising a post in public office. There have been accusations of some government officials engaging in lucrative activities while in office; however, these allegations have not been proven. One example of this is the WikiLeaks cable, published by Notitarde, which included accusations that Cabello would be the real owner of Braperca. Noticias 24 stated that Cabello denied any relationship with the Braperca warehouse.

References:

Notitarde, "Diosdado Cabello would be the owner of Braperca warehouse," July 12, 2011, <http://www.notitarde.com/notitarde/plantillas/nota.aspx?idart=1374119&idcat=9841&tipo=2>. See also: <http://www.el-carabobeno.com/impreso/articulo/t130711-i07/wikileaks-diosdado-cabello-rico-y-poderoso-en-doce-aos>

Noticias 24, "Diosdado's argument with a Televen reporter," March 21, 2009, <http://www.noticias24.com/actualidad/noticia/29332/la-discusion-de-diosdado-con-una-periodista-de-televen-video/>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Offering gifts and hospitality to members of the government has been a common practice in Venezuela, therefore regulations are not truly effective. For example, Transparency Venezuela states that the Venezuelan government failed to make progress in 20 out of 20 recommendations about gifts and benefits made and received by government employees.

References:

Transparency Venezuela (2010) Progress Implementing OAS Recommendations to Fight Corruption 2010, Third Round, <http://www.transparencia.org.ve/Recomendaciones.aspx>

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Executive branch asset disclosures are not effectively audited. The General Comptroller's Office's annual reports do not directly address the auditing of executive asset disclosure statements.

References:

General Comptroller's Office (2010) Administration Report 2010, p. 232-235, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Telesur, "General Comptroller Clodosbaldo Russian passed away," June 20, 2011, <http://www.telesurtv.net/secciones/noticias/94306-NN/fallecio-contralor-general-venezolano-clodosbaldo-russian/>

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

25

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

Comments:

Citizens wishing to obtain these records can request them through an information request. Granting or denial of this request is not guaranteed.

Organic Public Administration Law, Article 7.1: People have the right to access information about administrative proceedings in which they are interested.
Article 158: right to access administrative archives and records.

Organic Administrative Procedures Law, Article 72: "Administrative acts of general character or of interest to an uncertain number of people should be published in the Official Journal corresponding to the deciding organism."

References:

Organic Public Administration Law, Article 7.1.

Organic Administrative Procedures Law, Article 72, <http://www.tsj.gov.ve/legislacion/lopa.html>

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The president's annual message is available online and this message also contains financial accountability of the previous year's administration; however, no information on personal financial records is presented to the National Assembly or judiciary, let alone to the public. Ministers' financial records — either administrative or personal — are not available.

References:

National Assembly, Annual Message of Commander Hugo Chavez, January 15, 2011, <http://www.psuve.org/ve/wp-content/uploads/2011/01/Mensaje-Anual-a-la-Asamblea-Nacional-2010.pdf>.

Ministerio de Poder Popular para la Comunicación y la información (MINCI) 2011, Annual Message of Commander Hugo Chavez, www.minci.gob.ve/libros_folletos/.../485157/?...mensaje_ante_la_asamblea

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The president's annual message is available online and this message also contains financial accountability of the previous year's administration; however, no information on personal financial records is presented to the National Assembly or judiciary, let alone to the public. Ministers' financial records — either administrative or personal — are not available. Costs cannot be determined because of the lack of availability.

References:

National Assembly, Annual Message of Commander Hugo Chavez. January 15, 2011, <http://www.psuve.org/ve/wp-content/uploads/2011/01/Mensaje-Anual-a-la-Asamblea-Nacional-2010.pdf>.

Ministerio de Poder Popular para la Comunicación y la información (MINCI) 2011, Annual Message of Commander Hugo Chavez, www.minci.gob.ve/libros_folletos/.../485157/?...mensaje_ante_la_asamblea

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The president's annual message is available online, and this message also contains financial accountability of the previous year's administration; however, no information on personal financial records is presented to the National Assembly or judiciary, let alone to the public. Ministers' financial records — either administrative or personal — are not available.

The executive secretary of the MUD (an opposition party called the Opposition Unity) stated that the president's accounting for his administration was far from the truth and failed to mention the real problems of Venezuelans. Similarly, Fernando Egaña stated that because the General Comptroller's Office is subordinate to the executive, the safekeeping and fiscalization of the asset disclosure records have been intensely relaxed.

Since there is no access, there are no means to know for certain if these records are of high quality.

References:

El Universal, "Unity believes that Chávez 'recycled' unfulfilled promises," January 16, 2011, http://www.eluniversal.com/2011/01/16/pol_ava_unidad-cree-que-chav_16A4991851.shtml

El Nacional, http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/177511/Naci%C3%B3n/MUD:-Memoria-y-cuenta-de-Ch%C3%A1vez-fue-una-reiteraci%C3%B3n-de-sus-promesas-incumplidas

Interview with Fernando Egaña, Universidad Metropolitana professor, Caracas, Venezuela, October 10, 2011.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

According to Ciudadanía Activa, there is an abusive use of state resources for campaign purposes. Further, it is believed that the CNE will not effectively impose limits on these matters.

A section about this government plan with all the information including a video is published on the PSUV's webpage.

References:

PSUV Housing Plan Mission 2010, <http://www.psuv.org.ve/mision-vivienda-venezuela>

Noticias365, "PSUV reiterates that president Chavez is fulfilling his duties," June 13, 2011, <http://www.noticias365.com.ve/temas/al-dia/psuv-reitera-que-presidente-chavez-ejerce-sus-funciones/>

Ciudadanía Activa, "Opposition demands prohibition of early start of Chavez's campaign," April 4, 2010, <http://www.ciudadaniaactiva.org/noticias/detalle.php?-id=956>

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

75

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

Comments:

National Constitution, Article 211: During discussion and approval of draft laws the National Assembly will consult the authorities, including the Supreme Court of Justice.

Organic Law for the Supreme Court of Justice, Article 25, of competencies of the Constitutional Courtroom, declare absolute or partial nullity of national laws and other actions of the National Assembly.

References:

National Constitution, Article 211.

Organic Law for the Supreme Court of Justice, Article

25, http://www.ucv.ve/fileadmin/user_upload/asesoria_juridica/Ley_Contra_La_Corruccion_-_5.637_E.pdf

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Laws are sometimes reviewed, yet there is no guarantee of impartiality. The Supreme Court of Justice declared the laws passed on December 2010 to be constitutional although they are largely believed to be unconstitutional. For example, the Organic Communes Law was rejected as part of the constitutional reform draft of 2007, yet it was approved by the supreme court. Another example is that the Supreme Court of Justice amended the Organic Code for Military Justice, yet amending that code is an exclusive function of the National Assembly.

References:

Supreme Court of Justice, Sentence declaring constitutionality of the Organic Communes Law, December 17, 2010, <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1330-171210-2010-10-1436.html>

Supreme Court of Justice, Sentence declaring constitutionality of the Organic Law for the Communes Economic System, December 16, 2010, <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1329-161210-2010-10-1434.html>.

Supreme Court of Justice, Sentence declaring constitutionality of the Organic Law for Social Comptroller, December 16, 2010, <http://www.tsj.gov.ve/decisiones/scon/Diciembre/%201328-161210-2010-10-1437.html>

Venezuelan News Agency, "TSJ suspended Criminal Code articles that violate individual freedom," May 27, 2011, <http://avn.info.ve/node/59886>

El Universal, "Expert accuses the Supreme Court of Justice of assuming National Assembly duties," June 21, 2011, <http://www.eluniversal.com/2011/06/21/experto-acusa-al-tsj-de-asumir-funciones-del-parlamento.shtml>

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | No

Comments:

National Constitution, Article 200: National Assembly representatives have functional immunity, thus any presumption of offenses or crimes will be of the exclusive competence of the Supreme Justice Court to rule according to law.

References:

National Constitution, Article 200.

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

50

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

Comments:

According to the Law Against Corruption, all public officers must present an asset disclosure form within 30 days of taking and leaving office.

References:

Law Against Corruption Ley Contra la Corrupción, Gaceta Oficial No. 5.637 Extraordinario de fecha 07 de abril de 2003, Article 23.

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

Comments:

National Constitution, Articles 190, 191, state that National Assembly representatives cannot be owners, managers, directors of companies that deal with state companies, or manage a private profit cause, and cannot accept or hold public office without losing their status. The only restriction refers to incompatibilities while exercising a post in public office.

References:

National Constitution, Articles 190, 191.

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

Law Against Corruption, Article 60-62: criminal accountability for those government employees who within their duty receive, promise, induce retributions and other utilities that are not owed.

References:

Law Against Corruption, Article 60-62, http://www.ucv.ve/fileadmin/user_upload/asesoria_juridica/Ley_Contra_La_Corruptcion_-_5.637_E.pdf

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | No

Comments:

According to the Law Against Corruption, the General Comptroller's Office (Contraloría General de la Nación) may audit the accuracy of the asset disclosures, and impose sanctions if it finds it inaccurate.

References:

Asamblea Nacional, Ley Contra la Corrupción. Gaceta Oficial No. 5.637 Extraordinario de fecha 07 de abril de 2003, Articles 26-32, <http://www.cgr.gob.ve/descarga.php?Nombre=LCCorruccion.pdf%20&&%20Ruta=pdf/leyes/LCCorruccion.pdf>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no restrictions to post-government private sector employment for national legislators. The only restriction refers to incompatibilities while exercising a post in public office.

References:

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

Interview with Dr. Humberto Njaim, dean of the Legal and Political Studies Faculty, Universidad Metropolitana, Caracas, Venezuela, October 11, 2011.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Gifts and hospitality are not uncommon among legislators. There are indications that transparency is not a top priority.

References:

Noticias24, "Ojeda denounces 'dozens of cases' of corruption in housing project," December 12,

2010, <http://www.noticias24.com/actualidad/noticia/185219/diputado-william-ojeda-denuncia-decenas-de-casos-de-corrupcion-en-construccion-de-viviendas/>

Transparency Venezuela, "No red candidate has signed the anti-corruption pact," September 11, 2010, <http://www.transparencia.org.ve/Agenda-Transparencia.aspx>

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

In the General Comptroller Administration Report there is reference to the auditing of two aspects of the legislative branch, one of them about construction contracting.

According to Mercedes De Freitas, the Asset Disclosure Record auditing index is low. There is no constant availability of these reports in the General Comptroller's Office; the last known report establishes the auditing of only 18 asset disclosure records.

According to María Corina Machado, it is not likely that legislative branch asset disclosure records are audited, as there is not much information.

References:

General Comptroller's Office Administration Report 2010, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

25

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

Comments:

In law, citizens can access information by request. There are applicable laws.

National Constitution, Article 143: "Citizens have a right to be informed accurately and truthfully by the public administration on matters that are directly of interest to them ... censorship will not be allowed to public employees when informing on issues under their responsibility."

Organic Public Administration Law, Article 7.1: People have the right to access information about administrative proceedings in which they are interested. Article 158: right to access administrative archives and records.

References:

National Constitution, Article 143.

Organic Public Administration Law, Article 7.1.

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Asamblea Visible: The application of access to information laws in regards to the National Assembly has been discretionary and in occasion suspended when considered "strategic information," "political importance" or simply "secret" in an arbitrary manner by the government authorities.

Asset disclosure records were declared as confidential after Transparency Venezuela made the information request.

According to Maria Corina Machado, sworn asset statements per se are not publicly available due to security reasons.

References:

Asamblea Visible, Presentation on legislative transparency in Venezuela, July 26, 2011, <http://asambleavisible.com/2011/07/26/ponencia-sobre-la-transparencia-legislativa-en-venezuela/>

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure records are not publicly available on the National Assembly's webpage. According to Maria Corina Machado, in order to access asset disclosure records, there has to be a judicial order, which implies a number of transactions and associated costs.

The application of access to information laws to the National Assembly has been done in an arbitrary manner by the government authorities. Information release is discretionary and, on occasion, has been suspended when it related to "strategic information" or "political importance," or simply was labeled a "secret."

References:

Asamblea Visible, Presentation on legislative transparency in Venezuela, July 26, 2011, <http://asambleavisible.com/2011/07/26/ponencia-sobre-la-transparencia-legislativa-en-venezuela/>

Asamblea Nacional official webpage 2011, <http://www.asambleanacional.gob.ve/>

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to Mercedes De Freitas, since availability of asset disclosure records has not been effective, there are no mechanisms to evaluate the quality of these documents.

According to Maria Corina Machado, her personal asset disclosure records are of high quality, but the general perception is that most are not of high quality.

References:

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

Comments:

National Constitution, Article 5, states that every person can make requests to any authority and public employee about all matters within their competence.

Article 141 states the principles of the public administration, which include transparency and accountability.

References:

National Constitution of the Bolivarian Republic of Venezuela (1999), Articles 51, 141.

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Some information is publicly available. On the official webpage, there are options to access laws, legislative acts, official journals, agenda, etc. However, further information on unpublished content is not available.

Published content is not sufficient, either. Legislative administration reports/legislative processes are difficult to access. For example, Transparency Venezuela has a section that specifically works with the National Assembly, but these records are not publicly available. Further, opposition representatives do not have prior access in some issues. But to the general citizen, access is available through the webpage and TV and radio stations.

References:

Asamblea Nacional official webpage 2011, <http://www.asambleanacional.gob.ve>

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

Comments:

According to Mercedes De Freitas, legislative administration reports/legislative processes are difficult to access, Transparency Venezuela has a section that specifically works with the National Assembly, and these records are not publicly available.

According to Maria Corina Machado, most are available online, therefore there is no cost.

Some information is publicly available without cost, but further information on unpublished content is not available. Published content is not sufficient, either.

References:

Asamblea Nacional official webpage 2011, <http://www.asambleanacional.gob.ve>

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

54 3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

75

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

Judges will be appointed and promoted by a selection process involving competitive examinations and interviews in which citizen participation is guaranteed. Judges cannot engage in political propaganda during their serving period.

References:

National Constitution, Article 255.

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are

nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Professional criteria when selecting judges is highly questionable. The InterAmerican Commission on Human Rights 2010 Report on Venezuela stated: “[I]n the period from January to October 2010 the Commission continued to receive information on the job stability of so-called temporary and provisional judges, and on the Supreme Court Judicial Commission’s appointment of judges without public competition (245). Of these, 66 are said to be provisional appointments (27%), 70 temporary appointments (29%), and 103 interim appointments (42%); the remaining 6 reportedly fell into other categories (3%). The information supplied to the IACHR shows that 100% of the 245 judicial appointments in that period were not done by the competitive procedures required under Article 255 of the Constitution of the Bolivarian Republic of Venezuela.”

Judges usually have the professional qualifications, yet appointments do not follow professional standards. The appointment process lacks competitive hiring, and judges are not selected because of their professional capacity. Rather, they are selected for their political interests.

References:

InterAmerican Commission on Human Rights, 2010 Annual Report: Venezuela, <http://www.cidh.org/annualrep/2010eng/TOC.htm>

El Universal, “SCJ appointed 10 judges and removed 3 more in one day,” April 16, 2011, <http://www.eluniversal.com/2011/04/16/tsj-designo-10-jueces-y-removio-a-3-mas-en-un-dia.shtml>

Chavero Gadzik, Rafael J. (2011) La Justicia Revolucionaria (The Revolutionary Justice) Editorial Aequitas C. A., Caracas, Venezuela, p. 156-166

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

Comments:

Organic Law for the Supreme Justice Court, Article 38: Citizen Power will make the pre-selection, then the National Assembly will convene up to four times until achieving two-thirds of votes in favor.

References:

National Constitution of the Bolivarian Republic of Venezuela (1999), Article 263.

Organic Law for the Supreme Justice Court, Article 38.

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

50

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

Every sentence shall include motivation of the decision. Failure to comply with all the requirements makes the decision/sentence null.

References:

Code for Civil Proceedings, Article 243.

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Sentences are always motivated, yet some decisions are politicized.

References:

Supreme Court of Justice official webpage 2011. Decisions of the Court are available to the public, sentences include motivation for the decision, <http://www.tsj.gov.ve/decisiones/sala.asp?Sala=001&Nombre=Sala+Plena>

El Nacional (December 13, 2010) SCJ rejected 21 lawsuits against Chávez in 12 months. All lawsuits against the president, and 90% of the lawsuits against government organizations were rejected. http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/171477/Naci%C3%B3n/TSJ-rechaz%C3%B3-21-demandas-contr-Ch%C3%A1vez-en-12-meses

El Universal (May 25, 2011) SCJ opens disciplinary process against judge Veneci Blanco. The Judicial Commission did not specify the investigation's motives yet it assures that it is related to administrative irregularities. Available at: <http://noticias.eluniversal.com/2011/05/25/tsj-abre-proceso-disciplinario-a-la-magistrada-veneci-blanco.shtml>

El Universal (September 27, 2010) Disciplinary process against Afiuni is announced. In addition to the trial for the Eligio Cedeño case, the judge will face disciplinary process, again no motive for the investigation is not specified. Available at: http://www.eluniversal.com/2010/09/27/pol_ava_anuncian-proceso-dis_27A4529171.shtml

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

Comments:

Organic Law for the Supreme Court of Justice, Article 24: It is of the competence of the Main Chamber to determine the existence of sufficient grounds for the judgment of members of the Supreme Court of Justice.

Ethics Code of the Venezuelan Judge, Article 40, about the Disciplinary Judicial Tribunal, which has the competence of applying all principles and duties of this code.

The reformed Ethics Code for the Venezuelan Judge Official Journal No. 39.236 of August 6, 2009, finally regulates after 10 years the Disciplinary Tribunal subject. Since 1999, accountability of members of the judiciary had been dealt with provisionally under regulations by the Operation and Restructuring Commission as a "temporary measure," but this lasted 10 years, being unconstitutional.

References:

Organic Law for the Supreme Court of Justice, Article 24

Ethics Code of the Venezuelan Judge, Article 40 (this code was partially repealed by Official Journal No. 39.493 in 2010, but Article 40 remains the same,
http://www.oas.org/juridico/spanish/mesicic3_ven_anexo4.pdf

Interview with Laura Louza, director of the NGO "Acceso a la Justicia" and professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

Comments:

These are sanctions established for the first time in the Ethics Code of the Venezuelan Judge of 2009 and reformed in 2010. No specifics are established in the imposing of these sanctions, which grants wide discretion when effectively sanctioning judges. Moreover, the authorities of the disciplinary tribunal are appointed by simple majority within the National Assembly, which is dominated by the officialist party. The simple majority vote for appointment was approved in 2010 by the National Assembly.

References:

Ethics Code of the Venezuelan Judge, Article. 37: within the principles of the disciplinary competence there is impartiality and equality.

Art. 28.3: judges can be sanctioned with destitution for two years up to 15 years, causes for destitution include:

Art. 33.12/33.13/33.14: lack of integrity, inadequate or improper conduct and abuse of authority respectively.

Interview with Laura Louza, director of the NGO "Acceso a la Justicia" and professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

Chavero Gadzik, Rafael J. (2011) La Justicia Revolucionaria (The Revolutionary Justice). Editorial Aequitas C. A., p. 187

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The judicial disciplinary agency is the Judicial Commission of the Supreme Court of Justice. Although some investigations have been started, the creation of the disciplinary agency is so recent that sanctions have not yet been initiated.

References:

El Universal, "SCJ opens disciplinary process against judge Veneci Blanco," May 25, 2011, <http://noticias.eluniversal.com/2011/05/25/tsj-abre-proceso-disciplinario-a-la-magistrada-veneci-blanco.shtml>

Interview with Laura Louza, director of the NGO "Acceso a la Justicia" and professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

El Universal, "Disciplinary process against Afiuni is announced," September 27, 2010, http://www.eluniversal.com/2010/09/27/pol_ava_anuncian-proceso-dis_27A4529171.shtml

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Ethics Code for Venezuelan Judges established that transitory regulations will continue to be applied in practice. Judicial disciplinary tribunals were established on June 28, 2011, and corresponding regulations were created in September 2011. The disciplinary process operative management is done by the Supreme Court of Justice. The new judicial disciplinary system is too recent to be evaluated.

References:

Interview with Laura Louza, director of the NGO "Acceso a la Justicia" and professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

Noticiero Legal, "On September 16th, the Disciplinary Judicial Jurisdiction formally initiates activities," September 15, 2011, http://www.noticierolegal.com/index.php?option=com_content&view=article&id=9011:el-viernes-16-de-septiembre-de-2011-inicia-formalmente-las-actividades-de-despacho-en-la-jurisdiccion-disciplinaria-judicial&catid=20:tribunal-supremo-de-justicia&Itemid=25

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

46

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

Comments:

According to the Law Against Corruption, all public officials at all levels must present an asset disclosure form within the first month of taking and leaving office. There are no exceptions to this rule.

References:

Asamblea Nacional. Ley Contra la Corrupción. Gaceta Oficial No. 5.637 Extraordinario de fecha 07 de abril de 2003, Article 23, <http://www.cgr.gob.ve/descarga.php?Nombre=LCCorrupcion.pdf%20&&%20Ruta=pdf/leyes/LCCorrupcion.pdf>

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

Comments:

Ethics Code of the Venezuelan Judge, Article 33.2: It is a cause for removal from office to receive, request or promise gifts for him/herself or others that are related to the litigation. http://www.oas.org/juridico/spanish/mesicic3_ven_anexo4.pdf (This code was partially repealed by Official Journal No. 39.493 in 2010, but Article 33 remains the same.)

References:

Ethics Code of the Venezuelan Judge, Article 33.2, http://www.oas.org/juridico/spanish/mesicic3_ven_anexo4.pdf

Law Against Corruption, Article 60-62, http://www.ucv.ve/fileadmin/user_upload/asesoria_juridica/Ley_Contra_La_Corrupcion_-_5.637_E.pdf

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

Comments:

According to the Law Against Corruption, the General Comptroller's Office (Contraloría General de la Nación) may audit the accuracy of the asset disclosures and impose sanctions if it finds it inaccurate.

References:

Asamblea Nacional, Ley Contra la Corrupción. Gaceta Oficial No. 5.637 Extraordinario de fecha 07 de abril de 2003, Articles 26-32, <http://www.cgr.gob.ve/descarga.php?Nombre=LCCorruccion.pdf%20&&%20Ruta=pdf/leyes/LCCorruccion.pdf>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

Comments:

The only restriction refers to incompatibilities while exercising a post in public office.

National Constitution, Article 256, states that members of the judiciary cannot engage in private activities that are incompatible with their position, or any other public function, with the exception of educational activities.

The Organic Law for the Supreme Court of Justice, Articles 37.7 and 39, state that within their requirements and responsibilities, judges cannot engage in incompatible activities specified in Article 39.

References:

National Constitution, Article 256.

Organic Law for the Supreme Court of Justice, Articles 37.7, 39.

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

Comments:

No law regulates post-government employment.

References:

The only restriction refers to incompatibilities while in a public office.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent

or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Gift and hospitality regulations cannot be guaranteed in the judiciary. Corruption appears to be a problem within the judiciary. For example, on the Acceso a la Justicia webpage, a formerly confidential report ordered to be made public by the Supreme Court of Justice reveals a wide range of judges that favored people accused of crimes, such as drug trafficking and murder, after allegedly receiving illegal payments.

Moreover, Carlos Escarra, a member of the national legislature, says that the judiciary is one of the most corrupt elements and that there are mafias among the police, judges and prosecutors.

References:

El Universal, "Escarra admits that little has been done to clean up the judiciary," June 19, 2011, <http://www.eluniversal.com/2011/06/19/escarra-admite-que-poco-se-ha-hecho-por-adecentar-la-justicia.shtml>

Acceso a la Justicia, "Secret SCJ Report reveals connections between judges and drug traffickers," November 5, 2010, <http://accesoalajusticia.org/documentos/detalle.php?mrdstartid=10&catid=22>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

National-level judicial asset disclosure records are not effectively audited.

The General Comptroller's Office is in charge of auditing asset disclosure records of all public employees. The Supreme Court of Justice has an internal comptroller, which is part of the General Comptroller's Office. If something is believed to be irregular, it can be referred to the General Comptroller's Office and an investigation can be started.

References:

General Comptroller's Office, Administration Report 2010, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Interview with Laura Louza, director of the NGO "Acceso a la Justicia" and professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

25

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

Comments:

National Constitution, Article 51, states that every person can make requests to any authority and public employee about all matters within their competence. Article 141 states the principles of the Public, which include transparency and accountability.

Ethics Code of the Venezuelan Judge, Article 17, states that in order to protect constitutional rights of intimacy, private life, confidentiality, self-image, honor and reputation, judges will maintain confidentiality in the processes and cases they have knowledge of; they cannot provide information to people other than the parties.

References:

National Constitution, Articles 51, 141.

Ethics Code of the Venezuelan Judge, Article 17, http://www.oas.org/juridico/spanish/mesicic3_ven_anexo4.pdf (This code was partially repealed by Official Journal No. 39.493 in 2010, but Article 17 remains the same.)

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Personal asset disclosure records can be requested by a judicial order, but this entails a rigorous process with many costs and time.

References:

Acceso a la Justicia (2010), Supreme Court of Justice's administration according to its presidents, http://www.tsj.gov.ve/informacion/miscelaneas/informes_anuales.shtml, source: <http://accesoalajusticia.org/documentos/detalle.php?catid=2>

Supreme Court of Justice (2011) Plan Vitrina 2011 (Showcase Plan 2011), <http://www.tsj.gov.ve/presupuesto/presupuesto.asp>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Personal asset disclosure records can be requested by a judicial order, but this entails a lengthy and costly process. The Supreme Tribunal has severely restricted the access to information on public officials, including their salaries and assets disclosures, arguing that this information belongs to the "intimate sphere." Whoever requests this information must state the reasons and goals of the request, and it may be answered within limits "proportional" to the alleged public interest pursued by the request.

References:

Tribunal Supremo de Justicia, Sala Constitucional. Sentencia No. 745, July 15, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio745-15710-2010-09-1003.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Since these records are only available upon judicial order (and often denied), a way to measure their quality is not possible.

References:

Supreme Court of Justice official webpage, 2011, http://www.tsj.gov.ve/informacion/miscelaneas/informes_anuales.shtml

Interview with Laura Louza, director of the NGO "Acceso a la Justicia" and professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

50

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

National Constitution, Article 187.6: It is of the duties of the legislative to discuss and approve the national budget and any draft law regarding the tax system and public credit.

International Budget Initiative (2010) Open Budget Survey 2010: Venezuela obtains a score of 34, positioning it in the category of countries with minimum open budget.

References:

National Constitution, Article 187.6.

International Budget Initiative (2010) Open Budget Survey 2010, http://internationalbudget.org/wp-content/uploads/2011/06/2010_Full_Report-English.pdf

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

According to the Open Budget Survey 2010, Venezuela obtained a score of 34. This positioned it in the category of countries with limited open budget.

The National Assembly has the effective power to approve budget laws and expenditures, but little or no debate takes place in order to approve large expenditures. For example, for the sixth consecutive year, the National Assembly approved a draft budget law without objections or changes.

References:

Transparencia Venezuela (2011), "Parliamentary silence 2010," <http://www.transparencia.org.ve/AreasEstrategicas/Petroleo/Analisis-Presupuesto-2011.aspx>

International Budget Initiative (2010) Open Budget Survey 2010, http://internationalbudget.org/wp-content/uploads/2011/06/2010_Full_Report-English.pdf

El Nacional, "Public expenditures raise up to 193 billion," September 11, 2010, http://el-nacional.com/www/site/p_contenido.php?g=nodo/154456/Econom%C3%ADa/El-gasto-p%C3%BAblico-asciende-hasta-Bs-193-millardos

Noticiero Digital, "National Assembly approved 413 million bolivares for prisons," June 16, 2011, <http://www.noticierodigital.com/2011/06/an-aprobo-413-millones-de-bolivares-para-carceles/>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

The National Assembly allegedly has the necessary power, mechanisms and resources to oversee the budget process, but most decisions are made with little or no debate, bringing into question the independence of the branch.

There is supposed to be a National Assembly sub-commission on public finances, and public investment and expenditures of the executive, yet no information is available on the webpage.

The permanent finance commission also approved the budget for the National Assembly and the Central Venezuelan Bank.

References:

Correo del Orinoco, "National Assembly will be monitoring the execution of the national budget," February 9, 2011, <http://www.correodelorinoco.gob.ve/economia/asamblea-nacional-hara-seguimiento-a-ejecucion-presupuesto-nacion/>

National Assembly Subcommissions, 2011, http://www.asambleanacional.gov.ve/index.php?option=com_comisionesficha&tipoComi=subcomision&hidId=reporteSubComision&hidComId=21&Itemid=102&lang=es

National Assembly, Draft 2010 Budget Law approved without changes. http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=23668&Itemid=27

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

17

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

According to the Open Budget Survey 2010, the score Venezuela obtained is in the category of countries with a minimally open budget. For example, debates are available on the ANTV television channel and webpage, but this does not mean that all decisions and aspects regarding them are transparent. Moreover, Representative Ruiz stated that the approval of an amount larger than the entire yearly budget for a region was made without debate in parliament.

References:

International Budget Initiative (2010) Open Budget Survey 2010, http://internationalbudget.org/wp-content/uploads/2011/06/2010_Full_Report-English.pdf.

Primicias 24, "Homero Ruiz rejects irregular approval of additional credit for the Apure State Government," April 29, 2011, <http://primicias24.com/nacionales/homero-ruiz-rechaza-credito-adicional-para-el-estado-apure-de-forma-irregular/>

El Universal, "Sin Consulta Previa Asamblea Autoriza Credito Adicional," April 29, 2011, <http://www.eluniversal.com/2011/04/29/sin-consulta-previa-asamblea-autoriza-credito-adicional.shtml>

El Universal, "Venezuela among the less transparent countries in budget," October 19, 2010, http://www.eluniversal.com/2010/10/19/eco_ava_venezuela-entre-los_19A4625891.shtml

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Some laws are publicly discussed and a summoning is made to everyone who wants to participate. The "Social Street Parliamentarism" is a mechanism for this participation. However, there is no reference within the activities to budgetary discussions or participation.

Actual input to the budget discussion made by either NGOs or civil society is unlikely.

References:

National Assembly 2010 "Social Street 'Parliamentarism'" Action Plan, http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=24055&Itemid=221

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

No updated reports on actual expenditures or income with numbers are published. Available information is scattered and selective.

According to the Open Budget Partnership 2010, Venezuela provides minimal information to the public about its budget. For example, budgetary laws and modifications from only 2001 to 2005 are available on the National Budget Office's webpage. Other

documents on the National Budget Office's webpage mostly regard classification of budget allocation and procedure guidelines. Information on the specific allocation of additional credits is available on the National Assembly webpage.

References:

International Budget Partnership. Open Budget Partnership 2010, [http://www.transparencia.org.ve/AreasEstrategicas-\(2\)/Transparencia-Presupuestaria-\(1\)/Resultados-Venezuela-IPA-2010.-version-ingles.aspx](http://www.transparencia.org.ve/AreasEstrategicas-(2)/Transparencia-Presupuestaria-(1)/Resultados-Venezuela-IPA-2010.-version-ingles.aspx)

ONAPRE (National Budget Office) official webpage, 2011, http://www.ocepre.gov.ve/informacion/Ley_2010/ClasifPresupRecurEgresos-2010.pdf

National Assembly, additional credits, 2011, http://www.asambleanacional.gob.ve/index.php?option=com_leyesficha&hidId=creditos&Itemid=219&lang=es

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

Note that the regulation is not cited because it likely is an internal regulation, which is not easy to access or find. The National Assembly's Comptroller's Permanent Commission is in charge of the surveillance of investment and public funds for all levels of the national administration. Supposedly, this commission has to open cases and observe the budget process, but no observation has been made yet.

References:

National Assembly official webpage, 2011, http://www.asambleanacional.gob.ve/index.php?option=com_comisionesficha&tipoComi=permanente&hidId=reporteComisionPermanente&hidComild=22&Itemid=98&tab=djp&lang=es

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

33

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

According to the executive director of Transparency Venezuela, Mercedes De Freitas, ministers provide a report and accounts to the commission. But they provide insufficient information that is too general with little or no detail. These reports have not been formally evaluated by either Transparency Venezuela or the commission.

According to Transparency Venezuela's Budget Report 2011, additional credit over 40% of the original budget yet was approved, but not all financial resources or their origin are specified.

References:

Transparency Venezuela, Our Budget Report 2011, April, June, 2011, [http://www.transparencia.org.ve/Boletines-\(1\)/Mensual/informe_presupuesto_II_trimestre.aspx](http://www.transparencia.org.ve/Boletines-(1)/Mensual/informe_presupuesto_II_trimestre.aspx)

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

According to Mercedes De Freitas, political biasing is effective, such that ministers are not required to bring forth information about their administration. Since January 2011, the commission is integrated with nine ruling party and six opposition representatives (15 total). Agreement among both positions is difficult.

References:

El Universal, Without previous consultation Assembly authorized additional credit, April 2011, <http://www.eluniversal.com/2011/04/29/sin-consulta-previa-asamblea-autoriza-credito-adicional.shtml>

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

Comments:

The opposition claims that the commission is paralyzed and that it has not started investigations of more than 1,155 claims since 1999.

References:

National Assembly, National Assembly Comptroller Commission will approve its internal regulation, February, 2011, http://www.asambleanacional.gov.ve/index.php?option=com_content&view=article&id=30450%3Acomision-de-contraloria-discutira-y-aprobara-reglamento-interno-este-miercoles-&catid=1%3Alatest-news&Itemid=246&lang=es

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. ⁵⁶Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

50

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

Comments:

National Constitution, Article 141, sets forth the principles of the Public Administration: "Public employees are at the service of the State and not of any partiality, Their appointment cannot be determined by political orientation."

Public Administration Law Decree, Article 10, states that impartiality, accountability, objectivity, accessibility and transparency are founding principles of the Public Administration.

Organic Administrative Procedures Law, Article 30, states that "administrative activity will be carried out according to the principles of economy, efficiency, swiftness and impartiality."

References:

National Constitution, Articles 141, 144.

Public Administration Law Decree, Article 1.0

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

Law for the Statute of the Public Duty, Article 33.10: Public employees shall refrain from participation in issues of their competence when the issue is of interest of a relative up to the fourth level of kinship, a friend or enemy, or if they have previously acted as witnesses or experts on the issue, or if they have a relationship of subordination with other public officials interested in the issue.

References:

Law for the Statute of the Public Duty, Article 33.10.

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

Appeals are made directly through the courts. The Law for the Statute of the Public Duty, Title VIII: Civil Service Administrative Litigation Claim, Article 93, states that the responsible authority to process these claims are the competent tribunals on civil service administrative litigation claims.

The Organic Law for the General Comptroller and National Fiscal System, Article 84, states that "civil responsibility will be effective according to the laws that regulate the matter and through the redress mechanism stated in this law and its regulations... ."

References:

Law for the Statute of the Public Duty, Title VIII: Civil Service Administrative Litigation Claim, Article 93.

Organic Law for the General Comptroller and National Fiscal System, Article 84.

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | No

Comments:

Law for the Statute of the Public Duty, Article 78, states that civil servants who have been subject to destitution will be considered as retired from the Public Administration. Causes for destitution include corruption.

References:

Law for the Statute of the Public Duty, Article 78.

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

19

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Inter-American Commission on Human Rights (IACHR) Report 2010 states that public employees constantly engage in political criticism of opposition media.

There have been reports that public employees are required to wear red shirts (the color of the ruling party) and participate in ruling party demonstrations. Other reports state that public employees even must become a member of the ruling party and make a monetary contribution. The ruling party firmly deny all these allegations. But Luis Tascón admits that some public employees were coerced into being part of PSUV, participating in demonstrations and wearing red shirts. Luis Tascón was expelled from the PSUV.

References:

IACHR Venezuela 2010 report, p. 576

El Nacional, "Conatel initiates sanctions process against Globovision for covering El Rodeo," June 30, 2010, http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/217965/Naci%C3%B3n/Conatel-inicia-procedimiento-sancionatorio-contr-Globovisi%C3%B3n-por-cobertura-en-el-Rodeo

Portuguesa State Government, "Regional executive dictated a Public Socialist Administration course," June 22, 2011, http://www.portuguesa.gob.ve/index.php?option=com_content&task=view&id=2623&Itemid=2

Noticias 24, "Tason y Su Lista la Primera la Consiguio en Sumate y Pide Castigo para Quienes la Usaron," <http://www.noticias24.com/actualidad/noticia/12412/tason-y-su-lista-la-primera-la-consiguio-en-sumate-y-pide-castigo-para-quienes-la-usaron/>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Attorney General Carlos Escarrá resigned his membership in the PSUV, but proclaimed that he was the Bolivarian Revolution's attorney. The appointment of Escarrá and the authorities of the CNE show political preference in appointing civil servants. Professional qualifications are met, but it can be seen as if political affiliation is the main criteria for appointment.

References:

El Universal, "CNE: public employees can participate in electoral campaign," September 8, 2010, http://www.eluniversal.com/2010/09/08/v2010_ava_cne:-funcionarios-pu_08A4443371.shtml

PSUV, "Carlos Escarrá is the new Attorney General of the Republic," August 30, 2011, <http://www.psuv.org.ve/portada/carlos-escarra-nuevo-procurador-general-republica/>

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Civil service management actions are often based on nepotism, cronyism, or patronage. The El Nuevo Herald reported that public employees were dismissed for alleged irregularities, yet no proof was put forward.

Henry Rangel Silva's promotion was made as a result of the declarations he made regarding the possibility of an opposition government: He stated that the national armed forces would not recognize such elections results. Rangel Silva's promotion does not refer to civil but to military service; however, it is a clear example of the general criteria for appointments and management.

References:

Noticias 24, "Chavez promotes Rangel Silva to General in Chief," November 11, 2010, <http://www.noticias24.com/actualidad/noticia/180330/chavez-le-da-un-espaldarazo-a-rangel-silva-lo-asciende-a-general-en-jefe/>

El Nuevo Herald, "29 Are Dismissed in the Venezuelan Consulate," March 7, 2011, <http://www.elnuevoherald.com/2011/03/06/898591/destituyen-a-29-en-el-consulado.html>

Noticiero Digital, "Cilia Flores: we will have a resoundingly red National Assembly," May 3, 2010, <http://www.noticierodigital.com/forum/viewtopic.php?t=647471>

PSUV, "Carlos Escarrá is the New Attorney General of the Republic," August 30, 2011, <http://www.psuv.org.ve/portada/carlos-escarra-nuevo-procurador-general-republica/>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants sometimes do not have clear job descriptions. There are handbooks with specific descriptions of civil servant jobs, but they are not standardized because the majority of the public administration sectors create their own handbooks. Thus, some organisms have a very clear description in the handbooks, while others do not. Therefore, it is not guaranteed that all civil service job descriptions are clear and detailed.

This is confirmed by Dr. Rosa Amelia González. She states that organisms are supposed to follow the Law for the Statute of the Public Duty as a guideline, but there are many differences. For example, civil servant job descriptions offer different salaries: Employees of the CNE directive earn much more than employees of the central administration. Moreover, Dr. González states that the clarity of the job description depends on how it is written by the different institutions. For example, central administration job descriptions are not so clear. They are established in the post classification description under the authority of the planning vice ministry. However, other ministries within the public sector write clear job descriptions.

References:

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

Interview with Elides Rojas, editor in chief, El Universal newspaper, Caracas, Venezuela, October 14, 2011.

Interview with Dr. Rosa Amelia González, dean of research and public policy professor in IESA, October 18, 2011.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

The president allocated almost \$4,000 in bonuses, yet no specifics were revealed on how many people are public employees. Chavez did state the number of retired people and pensioners.

According to Radio Mundial, the Public Administration shall pay, starting November 15, 90 days of salary according to 2010 end-of-year bonus.

References:

Infolatam, "Venezuela: Chavez assigns 5.521 million dollars for public employees' bonuses," November 14, 2010, <http://www.infolatam.com/2010/11/15/venezuela-chavez-destina-5-521-millones-de-dolares-para-aguinaldos-a-empleados-publicos/>

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

According to Dr. Rosa Amelia González, a registry called the Post Updating Registry is a record of public administration projects, but there is not a lot of information on its status. This document is of internal use only, it is not available to the public and there is no means to know whether it is updated.

References:

Interview with Dr. Rosa Amelia González, dean of research and public policy professor in IESA, October 18, 2011.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Because the independent civil service redress mechanism is subject to political considerations, its effectiveness is compromised.

According to Dr. Rosa Amelia González, the private sector courts tend to favor the workers (employees). But when it comes to the public sector, it is not likely that the judiciary will rule against the government. This is due to the lack of separation of powers (the political subordination of the public powers to the executive).

References:

Supreme Court of Justice, Sentence on Civil Service Administrative Litigation Claim, April 4, 2011, <http://cfr.tsj.gov.ve/decisiones/2011/abril/2348-4-FP11-N-2011-000053-.html>

Interview with Dr. Rosa Amelia González, dean of research and public policy professor in IESA, October 18, 2011.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Workers on strike for more than 140 have not had an answer from the government on the payment of labor liabilities.

Workers of Universidad Central claim no payments have been made and say that the minister of education should resign his post for lying to them.

References:

El Universal, "Non-fulfillment of benefits payment to public employees for over 10 years is denounced," January 8, 2010, http://www.eluniversal.com/2010/01/08/pol_ava_denuncian-incumplimi_08A3266611.shtml

Noticiero Digital, "Three Cemex ex-workers sew their mouths after 140 days of hunger strike," March 23, 2011, <http://www.noticierodigital.com/2011/03/tres-ex-trabajadores-de-cemex-se-cosieron-los-labios-tras-140-dias-en-huelga-de-hambre/>

El Universal, "UCV workers protest for non-fulfillment of payments," August 5, 2010, http://www.eluniversal.com/2010/08/05/pol_ava_trabajadores-de-la-u_05A4302453.shtml

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

A life ban on public service after conviction is not considered in the law. The law specifies only temporary measures. Public employees who are convicted will be banned from public service for a period of 12 months.

For instance, former Mayor of Maturín Numa Rojas was indicted twice on corruption charges, and he is again disqualified from holding public office. Notably, there are 17 allegations against him, but he's only been put on trial for one.

References:

El Nacional, "Sanctions imposed on public employees who had unjustified funds," November 2, 2010, http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/163361/Naci%C3%B3n/Sancionados-funcionarios-p%C3%BAblicos-a-quienes-se-les-determin%C3%B3-fondos-no-justificados

La Prensa de Monagas, "Numa Rojas will have to go to court again," June 30, 2011, <http://www.laprensademonagas.info/Articulo.aspx?s=3&aid=60027>

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

58

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

Organic Administrative Procedures Law, Articles 31-33, state that there will be a file for every issue, kept in a uniform way, due to publishing in the official journal.

Organic Law for the Statute of the Public Duty, Article 33.4, states that civil servants shall provide particulars of the necessary information on the issues and files for which they have a legitimate interest.

Anticorruption Law, Articles 9 and 20 mandate that public employees have to inform citizens about the use of assets and expenditures of national wealth resources that fall within their administration.

References:

Organic Administrative Procedures Law, Articles 31-33.

Organic Law for the Statute of the Public Duty, Article 33.4.

Anticorruption Law, Articles 9, 20, <http://www.alacvenezuela.org/legislacion/Ley%20Contra%20la%20Corrupci%C3%B3n.pdf>

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

Comments:

Organic Administrative Procedures Law, Article 36: civil servants restraints; when the issue is of interest of a relative up to the fourth level of kinship, a friend or enemy, or if they have previously acted as witnesses or experts on the issue, or if they have a relationship of subordination with other public officials interested in the issue.

Law for the Statute of the Public Duty, Article 33.10: Public employees shall refrain from participating in issues of their competence when the issue is of interest of a relative up to the fourth level of kinship, a friend or enemy, or if they have previously acted as witnesses or experts on the issue, or if they have a relationship of subordination with other public officials interested in the issue.

References:

Organic Administrative Procedures Law, Article 36.

Law for the Statute of the Public Duty, Article 33.10.

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | **No**

Comments:

Law of the Statute for the Public Duty, Article 35: Accepting a job other than the exceptions mentioned (academic, accidental, teaching) implies resignation of the previous.

Anticorruption Law Article, 39: Any public employees will be disqualified from holding public office if they have been convicted for any of the offenses established in this law.

The only restriction refers to incompatibilities while exercising a post in public office.

References:

Law of the Statute for the Public Duty, Article 35.

Anticorruption Law Article, 39.

Yes: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

Comments:

Organic Law for the Statute of the Public Duty, Article 34/83.6/83.7/86.11: It is prohibited to accept posts, honors or rewards from foreign governments. Accepting or requesting money or any other benefit is a cause for warning and/or dismissal.

References:

Organic Law for the Statute of the Public Duty, Article 34/83.6/83.7/86.11.

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | No

Comments:

Organic Law for the General Comptroller and National Fiscal System, Article 9: organizations and entities subject to control and surveillance (12) in total.

References:

Organic Law for the General Comptroller and National Fiscal System, Article 9.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Law of the Statute for the Public Duty, Article 35: Accepting a job other than the exceptions mentioned (academic, accidental, teaching) implies resignation of the previous.

Anticorruption Law, Article 39: Any public employees will be disqualified from holding public office if they have been convicted for any of the offenses established in this law.

The only restriction refers to incompatibilities while exercising a post in public office.

References:

Law of the Statute for the Public Duty, Article 35.

Anticorruption Law, Article 39.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Corruption represented in gifts and hospitality is not uncommon in Venezuela. These sources give an example of corruption in general in the country.

According to Transparency International's annual corruption perception index, Venezuela was number 75 out of 180 countries in 1999; in 2010, Venezuela was number 158. The main focal points of corruption in Venezuela are the president's headquarters, PDVSA's headquarters, the Ministry of Defense along with the National Guard, and the Treasury Department.

References:

Analitica, "Corruption in Venezuela is in accelerated advance," May 6, 2010, <http://www.analitica.com/va/politica/opinion/8489562.asp>

Gustavo Coronel, América Economía, "The four corruption focal points of Venezuela," April 15, 2011, <http://www.americaeconomia.com/politica-sociedad/politica/los-cuatro-focos-de-corrupcion-en-venezuela>

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

Recusal is effective in most cases, but when there is a sensitive political interest, it is not. For example, Judge Afuni's filed a motion to the Supreme Court of Justice requesting that Judge Paredes recuse himself. The SCJ denied the motion and Judge Paredes took up Judge Afuni's case again.

Judge Majorie Maggiolo Diaz was recused when pronouncing the decision to reject the offense of boycott in the Pdval case.

References:

Diario Crítico, "Supreme Justice Court rejects recusal of judge Ali Paredes from Afuni case," November 18, 2010, <http://www.diariocritico.com/venezuela/2010/Noviembre/noticias/238676/tsj-rechaza-recusacion-del-juetz-ali-paredes-del-caso-afuni.html>

El Universal, "Trial Judge 29 becomes inhibited from the Pdval case," June 15, 2011, <http://www.eluniversal.com/2011/06/15/juez-29-de-juicio-se-inhibe-del-caso-pdval.shtml>

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

According to Dr. Roche Lander, asset disclosures or sworn asset statements are reviewed more than audited. Not all asset disclosures are revised, but rather a sample is taken.

There is a vast documentation of auditing of the sworn asset statements; however, political influence can still be a part of the auditing measures and results.

References:

General Comptroller's Office Administration Report 2010, Appendix, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

25

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

National Constitution, Article 51: Every person can make requests to any authority and public employee about all matters within their competence.

National Constitution, Article 141: principles of the public administration, which include transparency and accountability.

Public Administration Law Decree, Article 7.1: People have the right to access information about administrative proceedings in which they are interested.

Article 158: right to access administrative archives and records.

Organic Law for the Statute of the Public Duty, Article 33.4: Civil servants shall provide particulars the necessary information on the issues and files for which they have a legitimate interest.

References:

National Constitution, Articles 51, 141.

Public Administration Law Decree, Articles 7.1, 158.

Organic Law for the Statute of the Public Duty, Article 33.4.

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to Dr. Roche Lander, sworn asset statements are private. Access to these documents is granted only by judicial order. This is the result of a trial in which there has to be a justified motivation.

References:

General Comptroller's Office Administration Report 2010, Appendix, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No information is available regarding asset disclosure records in general. According to Dr. Roche Lander, sworn asset statements are private and access to these documents is granted only by judicial order. This is the result of a trial in which there has to be a justified motivation.

The only information available is about sanctions imposed on public employees that had irregularities in their sworn asset statements.

References:

General Comptroller's Office Administration Report 2010, Appendix, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The only information available is about sanctions imposed on public employees that had irregularities in their sworn asset statements.

According to Lander, sworn asset statements follow a format and pattern established by the General Comptroller's Office (GCO). The reliability of the information they contain has to be audited by the GCO, but many sworn statements and administration reports of civil servants have a low quality, for they have the intention mostly to justify irregularities.

There can be no evaluation of the quality of the asset disclosure records since they are not publicly available, and the GCO's impartiality is not guaranteed.

References:

General Comptroller's Office Administration Report 2010, Appendix., http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

44

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

National Constitution, Article 55: Every person has the right to be protected by the state, in any situation that constitutes a threat, vulnerability or risk.

Complaint Instructions, General Comptroller's Office, Article 22 refers to identity protection to the reporting party.

Anticorruption Law, Articles 49, 50 provide that when by any means the Public Ministry knows about any corruption allegations, it will start an investigation with the aid of any police department, and every person has to provide the Public Ministry with the information it requires.

References:

National Constitution, Article 55.

Complaint Instructions, General Comptroller's Office, Article 22, <http://www.alacvenezuela.org/docs/como-denunciar.pdf>

Anticorruption Law, Articles 49, 50, <http://www.alacvenezuela.org/legislacion/Ley%20Contra%20la%20Corrupci%C3%B3n.pdf>

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Comments:

According to Elides Rojas, there are no guarantees. When common people or civil servants turn to media to denounce cases of corruption, media entities suggest that people go to the Public Ministry. But people neither go to the Public Ministry nor return to the media entities.

References:

Globovision, "Policaracas director Renny Villaverde is dismissed," February 7, 2011, <http://www.globovision.com/news.php?nid=177299>

La Cantera Criolla, "Public employee," June 26, 2011, <http://lacanteracriolla.com/2011/06/26/empleado-publico/>

Interview with Elides Rojas, editor in chief, El Universal newspaper, Caracas, Venezuela, October 14, 2011.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | **No**

Comments:

No law specifically addresses this issue.

The National Constitution, Article 55, sets forth a guiding principle that, in theory, could be construed broadly to protect whistleblowers: "Every person has the right to protection by the State, through the citizen safety organs regulated by law, from situations that affect or constitute a threat, vulnerability or risk to the physical integrity of individuals, their properties, the enjoyment of rights or the Fulfillment of duties."

Complaint Instructions, General Comptroller's Office, Article 22, refers to identity protection to the reporting party, but this is for public sector employees.

References:

No law specifically addresses this issue.

National Constitution, Article 55.

Complaint Instructions, General Comptroller's Office, Article 22, <http://www.alacvenezuela.org/docs/como-denunciar.pdf>

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Comments:

Whistle-blowing is not common in Venezuela, mostly for fear of recrimination of any kind. The General Comptroller's Office official webpage specifies ways in which citizens can denounce corruption, as well as competent authorities that process such claims. Asistencia Legal Anti Corrupción (ALAC) also provides a mechanism for denouncing corruption, as well as information on other aspects of the process.

According to Elides Rojas, there are no guarantees. When common people or civil servants turn to media for denouncing cases of corruption, media entities suggest that people go to the Public Ministry. Unfortunately, people often are dissuaded from reporting.

References:

General Comptroller's Office FAQs, 2011, <http://www.cgr.gob.ve/contenido.php?Cod=069>

ALAC Venezuela, (Asistencia Legal Anti Corrupción) Anti-corruption Legal Assistance, 2011, <http://www.alacvenezuela.org/view/home>

Interview with Elides Rojas, editor in chief, El Universal newspaper, Caracas, Venezuela, October 14, 2011.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes | No

Comments:

The investigative process can be started by denunciation with the right amount of proof, which can be presented to the competent body, whether written in paper or through electronic media.

References:

Organic Law for the General Comptroller and National Fiscal System, Article 96, <http://www.alacvenezuela.org/legislacion/Ley%20Org%C3%A1nica%20de%20la%20Contralor%C3%ADa%20General%20de%20la%20Rep%C3%BA>

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is a permanent, professional, full-time office within the organizational structure of the General Comptroller's Office. The Citizen Attention Office is the organism that channels all claims (either itself or it refers it to the according authority). This is an entity at the structural level of the sub-comptroller.

Yet professionalism also implies impartiality, which can't be guaranteed given the stated characteristics of public employees in the country and the appointment of the former general comptroller.

References:

General Comptroller's Office, Citizen Attention Office, 2011, <http://www.cgr.gob.ve/contenido.php?Cod=067>

General Comptroller's Office, Organizational Structure, 2011, <http://www.cgr.gob.ve/contenido.php?Cod=013>

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Articles 17 and 18 refer to the General Comptroller's Office budget.

According to Mercedes De Freitas, the General Comptroller's Office does not have enough resources to carry out all of its duties. No requests are made by the institution to acquire more resources.

References:

Organic Law for the General Comptroller and National Tax System, Articles 17, 18.

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The quickness of the response generally corresponds to political interest. According to Dr. Rosa Amelia González, there is no effective agency control over whistle-blowing. Rather, it is used mostly as a political mechanism, and it works better for the private sector than for the public sector.

For example, according to Espacio Público, around 50 policemen gathered to demand the dismissal of director Renny Villaverde. Director Villaverde is linked to corruption allegations. The policemen claim that they have been reporting irregularities for over two years and nothing has been done.

References:

Espacio Público, "Police contingent demands director's dismissal," February 3, 2011, <http://espaciopublico.org/index.php/noticias/7-manifestaciones/964-efectivos-de-policar-as-exigen-destitucion-de-director->

Interview with Dr. Rosa Amelia González, dean of research and public policy professor in IESA, October 18, 2011.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Although investigations are initiated, it is not likely that politically sensitive cases will follow the same investigation pattern as lower-level offenders or opposition offenders. For example, the Supreme Court of Justice admitted an investigation on Capriles Radonski made by a PSUV member. Absolute nullity was declared after the PSUV claimed the reporting party was expelled from the political party.

References:

El Universal, "Corruption investigation in Sidor gets to the 'queen of rebars,'" June 19, 2011, <http://noticias.eluniversal.com/2011/06/19/investigacion-por-corrupcion-en-sidor-llega-hasta-la-reina-de-las-cabillas.shtml>

América Economía, "Venezuela annulled a corruption investigation request against opposition leader," July 20, 2011, <http://www.americaeconomia.com/politica-sociedad/politica/venezuela-anula-investigacion-por-corrupcion-contra-lider-opositor>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

75

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

Law for the Statute of the Public Statute, Article 33.10: Public employees shall refrain from participation in issues of their competence when the issue is of interest of a relative up to the fourth level of kinship, a friend or enemy, or if they have previously acted as witnesses or experts on the issue, or if they have a relationship of subordination with other public officials interested in the issue.

References:

Law for the Statute of the Public Statute, Article 33.10.

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

Comments:

There is no regular required training of public procurement officials.

References:

Ley de Contrataciones Públicas. Gaceta Oficial No. 39503, 09-06-2010, http://www.snc.gob.ve/document/ley_contr.pdf

Reglamento de la Ley de Contrataciones Públicas. Gaceta Oficial No. 39181, 0-19-2009, http://www.snc.gob.ve/document/reg_leycon.pdf

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

Comments:

Corruption in the public procurement sector is very common. For example, the general comptroller stated that housing projects were subject to mismanagement from the public administration. According to Dr. Rosa Amelia González, conflicts of interests are constant. She states that because of the lack of separation of powers, resorting to the authorities is not an effective possibility. Denouncing offenses does not seem like a possibility because the judiciary will rule in favor of the government.

References:

PROVEA, "Corruption affected housing construction," March 30, 2011, <http://www.derechos.org/ve/proveaweb/ddhh/el-universal-russian-corrupcion-afecto-construccion-de-viviendas.html>

Interview with Dr. Rosa Amelia González, dean of research and public policy professor in IESA, October 18, 2011.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | No

Comments:

Organic Law for the General Comptroller and National Fiscal System, Article 78: The General Comptroller's Office can request sworn statements of assets from any public employee or person related to national wealth deals.

References:

Organic Law for the General Comptroller and National Fiscal System, Article 78, <http://www.alacvenezuela.org/legislacion/Ley%20Org%C3%A1nica%20de%20la%20Contralor%C3%ADa%20General%20de%20la%20Rep%C3%BA>

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

Public Contracting Law, Chapter II, Articles 55-60: about open competitive bidding.

References:

Public Contracting Law, Chapter II, Articles 55-60, <http://ftp.ucv.ve/Documentos/Leyes/LeyContratacPub25-03-08.pdf>

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

Public Contracting Law, Chapter III, Articles 61-64: about closed competitive bidding.
Chapter VI, Articles 76-78: about direct contracting.
Article 87: awarding of sole bidding.

References:

Public Contracting Law, Chapter III, Articles 61-64; Chapter VI, Articles 76-78; Article 87, <http://ftp.ucv.ve/Documentos/Leyes/LeyContratacPub25-03-08.pdf>

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

Article 16 of the Public Procurement Law allows any citizen to report before the General Comptroller's Office or before the internal comptroller's office any infringement of the law, regulations or conditions of the bidding. Additionally, the Organic Law of Public Administration Procedures, which prevails over other, specific laws, establishes several types and procedures of appeal against decisions by bodies of the Public Administration.

References:

Ley de Contrataciones Públicas, Gaceta Oficial No. 39503, 09-06-2010, Article 16, http://www.snc.gob.ve/document/ley_contr.pdf

Reglamento de la Ley de Contrataciones Públicas, Gaceta Oficial No. 39181, 0-19-2009, http://www.snc.gob.ve/document/reg_leycon.pdf

Ley Orgánica de Procedimientos Administrativos, Articles 85 to 99, Gaceta Oficial No.2818 Extraordinario, 07-01-1981, http://www.snc.gob.ve/document/ley_oprad.pdf

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

Comments:

Article 16 of the Public Procurement Law allows any citizen to report before the General Comptroller's Office or before the internal comptroller's office any infringement of the law, regulations or conditions of the bidding. Additionally, the Organic Law of Public Administration Procedures, which prevails over other, specific laws, establishes several types and procedures of appeal against decisions by bodies of the Public Administration. Articles 92 and 93 of this law state that challengers of administrative decisions can sue in administrative courts if, after the completion of the formal appeal process inside the administration, they still disagree with the decision.

References:

Ley de Contrataciones Públicas, Gaceta Oficial No. 39503, 09-06-2010, http://www.snc.gob.ve/document/ley_contr.pdf

Reglamento de la Ley de Contrataciones Públicas, Gaceta Oficial No. 39181, 0-19-2009, http://www.snc.gob.ve/document/reg_leycon.pdf

Ley Orgánica de Procedimientos Administrativos, Gaceta Oficial No.2818 Extraordinario, 07-01-1981, http://www.snc.gob.ve/document/ley_oprad.pdf

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

Comments:

Article 139, § 4 of the Public Procurement Law bars providers from the National Registry for four to five years “when they have incurred in corrupt practices.” There is no permanent exclusion.

References:

Article 139, § 4 of the Public Procurement Law (Ley de Contrataciones Públicas.) Gaceta Oficial No. 3903, 09-06-2010, http://www.snc.gob.ve/document/ley_contr.pdf

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Lack of information can easily lead to the possibility of major offenders participating in bids over and over again. According to Dr. Rosa Amelia González, there is no evidence of this prohibition. The information systems are not sufficient, and it is likely that government officials do not know if the company in question has formerly incurred in offenses. There is no information sharing system. The registry (National Procurement Registry) exists, but there is no evidence as to whether it is updated.

References:

El Universal, “Commission payment is denounced in vessel sale to Venezuela,” May 27, 2011, <http://www.eluniversal.com/2011/05/27/denuncian-pago-de-comision-en-venta-de-barcos-a-venezuela.shtml>

Interview with Dr. Rosa Amelia González, dean of research and public policy professor in IESA, October 18, 2011.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

96

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

Public Contracting Law Articles 14 and 15 state that the contracting file will be kept and will be public except for those documents declared confidential.

Article 22.10 mandates that request, collect, systematize, disclose and provide information available about annual programming, and tri-mestre contracting summary.

Article 28 requires that information regarding the National Contractors Registry be available to the general public.

References:

Public Contracting Law, Articles 14, 15, 22.10, 28, <http://ftp.ucv.ve/Documentos/Leyes/LeyContratacPub25-03-08.pdf>

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

Public Contracting Law, Article 22.1, mandates the request, collect, systematize, disclose and provide information available about annual programming, and trimester contracting summary.

References:

Public Contracting Law, Article 22.10, <http://ftp.ucv.ve/Documentos/Leyes/LeyContratacPub25-03-08.pdf>

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The National Contracting Service webpage provides a section on legal requirements and regulations, national contracting registry, etc.

The law and regulations are available online at no cost.

References:

Servicio Nacional de Contrataciones (National Contracting Service), 2011, Requirements/Legal grounds, <http://www.snc.gob.ve/index.php/descargas.html>

Public Contracting Law, Amendment of September 6, 2010, Official Journal No.

39.503, <http://www.unefa.edu.ve/vad/images/stories/pdf/vad/comicontra/leydecontratacionespublicas.2010.pdf>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The National Contracting Service webpage provides a section on legal requirements and regulations, national contracting registry, etc.

The law and regulations are available online at no cost.

References:

Servicio Nacional de Contrataciones (National Contracting Service), 2011, Requirements/Legal grounds, <http://www.snc.gob.ve/index.php/descargas.html>

Public Contracting Law, Amendment of September 6, 2010, Official Journal No.

39.503, <http://www.unefa.edu.ve/vad/images/stories/pdf/vad/comicontra/leydecontratacionespublicas.2010.pdf>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Bids are advertised both in the SNC webpage and on other government institution's webpages. Apparently, there is sufficient information on every bid.

The official National Contracting Service webpage offers a section in which interested parties can log in in order to access public open bids.

References:

Servicio Nacional de Contrataciones (SNC) (National Contracting Service), 2011, Public Open Bidding Calls, <http://compras.snc.gob.ve.8080/lamados/vistas/publicaciones/index.faces>

Municipal Council of Chacao, Open Public Contracting Bid, 2011, <http://www.concejochacao.gob.ve/contrataciones-publicas-02/3050.html>

Popular Power Ministry for Sports, Contracting Processes 2011, <http://www.mindeporte.gob.ve/portal2009/comision-de-contrataciones>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The unit within the webpage also requires a log in; it provides a list of procurement bids results since 2009.

The OSCE webpage provides an annual summary report on public contracting.

References:

Servicio Nacional de Contrataciones (National Contracting Service), 2011, Public Contracting Summary since 2009, <http://sumario.snc.gob.ve/admin/login>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

Comments:

According to Article 13 of the Law on Privatizations, enacted in 1997, the processes of privatization shall be public and give equal opportunities and conditions to all participants. However, the same article establishes preferences for some groups, like workers, cooperatives and local investors. Articles 25 and 26 bar certain categories of subjects, like those who have declared bankruptcy or those who have been convicted of economic crimes, from participating.

References:

According to Article 13 of the Law on Privatizations, enacted in 1997, Ley de Privatización. Gaceta Extraordinaria No. 5.199, 12-30-1997.

<http://www.defiendete.org/html/de-interes/LEYES%20DE%20VENEZUELA/LEYES%20DE%20VENEZUELA%20II/LEY%20DE%20PRIVATIZACION.htm>

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

Comments:

The Law for the Statute of the Public Duty, Article 33.10: Public employees shall refrain from participation in issues of their competence when the issue is of interest of a relative up to the fourth level of kinship, a friend or enemy, or if they have previously acted as witnesses or experts on the issue, or if they have a relationship of subordination with other public officials interested in the issue.

References:

Law for the Statute of the Public Duty, Article 33.10.

Interview with Alicia Sepulveda, director of CEDICE's Economic and Legal Observatory, CEDICE Libertad (Centro de Divulgación del Conocimiento Económico), Caracas, Venezuela, September 29, 2011.

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

There is a nationalization policy in the country; privatization is simply not an option. Since 2007, there has been an accelerated nationalization process of private companies, in an amount that reaches \$23,300,000. From January to September 2011, for example, the Official Journal reported that 411 companies have been nationalized. According to APIUR, some of the companies that were expropriated are Cemex, Lafarge, Holcim, Sidor, Banco de Venezuela, Éxito, Monaca.

References:

Noticias 24, "DPA Analysis: expropriations in Venezuela draw a socialist model," May 26, 2010, <http://economia.noticias24.com/noticia/24796/analisis-dpa-expropiaciones-en-venezuela-dibujan-modelo-socialista-a-lo-chavez/>

Interview with Alicia Sepulveda, director of CEDICE's Economic and Legal Observatory, CEDICE Libertad (Centro de Divulgación del Conocimiento Económico, Caracas, Venezuela, September 29, 2011.

APIUR (Real State Owners Association), Expropriations, May 29, 2010, <http://www.apiur.org/inmuebles/hemeroteca/expropiaciones/762-expropiaciones-hubo-entre-2005-y-2009-y-cuantas-pagaron.html>

Doing Business, Ease of doing business in Venezuela, 2010-2011, <http://www.doingbusiness.org/data/exploreconomies/venezuela/#protecting-investors>

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

40

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

Although the main body of privatization rules, the Law of Privatizations of 1997, has not been applied since 1999, it is still formally in force and can be accessed on numerous webpages.

References:

Law of Privatizations of 1997, Ley de Privatización, Gaceta Oficial Extraordinaria No. 5.199, 12-30-1997, <http://www.defiendete.org/html/defiendete/interes/LEYES%20DE%20VENEZUELA/LEYES%20DE%20VENEZUELA%20II/LEY%20DE%20PRIVATIZACION.htm>

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

There is a nationalization policy in the country, and privatization is simply not an option. Since 2007, there has been an accelerated nationalization process of private companies, in an amount that reaches \$23,300,000. From January to September 2011, for example, the Official Journal reported that 411 companies have been nationalized. According to APIUR, some of the companies that were expropriated are Cemex, Lafarge, Holcim, Sidor, Banco de Venezuela, Éxito, Monaca.

References:

Noticias 24, "DPA Analysis: expropriations in Venezuela draw a socialist model," May 26, 2010, <http://economia.noticias24.com/noticia/24796/analisis-dpa-expropiaciones-en-venezuela-dibujan-modelo-socialista-a-lo-chavez/>

Interview with Alicia Sepulveda, director of CEDICE's Economic and Legal Observatory, CEDICE Libertad (Centro de Divulgación del Conocimiento Económico), Caracas, Venezuela, September 29, 2011.

APIUR (Real State Owners Association), Expropriations, May 29, 2010, <http://www.apiur.org/inmuebles/hemeroteca/expropiaciones/762-expropiaciones-hubo-entre-2005-y-2009-y-cuantas-pagaron.html>

Doing Business, Ease of doing business in Venezuela, 2010-2011, <http://www.doingbusiness.org/data/exploreconomies/venezuela/#protecting-investors>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

Comments:

Privatization Law, Article 10: All privatization processes will be published in Official Journals.

Again, there are no privatization processes nowadays. On the contrary, there is a policy of appropriation of the private sector.

References:

Privatization Law, Article 10.

Interview with Alicia Sepulveda, director of CEDICE's Economic and Legal Observatory, CEDICE Libertad (Centro de Divulgación del Conocimiento Económico), Caracas, Venezuela, September 29, 2011.

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is a nationalization policy in the country; privatization is simply not an option.

References:

Noticias 24, "DPA Analysis: expropriations in Venezuela draw a socialist model," May 26, 2010, <http://economia.noticias24.com/noticia/24796/analisis-dpa-expropiaciones-en-venezuela-dibujan-modelo-socialista-a-lo-chavez/>

Interview with Alicia Sepulveda, director of CEDICE's Economic and Legal Observatory, CEDICE Libertad (Centro de Divulgación del Conocimiento Económico), Caracas, Venezuela, September 29, 2011.

Doing Business, Ease of doing business in Venezuela, 2010-2011, <http://www.doingbusiness.org/data/exploreconomies/venezuela/#protecting-investors>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is a nationalization policy in the country; privatization is simply not an option.

References:

Noticias 24, "DPA Analysis: expropriations in Venezuela draw a socialist model," May 26, 2010, <http://economia.noticias24.com/noticia/24796/analisis-dpa-expropiaciones-en-venezuela-dibujan-modelo-socialista-a-lo-chavez/>

Interview with Alicia Sepulveda, director of CEDICE's Economic and Legal Observatory, CEDICE Libertad (Centro de Divulgación del Conocimiento Económico), Caracas, Venezuela, September 29, 2011.

Doing Business, Ease of doing business in Venezuela, 2010-2011, <http://www.doingbusiness.org/data/exploreconomies/venezuela/#protecting-investors>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁷³National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

National Constitution, Articles 280-283: The national ombudsman is a body of the Citizen Power established for the first time as such in the 1999 National Bolivarian Constitution of Venezuela. These articles relate to the structure and functions of the national ombudsman.

Organic Ombudsman Law, Article 4: one of the objectives of the Ombudsman is defense and monitoring of the 2, 3: rights, guarantees and interests of all persons in relation to the administrative services of the public sector, as well as public services provided either by an individual or legal entity.

References:

National Constitution, Articles 280-283.

Organic Ombudsman Law, Article 4, 3.

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

48

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

National Constitution, Article 280: the ombudsman is in charge of promotion, vigilance and defense of human rights, and the legitimate interests of all citizens.

Organic Ombudsman Law, Article 5, independence and autonomy: The ombudsman is independent from all the other state powers and it has structural, functional, financial and administrative autonomy.

References:

National Constitution, Article 280.

Organic Ombudsman Law, Article 5.

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman has repeatedly defended the government causes. For example, Ombudsman Gabriela del Mar Ramírez stated that the government's expropriations of citizen homes are a way to ensure rights. Ombudsman Ramirez stated that private companies and constructors in Venezuela violate human rights. Moreover, on August 13, 2010, the newspaper El Nacional published a photograph that showed bodies in the Bello Monte morgue as part of the criminal situation in Caracas. The

ombudsman initiated a protection recourse that would forbid all newspapers from publishing images with violent content that threaten the psychological integrity of children and adolescents.

References:

Informe 21, "Ombudsman Gabriela del Mar Ramírez says that the right to have a home is restored," November 5, 2010, <http://informe21.com/defensora-del-pueblo/defensora-del-pueblo-gabriela-del-mar-ramirez-dice-se-restituye-derecho-viviend>

Ombudsman Office, "Ombudsman requests media to refrain from publishing images that attempt on childhood and adolescence," August 16, 2010, http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=589:defensoria-solicita-a-tribunales-medidapreventiva-para-que-medios-impresos-se-abstengan-de-publicar-imagenes-que-atenten-contra-la-infancia-y-la-adolescencia-&catid=7:principal&Itemid=79.

IACHR Report: Venezuela 2010, <http://www.cidh.oas.org/annualrep/2010sp/indice2010.htm>

Acceso a la Justicia, "At the request of the Ombudsman the Supreme Court of Justice suspends application of Criminal Code articles related to personal freedom," May 27, 2011, <http://www.accesoalajusticia.org/noticias/detalle.php?notid=1495>

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Appointments and removals in Venezuela are effectively decided by the president. All public employees are subject to destitution or appointment if the president so wishes, whether by a direct or an indirect order.

According to Dr. Eduardo Roche Lander, in order for the ombudsman to be removed, there has to be a discussion within the National Assembly. But if the executive wishes to remove the ombudsman, an order to the National Assembly could suffice. In Venezuela, the ombudsman (created in 1999) has tended to be the defender of the government's interests.

References:

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The official webpage and 2010 annual report describe all staff characteristics, including professional full-time staff, to carry out its basic mandate.

References:

Regional Ombudsman Offices, Detail of contact information in all cities available, http://www.defensoria.gob.ve/index.php?option=com_contact&view=category&catid=17&Itemid=61

Ombudsman Office (Defensoría del Pueblo), Annual Report 2010, Human Resources, March, 2011, p. 129.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Ombudsman Gabriela del Mar Ramírez Pérez has a long-standing political career in favor of the ruling party (the Bolivarian revolution). She was a parliamentary representative of an allied party of the government, was part of "Comando Zamora" in favor of Chavez's reelection (2006), and was a representative of the campaign in favor of the rejected socialist reform (2007). Although Ombudsman Ramirez is a social worker who graduated at the top of her class and has a master's degree in legal sciences, the report states that she has no specific preparation relevant to human rights. Ramirez has relevant professional experience, but the reasons for her appointment seem politically biased.

References:

Veneconomía, "The 3-R get to the powers," January 2008, http://www.veneeconomy.com/site/files/articulos/artEsp4968_3535.PDF

Defensoría del Pueblo, Ombudsman CV, 2011, http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=10:hoja-de-vida&catid=188:enero&Itemid=75

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The institution receives regular funding.

The ombudsman has repeatedly defended the government in its decisions and its declarations; therefore, funding is consistent and regular.

References:

Defensoría del Pueblo, Annual Report 2010, Administration and Financing, March 2011, p.134-138, http://www.defensoria.gob.ve/dmdocuments/Informe%20Anual%20DdP_2010.pdf

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The documents are publicly available through the official webpage. No reports before 2008 are available.

References:

Defensoría del Pueblo, Annual Report 2009, Annual Report 2010, <http://www.defensoria.gob.ve/>

Defensoría del Pueblo, Annual Report 2008, http://190.9.128.123/index.php?option=com_docman&task=cat_view&gid=15&Itemid=36

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman initiates investigations when deemed necessary, but it is partisan in its application of power.

For example, the ombudsman has made no current pronouncements on the violations of Judge Afiuni's rights. Most investigations might be carried out effectively, the agency has the resources and power to act, but cases such as Judge Afiuni's denote a clear political deciding factor. Moreover, the ombudsman participates in freedom of speech attacks made by the government.

In Correo del Orinoco, August 22, 2011, the ombudsman requested a criminal investigation of "6to Poder." The newspaper published a headline mocking the "women of the Bolivarian revolution." This was seen as offensive and a criminal prosecution took place.

References:

Aporrea, "Ombudsman confirms that judge Afiuni's process goes according to law," May 9, 2010, <http://www.aporrea.org/actualidad/n156926.html>

El Caraboneño, "Representative requests the investigation of violations of María Lourdes Afiuni's rights," November 10, 2010, <http://www.el-carabobeno.com/impreso/articulo/t101110-e15/blanco-pide-investigar-violacin-de-derechos-de-mara-lourdes-afiuni>

Noticias 24, "Ombudsman initiated investigation on death of two detainees in CICPC headquarters," May 27, 2011, <http://www.noticias24.com/actualidad/noticia/258052/defensoria-del-pueblo-abrio-investigacion-por-muerte-de-dos-detenido-en-sede-del-cicpc/>

Defensoría del Pueblo, "Ombudsman requests investigation of university authorities," January 2010, http://190.9.128.123/index.php?option=com_content&view=article&id=423:defensoria-del-pueblo-solicita-al-mp-investigar-a-rectores-de-universidades&catid=215:enero&Itemid=115

Correo del Orinoco, Defensoria Pueblo Solicito Investigacion Penal Contra 6to Poder, <http://www.correodelorinoco.gob.ve/nacionales/defensoria-pueblo-solicito-investigacion-penal-contra-6to-poder/>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

The ombudsman, although powerless to enforce a decision itself, can request the judiciary to apply sanctions or penalties, but the judiciary is politically biased.

References:

National Constitution, Article 281.6.

El Universal, "Legal sentence prohibits publishing of violent images," August 17, 2010, http://www.eluniversal.com/2010/08/17/pol_ava_tribunal-prohibe-pub_17A4349093.shtml

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The government acts on requests and findings of the ombudsman, but effectiveness is not related to capacity but to political interests. According to María Corina Machado, in Venezuela, impunity is more than 95 percent. This includes the Public Ministry and the judiciary.

For example, the ombudsman requested a criminal investigation of the newspaper 6to Poder for “disrespecting” and “offending” women of the Bolivarian Revolution. However, the ombudsman failed to act when a representative violated a woman’s right to due process (i.e., Judge Afiuni) and when insults were made by government media.

References:

Noticia al día, “María Corina answers to Iris Varela: ” they insult because they are not right,” June 14, 2011, <http://noticiaaldia.com/2011/06/maria-corina-responde-a-iris-valera-%E2%80%99Cinsultan-porque-carecen-de-la-razon%E2%80%99D/>

Defensoría del Pueblo, “Ombudsman starts first seminar about sexual diversity,” May 5, 2010, http://190.9.128.123/index.php?option=com_content&view=article&id=486:defensoria-del-pueblo-inicia-el-i-seminario-sobre-sexodiversidad&catid=6:noticias-secundarias-izq

Interview with María Corina Machado, National Assembly representative, Caracas, Venezuela, October 18, 2011.

100: Ombudsman’s reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman’s reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman’s reports are often ignored, or given superficial attention. Ombudsman’s reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman is swift in acting on complaints with no political interest. These generally include children’s rights and police abuses.

References:

El Universal, “Ombudsman intervention is requested in Afiuni case,” March 29, 2010, http://www.eluniversal.com/2010/03/29/pol_ava_solicitan-intervenci_29A3662213.shtml

Defensoría del Pueblo, “Ombudsman starts fist seminar about sexual diversity,” May 5, 2010, http://190.9.128.123/index.php?option=com_content&view=article&id=486:defensoria-del-pueblo-inicia-el-i-seminario-sobre-sexodiversidad&catid=6:noticias-secundarias-izq

Agencia Venezolana de Noticias, “Ombudsman initiates investigation on the death of two detainees in CICPC headquarters,” May 27, 2011, <http://www.avn.info.ve/node/59832>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

National Constitution, Article 283, provides that the ombudsman's activity will be governed by the principles of accessibility and swiftness among others.

Organic Ombudsman Law, Articles 78 and 79, provide that the ombudsman archive is reserved for official service unless there is a personal, direct, legitimate interest, in which case access to these documents can be granted if all formalities are met.

References:

National Constitution, Article 283.

Organic Ombudsman Law, Articles 78, 79.

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available on the official webpage; however, no reports from before 2008 are available.

References:

Defensoría del Pueblo, Annual Report 2009, Annual Report 2010., <http://www.defensoria.gob.ve/>

Defensoría del Pueblo, Annual Report 2008, http://190.9.128.123/index.php?option=com_docman&task=cat_view&gid=15&Itemid=36

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available on the official webpage at no cost; however, no reports from before 2008 are available.

References:

Defensoría del Pueblo, Annual Report 2009, Annual Report 2010, <http://www.defensoria.gob.ve/>

Defensoría del Pueblo, Annual Report 2008. http://190.9.128.123/index.php?option=com_docman&task=cat_view&gid=15&Itemid=36

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

National Constitution, Articles 287-291: the General Comptroller's Office is the body of the Citizen Power in charge of controlling, auditing and monitoring income, expenditures, public assets, as well as all entities under its control. This branch of the public powers was also established in 1999 in the National Bolivarian Constitution of Venezuela.

Organic Law for the General Comptroller and National Fiscal System Article 9: Entities under the control of the general comptroller include those in charge of the national public sector.

References:

National Constitution, Articles 287-291.

Organic Law for the General Comptroller and National Fiscal System, Article 9.

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

47

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

National Constitution, Article 287: The General Comptroller's Office has functional, administrative and structural autonomy.

Organic Law for the General Comptroller and National Fiscal System, Article 3: about autonomy of the General Comptroller's Office.

References:

National Constitution, Article 287.

Organic Law for the General Comptroller and National Fiscal System, Article 3.

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

According to Mercedes De Freitas, the president has the power to remove and appoint a general comptroller. The lack of effective division of powers gives the executive discretion over appointments and removal of staff.

No general comptroller has been formally removed. In 1999, all heads of the public powers were removed based on "restructuring" of the system, and Clodosbaldo Russián was appointed. Comptroller Clodosbaldo Russian died in April 2011. By September 2011, no general comptroller elections had taken place.

References:

Noticiero Digital, "National Assembly shall designate new General Comptroller," June 21, 2011, <http://www.noticierodigital.com/2011/06/asamblea-nacional-debera-designar-nuevo-contralor/>

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

Interview with Dr. Eduardo Roche Lander, General Comptroller of the Republic (1994-1999) On October 11th, 2011, Caracas, Venezuela.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

On the official webpage, there are specifics on full-time staff. However, no general comptroller has been elected for more than 88 days, in violation of the law.

References:

Contraloría General de la República, official webpage, Organizational Structure, 2011, <http://www.cgr.gob.ve/contenido.php?Cod=013>

Transparency Venezuela, Comptroller Election Observatory, September 16, 2011, [http://www.transparencia.org.ve/Boletines-\(1\)/Observatorio-Eleccion-del-Contralor/Observatorio-eleccion-contralor-n%C2%BA-7.aspx](http://www.transparencia.org.ve/Boletines-(1)/Observatorio-Eleccion-del-Contralor/Observatorio-eleccion-contralor-n%C2%BA-7.aspx)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Attorney General Ortega Díaz stated that there are no clear regulations in appointing the comptroller. According to Veneconomy, the 2008 designation of Clodosbaldo Russián violated the Constitution, Article 288, which states that the comptroller post will be held for seven years. No reelection procedure is set forth.

References:

Reporte Confidencial, "No proceedings to designate new Comptroller," June 26, 2011, <http://www.reporteconfidencial.info/noticia/26388/sin-procedimiento-para-designar-nuevo-contralor-/>

Veneconomy, "The 3-R get to the powers," January 2008, http://www.venconomy.com/site/files/articulos/artEsp4968_3535.PDF

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

According to Mercedes De Freitas, the General Comptroller's Office (GCO) has the legal faculties to fulfill its duties; however, it lacks the institutional resources and funding to carry out its mandate. Yet, the GCO made no requests to the central government or the National Assembly to receive more resources.

References:

Contraloría General de la República, official webpage, Administration Reports, 2011, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Administration reports since 2006 are available and regular.

References:

Contraloría General de la República, official webpage. Administration Reports, 2011, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The government acts on the findings of the audit agency, but politically sensitive issues are overlooked. For example, the General Comptroller's Office (GCO) made political disqualifications rather than consistently addressing corruption offenses and claims. According to Dr. Roche Lander, the General Comptroller's Office could, when finding resource management irregularities, sanction these offenses.

Moreover, the GCO currently has the authority to dictate political disqualifications during the exercise of duties without a judicial process. And, although rare, the GCO could dictate administrative disqualifications for a short period of time. This is fundamentally unconstitutional.

References:

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The issue does not rely on the formal capacity of the GCO as much as its political will.

According to Dr. Roche Lander, the GCO has never been able to pursue the entirety of investigations on irregularities. It chooses the most relevant cases. It can open investigations on its own initiative, by claims or public notices in media. Yet the GCO does not carry out auditing of the executive administration. In fact, no actions are taken toward cases in which high-ranked public employees are involved. This has been denounced by many members of the public powers.

References:

Noticias 24, "Comptroller found responsibility in 25 people in Pdval case," March 29, 2011, <http://www.noticias24.com/actualidad/noticia/225676/>

Contraloría General de la República, official webpage, Sanctions, 2011, <http://www.cgr.gob.ve/contenido.php?Cod=080>

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

83

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

Organic Law for the General Comptroller and National Fiscal System, Article 14: One of the obligations of the general comptroller is submitting an annual report to the National Assembly.

Article 143 of the National Constitution establishes the right of every citizen to be informed on every matter of their interest related to public administration. Censorship is forbidden by all public employee in matters related to their jobs.

References:

Organic Law for the General Comptroller and National Fiscal System, Article 14.

National Constitution, Article 143.

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Annual administration reports are available immediately online at no cost. Yet politically sensitive information is not available in the reports, and there may be problems when accessing this information.

References:

Contraloría General de la República, official webpage, 2011, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

El Universal, "Comptroller did inform the district attorney about food," June 30, 2010, http://www.eluniversal.com/2010/06/30/imp_pol_art_contralor-si-informo_1956782.shtml

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Annual administration reports are available immediately online at no cost. Yet politically sensitive information is not available in the reports, and there may be problems when accessing this information.

References:

Contraloría General de la República, official webpage, 2011, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

77
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

There is a tax collection agency called SENIAT and it has its own legislation, as stated above.

References:

Ley del Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT) (Taxes and Customs Administration Integrated National Service Law), Official Journal No. 37.320, November 8, 2001.

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The official webpage includes specifications that indicate the staff seems to be professional and full time.

References:

SENIAT, official webpage, Taxpayer Service Division,

SENIAT, official webpage, Structural Diagram,

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In the annual Tax Activity Budget Law, there is a detailed description of funding for the tax agency, which is sufficient.

References:

OCEPRE (Central Budget Office), Tax Activity Budget Law 2010 (Ley de Presupuesto para el Ejercicio Fiscal 2010), http://www.ocepre.gov.ve/informacion/Ley_2010/Ley2010.html

OCEPRE (Central Budget Office), Tax Activity Budget Law 2011 (Ley de Presupuesto para el Ejercicio Fiscal 2011), http://www.ocepre.gov.ve/informacion/Ley_2011/Ley2011.html

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

25

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There is evident discretion in applying tax laws.

Businesses were closed for non-compliance of the law in one of the most popular malls in Caracas. Although street vendors will not be supervised or controlled, they will have to comply with certain health conditions.

References:

El Universal, "SENIAT closes 20 restaurants and nightclubs," May 20, 2011, <http://www.eluniversal.com/2011/05/20/seniat-clausura-20-restaurantes-y-discotecas.shtml>

YVKE Mundial, "The regulations that forbid peddlers to sell primary necessity food goes without effect," July 3, 2010, <http://www.radiomundial.com.ve/yvke/noticia.php?461169>

Ultimas Noticias, "Seniat closes 160 car dealers," May 26, 2011, <http://www.ultimasnoticias.com.ve/noticias/actualidad/seniat-clausura-160-concesionarios-de-automoviles.aspx>

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

Organic Customs Law Decree, Article 2: Customs service will be under authority of the president, the minister's council, ministries with a competence in finance issues, and the National Superintendency of Customs and Tax Administration. The SENIAT is the ruling taxes and customs institution; it has a specialized division on customs.

References:

Organic Customs Law Decree, Article 2.

Ley del Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT) (Taxes and Customs Administration Integrated National Service Law), Official Journal No. 37.320, November 8, 2001.

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

88

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The SENIAT has a professional, full-time staff. They are customs technicians who had two years of study in the National Customs School. Customs certification programs for professionals are available.

References:

SENIAT, official webpage 2011, National Customs Administration Structural Organization, http://www.seniat.gob.ve/portal/page/portal/MANEJADOR_CONTENTIDO_SENIAT/04ADUANAS/4.2INFORMACION_GENERA/4.2.1ESTRUC

Interviewees who wish to remain anonymous, Caracas, Venezuela, October 13, 2011.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency receives regular funding; however, there are some flaws. For example, there is a mechanism through which the SENIAT auctions merchandise received in containers that is declared as abandoned (after 90 days of no claim). The mechanism involves seizing these containers, storing them and eventually organizing the auction. This system is not effective due to the lack of both storage capacity and the auction structure.

References:

OCEPRE (Central Budget Office) Tax Activity Budget Law 2010 (Ley de Presupuesto para el Ejercicio Fiscal 2010), http://www.ocepre.gov.ve/informacion/Ley_2010/Ley2010.html

Interviewees who wish to remain anonymous, Caracas, Venezuela, October 13, 2011.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

0

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

William Ojeda stated that at least two documents provide evidence of privileges SENIAT granted to known drug lord Walid Makled.

Every customs office has discretion to interpret laws as it sees fit, thus the same laws are interpreted in different ways. Expropriations take place without justification. Moreover, claims are not processed and cases are not even opened. In fact, discrimination is related to monetary influence: Those who pay commissions have priority.

References:

El Carabobeño, "William Ojeda: Makled couldn't have operated so freely without support," March 28, 2011, <http://www.el-carabobeno.com/articulo/articulo/10923/makled-no-poda-desenvolverse-con-tanta-soltura-sin-apoyo->

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

Organic Law for the General Comptroller and National Fiscal System, Articles 9 and 24 establish all entities subject to this law, which include state-owned enterprises.

References:

Organic Law for the General Comptroller and National Fiscal System, Articles 9, 24.

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

70

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

National Constitution, Article 287, mandates that the General Comptroller's Office shall have functional, administrative and

structural autonomy.

The Organic Law for the General Comptroller and National Fiscal System, Article 3, provides for the autonomy of the General Comptroller's Office.

References:

National Constitution, Article 287.

Organic Law for the General Comptroller and National Fiscal System, Article 3.

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The GCO is also the institution in charge of overseeing state-owned companies. As indicated on its website, it has full-time, professional staff.

References:

Contraloría General de la República, official webpage 2011, Organizational Structure, <http://www.cgr.gob.ve/contenido.php?Cod=013>

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

According to Mercedes De Freitas, the General Comptroller's Office (GCO) has the legal faculties to fulfill its duties, but it lacks the institutional resources and funding to carry out its mandate. The GCO made no requests to the central government or the National Assembly for more resources.

References:

Noticias 24, "Comptroller found responsibility in 25 people in Pdval case," March 29, 2011, <http://www.noticias24.com/actualidad/noticia/225676/>

Contraloría General de la República, official webpage 2011, Administration Reports, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The document of Maracaibo Comptroller's Office confirms the ability of the comptroller to independently initiate investigations. The initiation of investigations is not exempt from political considerations.

References:

Noticias 24, "Comptroller found responsibility in 25 people in Pdval case," March 29, 2011, <http://www.noticias24.com/actualidad/noticia/225676/>

Contraloría General de la República, official webpage 2011, <http://www.cgr.gob.ve/contenido.php?Cod=080>

Contraloría de Maracaibo, Administrative Investigation in Venezuela, <http://www.contraloriademaracaibo.gob.ve/portal/archivo.php?archivo=113>

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The General Comptroller's Office's official webpage states that sanctions were imposed. For example, in the PDVAL case, when food containers were left to rot, people have been held responsible. But there are many allegations of corruption in state-owned companies. There seems to be few effective investigations when high-ranking government officials are presumed to be involved, either to deny accusations or impose sanctions.

References:

Contraloría General de la República, official webpage 2011, <http://www.cgr.gob.ve/contenido.php?Cod=080>

Globovisión, "Comptroller notified 25 people to establish responsibility for Pdval case," March 29, 2011, <http://www.globovision.com/news.php?nid=182783>

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

60

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

National Constitution, Article 28, establishes the right to access information of documents of any nature that contain issues of interest to a community or group of people.

References:

National Constitution, Article 28.

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

Reports are mostly available in official webpages; however, the quality of these has been questioned by many who denounce huge financial irregularities in the state Companies. Moreover, an important state company, CORPOELEC, does not provide administration and financial reports. See, e.g., CVG: Corporación Venezolana de Guayana; CVG Ferrominera Administration Reports, the most recent dates from September 2010; and CVG Baxilum Quarterly Administration Reports, the most recent dates from September 2009.

References:

CVG Ferrominera, official webpage 2011, http://www.ferrominera.com/?q=gestion_empresa

CVG Baxilum, official webpage 2011, <http://www.bauxilum.com/finanzas.php>

PDVSA, official webpage 2011, Financial Reports 2000-2010, <http://www.pdvsacom/>

Analítica, "Carlos Peñaloza: getting rich in PDVSA (I)," April 8, 2011, <http://www.analitica.com/va/economia/opinion/8216322.asp>

Reportero 24, "Corruption: Pdvsa washes hands of pension management," May 2011, <http://www.reportero24.com/2011/05/corruccion-pdvsase-lava-las-manos-sobre-manejo-de-pensiones/>

Corpoelec, official webpage 2011, <http://www.corpoelec.gob.ve/>

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

International standards are established in the General Comptroller's Office regulations for the auditing of state-owned companies, but this auditing process is not applied for all cases. For example, PDVSA has not been audited for more than two years.

According to Dr. Rosa Amelia González, in most industries and companies, external partners have left. Since state-owned companies are not in the stock market and do not have external stock shares, the pressure for auditing information to be produced and made available has grown weaker and continues to do so.

References:

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

Interview with Dr. Rosa Amelia González, dean of research and public policy professor in IESA, October 18, 2011.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available on official webpages, but the quality of these reports has been questioned by many who are vocal about huge financial irregularities in the state companies. Also, some companies, like CORPOELEC, do not provide this information online.

References:

CVG Ferrominera, official webpage 2011, Company Administration Reports (Last one dates from September 2010), http://www.ferrominera.com/?q=gestion_empresa

CVG Bauxilum, official webpage 2011, Quarterly Administration Reports (Last one dates from September 2009), <http://www.bauxilum.com/finanzas.php>

PDVSA, official webpage 2011, Financial Reports 2000-2010, <http://www.pdvsa.com/>

Analítica, "Carlos Peñaloza: getting rich in PDVSA (I)," April 8, 2011, <http://www.analitica.com/ya/economia/opinion/8216322.asp>

Reportero 24, "Corruption: PDVSA washes hands of pension management," May 2011, <http://www.reportero24.com/2011/05/corruccion-pdvsa-se-lava-las-manos-sobre-manejo-de-pensiones/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available in official webpages at no cost, but the quality of these has been questioned by many who cite huge financial irregularities in the state companies. Also, some companies, like CORPOELEC, do not provide this information online.

References:

VG Ferrominera, official webpage 2011, Company Administration Reports (Last one dates from September 2010), http://www.ferrominera.com/?q=gestion_empresa

CVG Bauxilum, official webpage 2011, Quarterly Administration Reports (Last one dates from September 2009), <http://www.bauxilum.com/finanzas.php>

PDVSA, official webpage 2011, Financial Reports 2000-2010, <http://www.pdvsa.com/>

Analítica, "Carlos Peñalosa: getting rich in PDVSA (I)," April 8, 2011, <http://www.analitica.com/va/economia/opinion/8216322.asp>

Reportero 24, "Corruption: PDVSA washes hands of pension management," May 2011, <http://www.reportero24.com/2011/05/corruccion-pdvsa-se-lava-las-manos-sobre-manejo-de-pensiones/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

77
5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

56

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

National Constitution, Article 112, guarantees the freedom to work, to form a company, industry and trading.

Commerce Code, Articles 10-16, about the exercise of commerce activities: The only restriction is to those underage citizens without the proper authorization to engage in such activities.

References:

National Constitution, Article 112.

Commerce Code, Articles 10-16.

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

Commerce Code, Articles 1.082-1.096, discuss commercial jurisdiction and procedures.

Organic Administrative Proceedings Law, Article 97, establishes the appeal of review against definitive administrative actions before the according ministry.

References:

Commerce Code, Articles 1.082-1.096.

Organic Administrative Proceedings Law, Article 97, <http://www.tsj.gov.ve/legislacion/lopa.html>

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the World Bank's Doing Business in Venezuela, it takes 141 days to start a business. This ranks Venezuela as 144th out of 183 economies in 2011.

According to Jose Lossada, the time to obtain a business license depends on the municipal authorities. In some cases, such as in the case of liquor licenses, the municipality takes up to two years to grant a license. Sometimes the licensing process is indefinite. However, other cases can take two months to grant a license.

References:

World Bank, Doing Business in Venezuela (2010-2011), Starting a Business, <http://www.doingbusiness.org/data/exploreconomies/venezuela/#starting-a-business>

Interview with Jose Lossada, Commerce Federation of Venezuela, Caracas, Venezuela, October 13, 2011.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the World Bank's Doing Business in Venezuela, the costs in percentage of income per capita is 30.2.

According to Jose Lossada, costs are not generally high, but it is a slow and tedious process. Therefore, most people hire managers who charge more money. When it comes to liquor licenses, the amount is even higher. This is a problem in almost all municipalities.

References:

World Bank Doing Business in Venezuela (2010-2011), Starting a Business, <http://www.doingbusiness.org/data/exploreeconomies/venezuela/#starting-a-business>

Interview with Jose Lossada, Commerce Federation of Venezuela, Caracas, Venezuela, October 13, 2011.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

LOPCYMAT (Organic Law for Prevention, Conditions and Work Environment), Article 18: The National Institute for Prevention, Health and Labor Security will determine all guidelines referring to health, security and conditions and work environment in the National Security and Health Plan for Work. Additionally, it will create and maintain a center for information, archives and training.

The webpage has customer service options, but basic business regulatory requirements for meeting public health standards are not immediately available in the webpage.

References:

Ley Orgánica de Prevención, Condiciones y Medio Ambiente de Trabajo LOPCYMAT (Organic Law for Prevention, Conditions and Work Environment), Article 18.

Instituto Nacional de Prevención, Salud y Seguridad Laborales INPSASEL (National Institute for Labour Prevention, Health and Security), official webpage 2011, <http://www.inpsasel.gob.ve/>

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

LOPCYMAT (Organic Law for Prevention, Conditions and Work Environment), Article 18: The National Institute for Prevention, Health and Labor Security will determine all guidelines referring to health, security and conditions and work environment in the National Security and Health Plan for Work. Additionally, it will create and maintain a center for information, archives and training.

The webpage has customer service options, but basic business regulatory requirements for meeting public health standards are not immediately available on the webpage.

References:

Ley Orgánica de Prevención, Condiciones y Medio Ambiente de Trabajo LOPCYMAT (Organic Law for Prevention, Conditions and Work Environment), Article 18.

Instituto Nacional de Prevención, Salud y Seguridad Laborales INPSASEL (National Institute for Labour Prevention, Health and Security), official webpage 2011, <http://www.inpsasel.gob.ve/>

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

Comments:

LOPCYMAT (Organic Law for Prevention, Conditions and Work Environment), Article 18: The National Institute for Prevention, Health and Labor Security will determine all guidelines referring to health, security and conditions and work environment in the National Security and Health Plan for Work. Additionally, it will create and maintain a center for information, archives and training.

The webpage has customer service options, but basic business regulatory requirements for meeting public health standards are not immediately available on the webpage.

References:

Ley Orgánica de Prevención, Condiciones y Medio Ambiente de Trabajo LOPCYMAT (Organic Law for Prevention, Conditions and Work Environment), Article 18.

Instituto Nacional de Prevención, Salud y Seguridad Laborales INPSASEL (National Institute for Labor Prevention, Health and Security), 2011, <http://www.inpsasel.gob.ve/>

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Standards are applied unevenly. According to Jose Lossada, the inspection authorities have jurisdiction over all municipalities, but inspections tend to be concentrated in some areas. Inspections on some municipalities can be made up to 300 percent more than on other municipalities of the same type of establishment.

References:

El Universal, "In 2009 Inpsasel warned about dangers in basic industries," September 23, 2010, http://www.eluniversal.com/2010/09/23/imp_eco_art_en-2009-inpsasel-ale_2046925.shtml

INPSASEL, "Inpsasel workers start the construction of socialism," August 23, 2010, http://www.inpsasel.gob.ve/moo_news/Prensa_489.html

El Universal, "Inpsasel reinstates socialist training in their workshops," February 17, 2011, http://noticias.eluniversal.com/2011/02/17/eco_art_inpsasel-restituye-l_2193432.shtml

Interview with Jose Lossada, Commerce Federation of Venezuela, Caracas, Venezuela, October 13, 2011.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Standards are applied unevenly. According to Jose Lossada, the inspection authorities indeed have jurisdiction over all municipalities, but inspections tend to be concentrated in some areas. Inspections on some municipalities can be made up to 300 percent more than other municipalities of the same type of establishment.

References:

El Universal, "In 2009 Inpsasel warned about dangers in basic industries," September 23, 2010, http://www.eluniversal.com/2010/09/23/imp_eco_art_en-2009-inpsasel-ale_2046925.shtml

INPSASEL, "Inpsasel workers start the construction of socialism," August 23, 2010, http://www.inpsasel.gob.ve/moo_news/Prensa_489.html

El Universal, "Inpsasel reinstates socialist training in their workshops," February 17, 2011, http://noticias.eluniversal.com/2011/02/17/eco_art_inpsasel-restituye-l_2193432.shtml

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Standards are applied unevenly. According to Jose Lossada, the inspection authorities indeed have jurisdiction over all municipalities, but inspections tend to be concentrated in some areas. Inspections on some municipalities can be made up to 300 percent more than other municipalities on the same type of establishment.

References:

El Universal, "In 2009 Inpsasel warned about dangers in basic industries," September 23, 2010, http://www.eluniversal.com/2010/09/23/imp_eco_art_en-2009-inpsasel-ale_2046925.shtml

INPSASEL, "Inpsasel workers start the construction of socialism," August 23, 2010, http://www.inpsasel.gob.ve/moo_news/Prensa_489.html

El Universal, "Inpsasel reinstates socialist training in their workshops," February 17, 2011, http://noticias.eluniversal.com/2011/02/17/eco_art_inpsasel-restituye-l_2193432.shtml

Interview with Jose Lossada, Commerce Federation of Venezuela, Caracas, Venezuela, October 13, 2011.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁶¹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

Attempted corruption is characterized as a crime in Article 63 of the Law Against Corruption: "Anyone that, without achieving their goal, attempts to persuade or induce any public servant to perpetrate any of the crimes included in articles 61 and 62 of this Law, will be punished, ... with prison from six months to two years...." Articles 64 and 70 are also partially relevant.

References:

Law Against Corruption (Ley Contra La Corrupción), Gaceta Oficial No. 5.637 Extraordinario 04-07-2003, Article 63.

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

Comments:

Law Against Corruption, Article 62.2: Criminal accountability will be applied to those who seek either to benefit or damage any of the parties involved in an administrative proceeding, or criminal, civil or any other kind of trial.

Article 63: Accountability will also be held for those who by any means attempt to persuade or induce any public employee to commit any offense established in Articles 61 and 62.

Law for the General Comptroller and National Fiscal System, Articles 91.12/91.22: administrative responsibility related to deviation of public funds to either influence the responsibility of authorities, or sent to a destination different to those established in the law.

Law for the Statute of the Public Duty, Article 79, establishes criminal, disciplinary, administrative and civil responsibility of public employees.

Article 86.11: causes for destitution include requesting or receiving money or any other benefit, taking advantage of the position of public employee.

References:

Law Against Corruption, Articles 62.2, 63.

Law for the General Comptroller and National Fiscal System, Articles 91.12, 91.22.

Law for the Statute of the Public Duty, Articles 79, 86.11.

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

Comments:

Law Against Corruption, Articles 53, 54, 60, 61, 64: penalizes when a public official accepts or promises to accept for oneself or another compensation or other profit that one should not accept.

Law for the General Comptroller and National Fiscal System, Article 91: all acts subject to administrative responsibility.

Law for the Statute of the Public Duty, Article 86.11: causes for destitution include requesting or receiving money or any other benefit, taking advantage of the position of public employee.

References:

Law Against Corruption, Arts. 53, 54, 60, 61, 64. <http://www.slideshare.net/yomonitorio/ley-contra-la-corrupcin-9915550>

Law for the General Comptroller and National Fiscal System, Article 91.

Law for the Statute of the Public Duty, Article 86.11.

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

Comments:

Law Against Corruption, Articles 53, 54, 60, 61, 64: penalization of offenses against the public patrimony.

Law for the General Comptroller and National Fiscal System, Article 91: all acts subject to administrative responsibility.

Law for the Statute of the Public Duty, Article 86.11: causes for destitution include requesting or receiving money or any other benefit, taking advantage of the position of public employee.

References:

Law Against Corruption, Articles 53, 54, 60, 61, 64.

Law for the General Comptroller and National Fiscal System, Article 91.

Law for the Statute of the Public Duty, Article 86.11.

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

Comments:

It is a prohibition for public employees to accept any rewards, post or honor from foreign governments without authorization of the National Assembly.

References:

Law for the Statute of the Public Duty,
<http://www.contraloriademaraibo.gob.ve/portal/archivo.php?archivo=69>

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

Comments:

Law Against Corruption, Articles 46-51: about illicit enrichment and its restoration to the Public Patrimony.

Law for the General Comptroller and National Fiscal System, Article 91: all acts are subject to administrative responsibility.

References:

Law Against Corruption, Articles 46-51.

Law for the General Comptroller and National Fiscal System, Article 91.

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

Comments:

Law Against Corruption, Article 66: any public employee that uses for him/herself or another person, classified information or data under his/her responsibility will be penalized.

Law for the Statute of the Public Duty, Article 86.12: causes for destitution include the disclosure of confidential, secret or classified documents.

References:

Law Against Corruption, Article 66.

Law for the Statute of the Public Duty, Article 86.12.

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes | No

Comments:

Organic Law Against Organized Crime, Articles 4, 5: of the crimes against the socio-economic order; money laundering and money laundering as a result of negligence, imprudence, lack of skill or nonobservance.

Banking Institutions Law, Article 200.6, establishes sanctions to banking institutions that facilitate the exit or money laundering in any of its forms.

References:

Organic Law Against Organized Crime, Articles 4, 5.

Banking Institutions Law, Article 200.6.

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

Comments:

Organic Law Against Organized Crime, Article 1: This law is aimed at preventing, investigating, pursuing, typifying and to sanction all crimes and offenses related to organized crime, according to the National Bolivian Constitution of Venezuela and all ratified international treaties related to the subject.

References:

Organic Law Against Organized Crime, Article 1.

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

Organic Law for the General Comptroller and National Fiscal System, Article 2: The Republic's General Comptroller's Office is an organ of the Citizen Power, in charge of control, vigilance, and auditing of income, expenditures and public assets, as well as all operations related to them

References:

Organic Law for the General Comptroller and National Fiscal System, Article 2.

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

47

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

Organic Law for the General Comptroller and National Fiscal System, Article 3: "the General Comptroller's Office in the exercise of its functions is not subject to any other organ of the public powers. It has functional, administrative and organizational autonomy ..."

References:

Organic Law for the General Comptroller and National Fiscal System, Article 3.

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Venezuela is ranked as corrupt in multiple indexes worldwide, suggesting politicized administration of the General Comptroller's Office (GCO). The GCO actively disqualifies political individuals but overlooks major corruption cases.

For example, in September 2011, candidate Leopoldo Lopez was disqualified. The IACHR ruled against Lopez' disqualification and mandated that the Venezuelan government lift its sanctions. Lopez says that his disqualification was made in order to prevent him from running for public office in 2008 and 2012. In total, six opposition and two ruling party candidates were disqualified.

According to the World Justice Project, Venezuela ranks 54 out of 66 in the Absence of Corruption ranking.

References:

Reportero 24, "HRRR: Venezuela will be judged for political disqualifications," February 2011, <http://www.reportero24.com/2011/02/dhh-venezuela-sera-juzgada-por-inhabilitaciones-politicas/>

Noticias 24, "General Comptroller declares after 8 disqualifications facing the 26-S elections," June 1, 2010, <http://www.reportero24.com/2011/02/dhh-venezuela-sera-juzgada-por-inhabilitaciones-politicas/>

World Justice Project (Rule of Law Index 2011), http://worldjusticeproject.org/sites/default/files/Venezuela_CP.pdf

Enfoque 365, "General Comptroller states that disqualifications do not obey a political retaliation," May 25, 2010, <http://www.enfoques365.net/N12454-venezuela-contralor-dice-que-inhabilitaciones-no-obedecen-a-retaliacin-politica.html>

Chavez.org, "Chavez laments the passing of Clodosbaldo Russián," June 21, 2011, <http://www.chavez.org.ve/temas/noticias/presidente-hugo-chavez-lamenta-fallecimiento-clodosbaldo-russian/>

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or

other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

According to Mercedes De Freitas, the president has the power to remove and appoint a general comptroller; the lack of an effective division of powers grants the executive discretion over appointments and removal of staff.

By September 2011, no general comptroller has been appointed since the death of former Comptroller Clodosblado Russian after he suffered a stroke in April 2011. The National Assembly no longer holds a two-thirds ruling party majority. The government has not assigned a general comptroller yet because it does not have the simple majority in the parliament.

References:

Noticiero Digital, "National Assembly shall designate new General Comptroller," June 21, 2011, <http://www.noticierodigital.com/2011/06/asamblea-nacional-debera-designar-nuevo-contralor/>

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

According to Mercedes De Freitas, public posts are not open to public competitions, in accordance with the new national constitution.

The general comptroller has to be elected by two-thirds majority of the National Assembly representatives; if after 30 days this doesn't happen, the decision will be subject to popular elections. By September 2011, the general comptroller had not been appointed, almost 90 days after the death of former Comptroller Clodosblado Russian (suffered a stroke). The National Assembly no longer holds two-thirds officialist majority because it does not have the simple majority in the parliament. This points toward the fact that professional criteria is not a priority when appointing a new comptroller.

References:

Transparency Venezuela, Comptroller Election Observatory, July 28, 2011, [http://www.transparencia.org.ve/Boletines-\(1\)/Observatorio-Eleccion-del-Contralor/Informe-no-1-28-julio-2011.aspx](http://www.transparencia.org.ve/Boletines-(1)/Observatorio-Eleccion-del-Contralor/Informe-no-1-28-julio-2011.aspx)

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not

have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Information on the official webpage suggests the agency has a professional, full-time staff. No general comptroller has been elected for more than 88 days, despite national legislation.

References:

Contraloría General de la República, official webpage 2011, Organizational Structure, <http://www.cgr.gob.ve/contenido.php?Cod=013>

Transparency Venezuela, Comptroller Election Observatory, September 16, 2011, [http://www.transparencia.org.ve/Boletines-\(1\)/Observatorio-Eleccion-del-Contralor/Observatorio-eleccion-contralor-n%C2%BA-7.aspx](http://www.transparencia.org.ve/Boletines-(1)/Observatorio-Eleccion-del-Contralor/Observatorio-eleccion-contralor-n%C2%BA-7.aspx)

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

According to Mercedes De Freitas, the General Comptroller's Office (GCO) has the legal faculties to fulfill its duties, but it lacks the institutional resources and funding to carry out its mandate. The GCO made no requests to the central government or the National Assembly to receive more resources.

References:

Contraloría General de la República, official webpage 2011, Administration Reports, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Administration reports are available online at no cost. Reports dating to before 2006 are not published on the official webpage.

References:

Contraloría General de la República, official webpage 2011, Administration Reports, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

In the "news" section of the official webpage, there is an account of action taken by the comptroller's office. No claims are made about restrictions to carrying out its mandate. Effectiveness of the agency does not depend on its capacity to carry out its mandate, but on political interference.

According to Mercedes De Freitas, the General Comptroller's Office (GCO) has the legal faculties to fulfill its duties, but it lacks the institutional resources and funding to carry out its mandate. Yet, the GCO made no requests to the central government or the National Assembly to receive more resources.

References:

General Comptroller's Office, official webpage 2011, Strategic Plan 2009-2015, <http://www.cgr.gob.ve/contenido.php?Cod=061#>

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The comptroller's office has full power to initiate investigations on its own, but it is common that it answers based on political interests, thus biasing the type of investigations it independently starts.

References:

General Comptroller's Office, "Auditors are trained in Investigation Powers," January 27, 2011, <http://www.cgr.gob.ve/noticia.php?notcodigo=00000467>

Notitarde, "General Comptroller: no investigation has been started on Makled allegations," April 18, 2011, <http://www.notitarde.com/notitarde/plantillas/nota.aspx?idart=1303562&idcat=9841&tipo=2>

Informe 21, "The government requests a criminal investigation against 'El Nacional' for alleged offenses when publishing information, August 13, 2010, <http://informe21.com/actualidad/reacciono-gobierno-polemica-portada-viernes-del-diario-nacional>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is little information in regards to the General Comptroller's Office's (GCO) investigations but, for example, the 2004 case of Danilo Anderson still has not been resolved. Moreover, the GCO duties have never been carried out in a swift manner. The comptroller process is slow due to the amount of documentation it entails. Further, investigations that are of political interest or that are related to the official ruling party are either delayed or dismissed.

References:

General Comptroller's Office, 2011, Administration Reports, http://www.cgr.gob.ve/informes_gestion.php?Cod=026

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Citizens fear reporting corruption before the General Comptroller's Office (GCO), in part because of the lack of action of the institution. Additionally, the GCO does not safeguard the complaint information or the personal identification of the whistle-blower, unless it is a case of an anonymous witnesses (an established exception). The common citizen does not have a security guarantee. In Venezuela, impunity is the rule. Many public employees have to stand watch when corruption happens, either because of the bureaucracy, the ineffective justice system, or the fear of losing their jobs.

For example, Globovisión reported that Mr. Villaverde had engaged in corruption and was dismissed, but during the demonstration the police also claimed that the mayor's sister threatened to dismiss them.

According to Dr. Roche Lander, the "Lista Tascón" is a clear indicator that most citizens do not trust the whistle-blowing mechanism of the GCO out of fear of recrimination from the public powers. The "Lista Tascón" (2004) was a list of all the citizens who participated in the request for a revocatory referendum of the president; it is said that this list was either bought from a civil society leader or given to the official representative by the CNE. Many of the citizens whose signature was on this list were fired, attacked or banned from public duty.

The GCO official webpage specifies ways in which citizens can denounce corruption, as well as competent authorities that process such claims. ALALC also provides a mechanism for whistle-blowing on corruption, as well as information regarding all aspects of the process.

References:

Interview with Mercedes De Freitas, executive director of Transparency Venezuela, Caracas, Venezuela, September 29, 2011.

Globovisión, "Policaracas director Renny Villaverde is dismissed," February 7, 2011, <http://www.globovision.com/news.php?nid=177299>

La Cantera Criolla, "Public employee," June 26, 2011, <http://lacanteracriolla.com/2011/06/26/empleado-publico/>

General Comptroller's Office, FAQs, 2011, <http://www.cgr.gob.ve/contenido.php?Cod=069>

ALAC Venezuela, Anti-corruption Legal Assistance, 2011, <http://www.alacvenezuela.org/view/home>

Interview with Dr. Eduardo Roche Lander, general comptroller of the republic (1994-1999), Caracas, Venezuela, October 11, 2011.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

77. Is there an appeals mechanism for challenging criminal judgments?

42

77a. In law, there is a general right of appeal.

Yes | No

Comments:

National Constitution, Article 27: Every person has the right to be protected by the courts in the exercise of their constitutional rights.

Organic Criminal Proceedings Code, Articles 105, 106, 244, 347, 406, 437, Title III, About Appeals: These articles refer to action related to the courts of appeal and Title III relates to all specifications regarding the right of appeal.

References:

National Constitution, Article 27.

Organic Criminal Proceedings Code, Articles 105, 106, 244, 347, 406, 437, Title III,
<http://www.ministeriopublico.gob.ve/web/guest/codigo-procesal-penal>

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Vivas F. J. states 12 main problems in the criminal courts, including the inefficiency of prosecutors who don't meet the process deadlines due to excess work, problems regarding the detention centers and jails, postponement of trial for more than two years (the maximum time of detention without a sentence) and a low proportion of courts in relation to the amount of cases received.

According to Laura Louza, resolving appeals depends on the jurisdiction of the subject. Some areas are more efficient than others. For example, commercial and civil instances (private matters) are generally slower, while criminal, fiscal or constitutional (public matters) instances tend to be resolved more quickly.

Also, the Organic Law for the Supreme Court of Justice, approved in July 2010, enables the Constitutional Courtroom to revise any sentence even if it is definite and firm. This measure means appeals could be infinite, since so many instances can be re-envisioned by all courtrooms.

CEJA states that most cases are behind schedule and so accumulated, year after year. There is no official data on unresolved cases. The Public Ministry limits itself to present conclusive acts without the possibility of establishing a comparative analysis, in order to know the reality of the social phenomenon implied in unresolved issues.

References:

F.J. Vivas, "On the criminal procedure delay in the Judicial Circuits," March 2, 2011, <http://abogadoespecialista.blogspot.com/2011/03/sobre-el-retardo-procesal-penal-en-los.html>

Interview with Laura Louza, director of the NGO "Acceso a la Justicia," professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

Centro de Estudios de Justicia de las Américas (CEJA) (Americas' Justice Studies Center), Persecution of Complex Crimes, 2010,
http://www.cejamericas.org/portal/index.php/es/biblioteca/biblioteca-virtual/doc_details/5442-persecucion-de-delitos-complejos-capacidades-de-los-sistemas-penales-en-america-latina

Interview with Carmen Luisa Roche, retired professor and investigator in Universidad Central de Venezuela, Caracas, Venezuela, October 11, 2011.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the World Bank, attorney, court and enforcement costs are 21.5 percent, 7.2 percent and 15 percent of the claim, respectively. This data positions Venezuela at a cost of 43.7 percent of the claim, which is more than the regional percentage of 31.2.

According to Carmen Luisa Roche, public defense is free, but the general feeling is that these defenders do not provide high-quality services. Many resort to private lawyers who are not reliable and tend to financially drain their clients. Public defenders provide quality services but the problem remains in the fact that they cannot provide sufficient services given the number of cases they oversee.

References:

World Bank Doing Business, 2011, <http://www.doingbusiness.org/data/exploreeconomies/venezuela/#enforcing-contracts>

Interview with Carmen Luisa Roche, retired professor and investigator in Universidad Central de Venezuela, Caracas, Venezuela, October 11, 2011.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

25

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Judges can follow written law, but only if it is according to the revolution's interests. For example, Judge Afiuni followed written law and was imprisoned for it. Some judges violate the constitution and are rewarded. Judges seem to operate under the theory that rules are guidelines that can and should (when "necessary") be broken.

According to Laura Louza, in Venezuela laws constantly change. New laws are constantly created. New laws seek to regulate and criminalize private activities. The Constitutional Courtroom acts as a legislator to create the new laws. This has become such a problem that many studies and publications address this issue.

References:

Interview with Laura Louza, director of the NGO "Acceso a la Justicia," professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

A. Bewer-Carías, "Constitutional judges as positive legislators. A comparative approach," September 2010, <http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea2/Content/I,%201,%201017-%20LOS%20JUECES%20CONSTITUCIONALES%20COMO%20LEGISLADORES%20POSITIVOS.%20UNA%20APROXIMACION%20C3%93N%20COMPAI>

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

25

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

According to CEJA, cases that reach the criminal system represent less than 30 percent of criminal conflicts. Still, such cases surpass the investigative capacity of the Public Ministry due to the resources.

To Laura Louza, enforcement of judicial decisions is known to be a problem. The execution index is low.

References:

Centro de Estudios de Justicia de las Américas (Americas' Justice Studies Center), Persecution of Complex Crimes. Capacities of the Criminal Systems in Latin America, 2010, http://www.cejamericas.org/portal/index.php/es/biblioteca/biblioteca-virtual/doc_details/5442-persecucion-de-delitos-complejos-capacidades-de-los-sistemas-penales-en-america-latina

Interview with Laura Louza, director of the NGO "Acceso a la Justicia," professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

75

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

National Constitution, Article 254: "the judiciary is independent and the Supreme Court of Justice will have functional, financial and administrative autonomy..."

Organic Law for the Supreme Court of Justice, Article 2: The Supreme Court of Justice as the maximum organ of the judiciary has administrative, financial and functional autonomy.

References:

National Constitution, Article 254.

Organic Law for the Supreme Court of Justice, Article 2.

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Political interference is not only allowed but encouraged. For example, the new Law for Administrative Contentious Jurisdiction of June 22, 2010, Official Journal No. 39.451, Article 58, establishes communal councils. They are entitled to give opinions and participate in trials regardless of whether they are an interested party. The judiciary also enables political disqualification without definitive sentences.

References:

L. Louza, La Revolución Judicial en Venezuela (The Judicial Revolution in Venezuela), FUNEDA, Caracas, Venezuela, April 2011, p. 67

Rafael J. Chavero Gadzik, La Justicia Revolucionaria (The Revolutionary Justice), Editorial Aequitas C. A., Caracas, Venezuela, 2010, p. 212-242.

Primicias 24, "Luisa Estela Morales: 'Division of Powers weakens the state'," December 5, 2010, <http://primicias24.com/nacionales/luisa-estela-morales-no-podemos-seguir-pensando-en-una-division-de-poderes-porque-eso-es-un-principio-que-debilita-al-estado/>

El Universal, "Supreme Court of Justice admits that laws answer an 'ideological objective'," February 6, 2011, http://www.eluniversal.com/2011/02/06/pol_art_tsj-reconoce-que-ley_2184299.shtml

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

Comments:

There are two systems that randomly distribute cases to national-level judges: the Tepuy 21 and the Juris 2000. They work based on an algorithm developed in conjunction with the World Bank. The system itself is reliable, but all judges have a political partiality.

References:

Interview with Laura Louza, director of the NGO "Acceso a la Justicia," professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

Comments:

The vagueness of the reasons for disqualifying judges, in addition to the ideological declaration of the Supreme Court of Justice's president, suggest that a high level of discretion is permitted in the judicial removal process. Thus, although a formal process occurs, the removal process arguably subjects judges to removal for political reasons. For example, "moral rectitude" is a term that is subject to wide interpretation.

References:

National Constitution, Article 255: "... judges cannot be removed, suspended or transferred, except in the cases and under the procedure indicated by law..."

Ethics Code of the Venezuelan Judge, Article 28 and following: judges can be sanctioned, suspended and disqualified for up to 15 years. Within the causes of disqualification: "lack of rectitude," "Grave or reiterated inappropriate or inadequate behaviour in the exercise of his/her functions" and "Incur in abuse of authority, excess or usurpation of functions."

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

50

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

Judge Afiuni was imprisoned for unconstitutional reasons and her rights have been constantly denied. Moreover, denial for a cancer test and medical exams directly result in the worsening of her medical conditions, which may not be affirm physical harm, but can have deadly consequences.

The conditions of her imprisonment include denial of her right to medical assistance and constant threats to her life and physical integrity. The defendants requested the granting of a less grave measure that would allow Judge Afiuni to effectively take medical tests to determine if she has cancer. This request was denied.

References:

UCAB, "María Lourdes Afiuni: judge imprisoned for applying UN resolution," 2010, http://www.ucab.edu.ve/ti_files/CDH/Maria%20Lourdes%20Afiuni/AfiuniLargoWeb.pdf

El Universal, "Judge denies less grave measure to Afiuni to attend to her health," July 28, 2011, <http://www.eluniversal.com/2011/07/28/juez-niega-medida-menos-gravosa-a-afiuni-para-atender-su-salud.shtml>

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

Comments:

There are no known cases.

References:

Interview with Laura Louza, director of the NGO "Acceso a la Justicia," professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

61

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Racial or ethnic discrimination within the judiciary is not common. Some benefits may be granted but it's not systematic. For example, according to Laura Louza, some measures or orders protect certain groups such as indigenous people and African-American descendants.

References:

Interview with Laura Louza, director of the NGO "Acceso a la Justicia," professor and manager of the Updating Project of the Judicial System, Caracas, Venezuela, September 27, 2011.

Correo del Orinoco, "Law Against Racial Discrimination will benefit Venezuelans and foreigners," May 19, 2011, <http://www.correodelorinoco.gob.ve/nacionales/ley-contra-discriminacion-racial-beneficiara-a-venezolanos-y-extranjeros/>

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

According to Carmen Luisa Roche, women have access to the judicial system. There is no specific targeted discrimination of women in the judiciary; however, the inefficiency of the system often affects women directly and they can in some cases be victimized when resorting to authorities.

References:

Acceso a la Justicia from El Universal, "Supreme Court of Justice will open three new courts of violence against women," July 27, 2011, <http://www.accesoalajusticia.org/noticias/detalle.php?notid=1881>

Interview with Carmen Luisa Roche, retired professor and investigator in Universidad Central de Venezuela, Caracas, Venezuela, October 11, 2011.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

Comments:

Organic Criminal Proceedings Code, Articles 12, 125.3, 137, 140: these articles establish the right to a defense without discrimination, the designation of a public defender from the very beginning of the investigations, or a lawyer in the cases where none is available or unaffordable by the defendant.

References:

Organic Criminal Proceedings Code, Articles 12, 125.3, 137, 140.

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

As stated on the public defense official webpage, there are “new public defenders for 8 states of the country.” This is an example of the efforts made in that regard. Still, there are many deficits, and public defenders have to be multiplied in order to provide more availability and quality service to all citizens. Chavero Gadzik dedicates a section of his book to “Improvements in Public Defense,” one of the very few positive evaluations of the judiciary in the past years.

References:

, Rafael J. Chavero Gadzik, La Justicia Revolucionaria (The Revolutionary Justice), Editorial Aequitas, C. A., 2011, p.272-274.

Defensoría Pública, official webpage, 2011, http://www.defensapublica.gob.ve/index.php?option=com_content&view=article&id=288:nuevos-defensores-y-defensoras-publicas-para-8-estados-del-pais&catid=38:noticias&Itemid=50

El Universal, “Public Defense needs more resources to keep working,” March 16, 2010, <http://www.eluniversal.com/2011/03/16/defensa-publica-necesita-mas-recursos-para-seguir-operando.shtml>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

According to the World Bank, attorney, court and enforcement costs in Venezuela are 21.5 percent, 7.2 percent and 15 percent of the claim, respectively. This data positions Venezuela at a cost of 43.7 percent of the claim, which is more than the regional percentage of 31.2.

According to Carmen Luisa Roche, costs depend on the type of the process and how extensive it becomes. Lawyer fees are the most influential. The court itself does not charge any fee, but many procedures have to be paid; thus, a complicated case is not affordable.

References:

World Bank, Doing Business, 2011, <http://www.doingbusiness.org/data/exploreeconomies/venezuela/#enforcing-contracts>

Interview with Carmen Luisa Roche, retired professor and investigator in Universidad Central de Venezuela, Caracas, Venezuela, October 11, 2011.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Costs are subject to many variables that point toward judicial uncertainty and insecurity.

According to the World Bank, attorney, court and enforcement costs are 21.5 percent, 7.2 percent and 15 percent of the claim, respectively. This data positions Venezuela at a cost of 43.7 percent of the claim, which is more than the regional percentage of 31.2.

According to Carmen Luisa Roche, this also depends on the type of process, but generally small businesses do not resort to a court because they would end up paying almost half of the amount of the lawsuit for attorney costs alone.

References:

World Bank, Doing Business, 2011, <http://www.doingbusiness.org/data/exploreeconomies/venezuela/#enforcing-contracts>

Interview with Carmen Luisa Roche, retired professor and investigator in Universidad Central de Venezuela, Caracas, Venezuela, October 11, 2011.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

PROVEA: Venezuela has 807 criminal judges, which is approximately three judges for every 100.000 inhabitants, but in some states with the most population (Aragua, Anzoátegui, Carabobo, Lara y Zulia), there are less than two judges per 100.000 inhabitants.

Venezuelan population concentrates around urban areas, therefore availability of courts of all instances in small towns is not possible. Some citizens must travel in order to get to a specific court in a bigger city. The World Bank developed a project to broaden accessibility of courts (1993), but this project is currently paralyzed.

References:

PROVEA (2009-2010) Annual Report 2010, <http://www.derechos.org/ve/pw/wp-content/uploads/2010Justicia.pdf>

Interview with Carmen Luisa Roche, retired professor and investigator in Universidad Central de Venezuela, Caracas, Venezuela, October 11, 2011.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

25

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Policemen may have the professional requirements, but the president's message points toward a political purpose for the police forces. The official national police webpage establishes the National Police Structure. The page also contains all the National Police Directive and professional competencies.

References:

Policía Nacional, official webpage 2011, <http://www.policianacional.gob.ve/index.php/la-nueva-policia-nacional/estructura-policia-nacional>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Police forces are insufficient.

Dispositivo Bicentenario de Seguridad/ Bicentennial Security Mechanism (Dibise) was created in 2010 with a budget of 319 million bolívares. The budget is distributed under coordination of the national guard and local police forces (among others). In 2011, the budget was 290.743.581 bs, but the agency asked for more funding. In particular, it stated, "[T]he allocation we really need to improve our presence in Miranda state is 745.911.575 bs ... we ask the National Government to help us with this situation that we share with all other police directors."

References:

PROVEA Annual Report 2010, <http://www.derechos.org/ve/pw/wp-content/uploads/2010seguridadciudadana.pdf>

La Prensa de Miranda, "Director confirms that Polimiranda works together with Dibise," February 11, 2011, <http://prensademiranda.com/2011/02/11/director-asegura-que-polimiranda-trabaja-en-mancomunidad-con-el-dibise/>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The police forces have political influences, either by qualifications of the government or conditioning their duties.

In the Globovisión article, the president made clear that the police forces that allowed the public order to be "disturbed" by protestors had to be intervened.

PSUV (United Socialist Party of Venezuela): Minister of Internal Affairs and Justice Tarek El Aissami stated that this police (National Bolivarian Police) force was for the people and "you [police members] shall do your job according to socialist ethics and much humanity." The sole "Bolivarian" adjective in this context implies a political denomination.

President Chávez talking about the graduates: "He is a man that commits himself entirely, a revolutionary youth that commits himself entirely ... to the task that the revolution has given him."

References:

PSUV, "The National Bolivarian Police was born today," December 18, 2009, <http://www.psuv.org/ve/temas/noticias/Hoy-nacio-la-Policia-Nacional-Bolivariana/>

Revolución o muerte.org (Revolution or Death), Hugo Chavez Frías' speech, Graduation Ceremony of the II class of the National Bolivarian Police, July 21, 2010, <http://www.revolucionomuerte.org/index.php/discursos/comandante-hugo-chavez/1903-discurso-comandante-hugo-chavez-frias-acto-de-graduacion-de-la-ii-promocion-de-la-policia-nacional-bolivariana->

Globovisión, "President Chávez ordered intervention to police forces that allowed alteration of the public order," January 28, 2010, <http://www.globovision.com/news.php?nid=139286>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

54

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

National Constitution, Article 280: "The Ombudsman is in charge of promotion, defense and vigilance of Constitutional rights, as well as those established in international treaties on human rights, in addition to legitimate interests, collective or diffuse of citizens."

References:

National Constitution, Article 280.

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is a high impunity index; some officials engage in criminal activities, and citizens' complaints lose relevancy. They may often be overlooked.

According to a study done by INCOSEC, only 37.3 percent of victims turn to the authorities, and 59.2 percent of those state that nothing has been done about their case. Of the 54.8 percent of victims who don't go to authorities, 67.4 percent say that they don't go to the authorities because they will not do anything, while 13.8 percent don't turn to the authorities for fear of negative consequences.

Moreover, El Mundo stated that in Venezuela, 91 percent of people convicted of homicide are not detained.

Finally, the IACHR determines in its report the existence of an impunity pattern in violence cases in Venezuela.

References:

INCOSEC (Coexistence and Citizen Security Investigations Institute), Study of Interpersonal violence and perception of the 2010 citizen security situation in Venezuela, March 2011, <http://incosec.sumospace.com/wp-content/uploads/2011/03/Diapositiva112.jpg>

El Mundo, "Venezuela, the country of the unresolved crimes," March 3, 2010, <http://www.elmundo.es/america/2010/03/03/noticias/1267626916.html>

IACHR, IACHR Publishes report about Venezuela, February 24, 2010, <http://www.cidh.oas.org/Comunicados/Spanish/2010/20V-10sp.htm>

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

National Constitution, Articles 284-286: About the Public Ministry, its functions include ordering and directing investigations of punitive actions.

National Constitution, Articles 280-283: About the Ombudsman, its functions include as well, to watch over the adequate running of the public services, and protect the people's human rights.

References:

National Constitution, Articles 280-286.

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

Police forces are corrupt. Extortion and bribery are usual, and police involvement in kidnappings and robberies is common knowledge. The number of investigations opened for these type of cases (if there are any) is negligible.

For example, El Universal reported that some retired metropolitan police officers stated that an important part of officers is that they are dedicated to criminal activities such as extortion and kidnapping. However, the mayor of Chacao (a municipality governed by the opposition) stated that criticism against the Chacao police forces was politically motivated.

References:

El Universal, "Metropolitan Police groups extort and kidnap," March 3, 2011, <http://www.eluniversal.com/2011/03/03/afirman-que-grupos-de-la-pm-extorsionan-y-secuestran.shtml>

AOL Latino, "Venezuela: police officers investigated for alleged aggression to detainees," May 12, 2011, <http://noticias.aol latino.com/2011/05/12/venezuela-investigacion-a-policias-por-agresiones-a-detenido/>

PROVEA Annual Report 2010, About the right to life, http://www.derechos.org/ve/pw/wp-content/uploads/20_vida.pdf

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:

Members of the police service and the national police force are not immune from criminal proceedings.

References:

Organic Law for Police Service and the National Police Force, Article 64: about disciplinary regime and criminal accountability.

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

If a police officer is investigated, he or she will not receive privileges for being a police officer, but a police officer may receive privileges or be discriminated against if there is a political interest.

In the newspaper El Universal, some retired metropolitan police officers stated that an important part of being a police officer is being dedicated to criminal activities such as extortion and kidnapping.

According to Reportero 24, some policemen even belong to a group called Evil Legion.

References:

PROVEA Annual Report 2010, http://www.derechos.org/ve/pw/wp-content/uploads/20_vida.pdf

El Universal, "Metropolitan Police groups extort and kidnap," March 3, 2011, <http://www.eluniversal.com/2011/03/03/afirman-que-grupos-de-la-pm-extorsionan-y-secuestran.shtml>

Reportero24, "Metropolitan Police officers imprisoned for extortion operated in the west," March 2011, <http://www.reportero24.com/2011/03/agentes-de-pm-presos-por-extorsion-operaban-en-el-oeste/>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.