

**regional study**

# **access to information in the context of health emergency**

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### CONCLUSIONS

# Access to information in the context of health emergency

By Daniela Urribarri [1]

This document systematizes the results of a qualitative and quantitative study carried out during the month of April among the member organizations of the Alianza Regional, with regard to the situation of enjoyment of the rights of access to public information (ATI) and freedom of expression (FOE) until April 30, in the following countries: Bolivia, Cuba, Paraguay, Guatemala, Dominican Republic, Brazil, Uruguay, Costa Rica, Honduras, Ecuador, El Salvador, Colombia, Mexico, and Nicaragua.[2]

Knowing the status of access to the right to information is of particular interest in the current context of health emergency. On one hand, it is key for the citizens to know the strategies of prevention and care, thereby enabling their right of access to health, among others; on the other hand, it enables the possibility of evaluating and controlling the priorities and investments of governments in the management of the health emergency.

In addition, the freedom to inform and express requires particular attention in this context, in order to allow the delivery of reliable information and to fight the risk of an infodemic, as the WHO alerted.

Below, we present some of the main results of this study, which we will repeat monthly in order to see the evolution of these variables over time.

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[1] Daniela Urribarri is an organizational sociologist, specialized in management. She currently cooperates as a Director of Programs of the Alianza. She was responsible for the design of the study, the compilation of information and the preparation of this report, based on the data provided by the organizations that are members of the network.

[2] The organizations that are members of the Alianza Regional and that presented information about their respective countries were: Fundación Ciudadanía y Desarrollo (FCD - Ecuador), Fundación Democracia sin Fronteras y C-Libre (Honduras), Observatorio Cubano de Derechos Humanos (Cuba), Instituto de Derecho y Economía Ambiental (IDEA - Paraguay), Acción Ciudadana (Guatemala), Participación Ciudadana (Dominican Republic), Artigo 19 (Brazil), CAinfo (Uruguay), Instituto de Prensa y Libertad de Expresión (IPLEX - Costa Rica), Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES - El Salvador), Transparencia por Colombia (Colombia), Fundar (Mexico), Fundación Violeta Barrios de Chamorro (FVBCH - Nicaragua), Transparencia Venezuela y Espacio Público (Venezuela), and Asociación Nacional de la Prensa (ANP - Bolivia).

# Right of access to information and operation of the guaranteeing bodies

Despite the progress that the regulations on the right of access to public information (ATI) had in the last decade in the region, the degree of backwardness in the access to this right that is registered in the region is worrying, even in “normal” times, with no health emergency: 67% of the countries consulted report that they do not have the conditions for full access to public information.

That means: 13% do not have a normative regulation of this right (Cuba and Venezuela), 27% report that the norm exists formally but consider that it is systematically breached (Bolivia, Nicaragua, Honduras and Guatemala), and 27 % does not have a guaranteeing body under the terms recognized by international standards in this subject (Paraguay, the Dominican Republic, Brazil and Uruguay).

## Access to public information: structural backwardness in the region



Most of the consulted countries\* did not fully enjoy the right of access to public information, even before the pandemic.



### Full enjoyment of the right

» Ecuador » El Salvador » Costa Rica  
» Colombia » México



### Non full enjoyment of the right

- Do not have a ATI Law: Venezuela and Cuba
- Have a Law but it is not applied in practice: Honduras, Bolivia, Guatemala and Nicaragua
- Do not have a guaranteeing body that fulfills the international standards: Brazil, Paraguay, Dominican Republic and Uruguay.



Added to this, there are specific resolutions and practices in the current context that limit the validity of the ATI in several countries of the region for different reasons:

In 53% of the analyzed countries, the organizations report that currently valid deadlines for the delivery of information are not met; and only in some of them (38% of the consulted countries) it is reported that this is because of difficulties of physical accessibility to the information due to the quarantine. These postponements of the times entail de facto limits to the exercise of the right.

## ATI in times of Covid-19

**During pandemic, deadlines for the delivery of information are not met in most of the consulted countries\*:**



**53%**



do not meet valid deadlines

**30%**



do not have enough information

**17%**



meet expected deadlines

\*Ecuador, Honduras, Paraguay, Guatemala, Brasil, Uruguay, El Salvador, México, Nicaragua, Costa Rica, República Dominicana, Bolivia y Colombia.

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In some countries there were expressed resolutions that modify or extended the terms to answer the ATI requests (Colombia), getting to extremes as Guatemala that suspended the legal deadlines of the whole administrative process for 3 months, or El Salvador that, being suspended the terms of the administrative processes, practically the appeals processes that can be processed before under the Instituto de Acceso a la Información Pública (IAIP) for refusals to provide information, since it only receives requests for appeal and analyzes admissions.

A particular impact on the exercise of the right of access to information results from the operation of the guaranteeing bodies that regulations must provide:

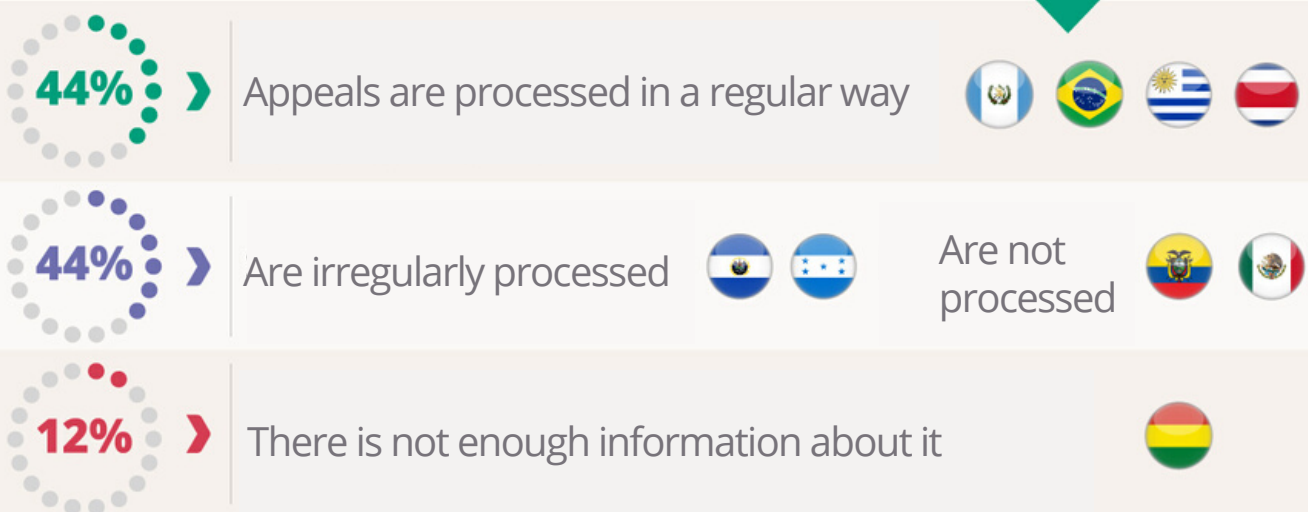
Firstly, it is important to spotlight that the degree of backwardness in the region is also worrying at this point, since only 54% of the countries consulted have a guaranteeing body at the national / federal level.

Regarding the operation of these agencies in the context of the current health emergency, almost 50% of the consulted reported that the guaranteeing bodies do not respond regularly to the claims that are made to them for public administration's failure to answer ATI requeries.

In the cases of Mexico and Honduras, the INA and the IAIP, respectively, suspended their service from the last days of March to the end of April in the first case, and to the end of May in the second.

Finally, there were records of extreme attempts in Brazil, where the Government decided to remove the possibility of making ATI inquiries until December 2020; fortunately, this advance was stopped by a resolution of the Federal Supreme Court. Or the case of Venezuela where for years, 95% of the queries made requesting information have not received a response or have only obtained a few incomplete and biased data.

## Only 44% of the countries that have an ATI guaranteeing body, normally processes appeals in times of Covid-19.



# Active transparency as a way to access information in the context of health emergency

## PURCHASING AND CONTRACTING PROCESSES

All the countries surveyed in this study have decreed health emergencies, except for Cuba. The state of emergency and exception enables faster purchasing and contracting processes, as well as the redirection of resources and priorities; but it does not exempt the legal obligation to report back. So the emergency should not block processing these processes with active transparency practices that allow the public access to the necessary information to identify political priorities and the destination of funds.

Nevertheless, in 70% of the studied countries, the scarce and / or poor quality of public information related to the management of purchases and contracts for the attention of the health emergency is warned. There are web pages that hinder fast and easy access to that information, or the information is incomplete, hard to understand and/or outdated.

The situation of Venezuela and Nicaragua, and Cuba where the organizations report the complete lack of information related to purchases and contracts, is particularly concerning.

Meanwhile, in Costa Rica, Ecuador, Dominican Republic and Paraguay, the organizations consider the information that is published in relation to COVID of high quality (complete and timely). When reviewing the good practices of these countries, some key characteristics for complete and quality advertising are noted:

**Where to publish?** On specific platforms or microsites that allow quick and easy access to emergency management, preventing it from being in the midst of an enormous amount of information that makes it difficult to identify it.

**How often to publish?** It is key that the information will be permanently updated to allow monitoring and verification of what is published in the short term, so that any irregularity or inconsistency can be promptly noticed and corrected.



**What to publish?** Information that allows knowing and tracing the complete process of purchasing and contract, from the request and justification, to the evaluation of the purchased product or service, going through the procedures corresponding to the reception and evaluation of offers and bidders, their selection, purchase invoice, reception of what was purchased and more.

**How to publish?** In open data format that allows analysis and reuse by third parties.

## POLICIES FOR TRANSFERRING RESOURCES TO VULNERABLE SECTORS

With the exception of Nicaragua and Venezuela, where the lack of public information hinders the response on this point, in the rest of the consulted countries, several policies have been developed to assist and transfer resources and/or goods to the most vulnerable sectors.

However, it is concerning that in most of the cases (58%) it is considered that the information to access those benefits is not clear, simple and transparent. Only in Ecuador, Paraguay, Ecuador, Costa Rica and Bolivia, that information is considered transparent and simple.

## WATER ACCESS POLICIES

Water access is a key point in care policies for the current emergency. The WHO has repeatedly emphasized that “one of the best measures (to prevent infection) is one of the simplest: wash your hands. That simple act can make the difference between life and death. 3,000 million people do not have soap and water at home. It's an old problem that requires more attention” (Dr. Tedros, May 4)

However, only 40% of the 15 countries that were consulted records valid national policies to improve the access to water during emergency (Bolivia, Colombia, El Salvador, Costa Rica, Uruguay and Brazil); and only in Uruguay and Costa Rica it is considered that the available information to access these policies is simple and clear.



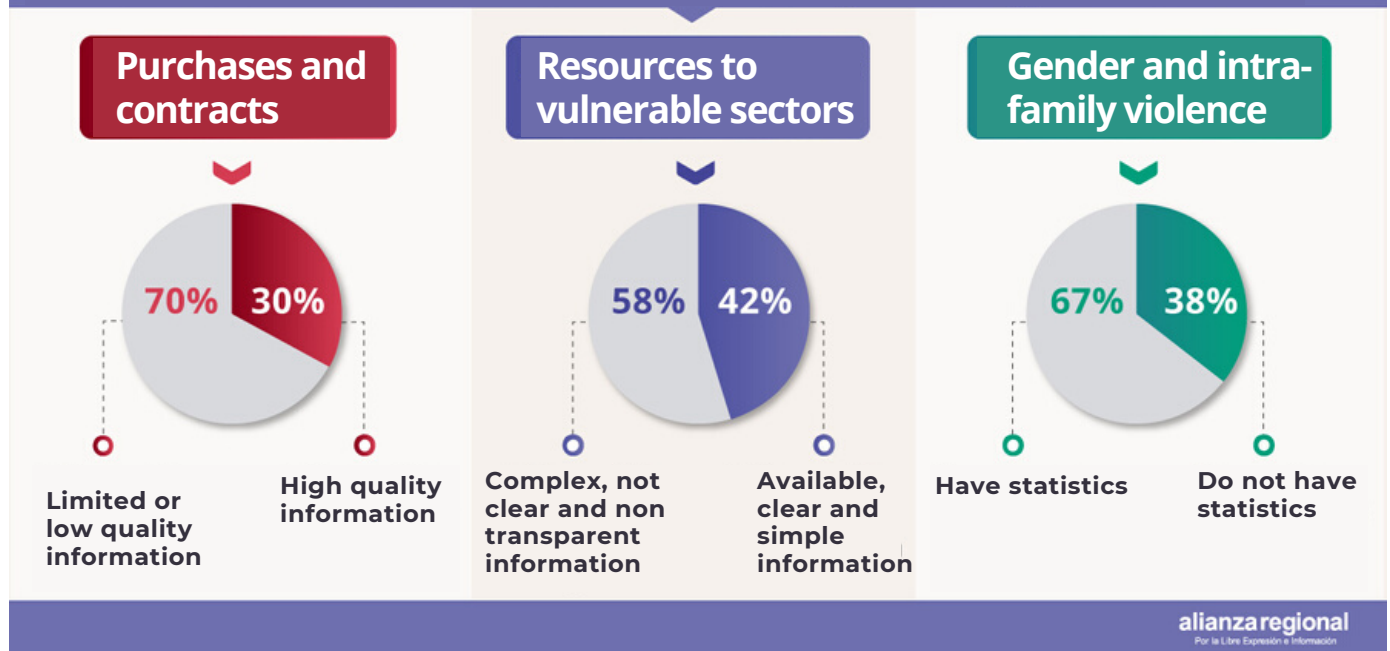
## GENDER AND INTRA-FAMILY VIOLENCE

According to UN Women, before the health emergency, violence against women was already one of the most aggravating human rights violations; and the United Nations Population Fund (UNFPA) notes that pandemics worsen the inequalities that women, adolescents and girls already face.

In this context of risk to the physical and mental health of an important part of the population, the production of information is key for the generation of public policies, as well as for monitoring its evolution by citizens. However, in 33% of the surveyed countries there is no statistical information about it (Honduras, Cuba, Dominican Republic, Nicaragua and Venezuela).

On the other hand, in those countries that do have statistical information, there were increases in cases of gender violence in 80% of cases, while in 10% the number of cases it did not change, and in the remaining 10% there is no updated information. In the case of intra-family violence, 100% of the countries indicated that the cases increased.

### Active transparency in the context of Covid-19: The information is insufficient and low quality.



# Freedom of expression in the context of covid-19

The exercise of freedom of expression also shows specific difficulties and risks in the current context, which under various arguments restrict the exercise of journalism, and increase government controls over social conversation or the issue of opinions on networks.

## During pandemic, there are restrictions on freedom of expression in the region:



› Arbitrary arrests



› Stigmatizing discourses on media and/or journalists



› regulatory reforms that limit the right



› Selection of journalists who can access information



› Tracing journalists who defend human rights and others



› Equipment confiscation and others

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On one hand, there are practices restricting the access of information for some journalists, as in the case of the Governments of Cuba, Nicaragua and Venezuela, that continue not opening press conferences on Covid-19 to independent media; or Guatemala that removed the journalists who question official practices from their WhatsApp groups through which they distribute the information.

There are also stigmatizing practices towards the press in several countries: Mexico continues to be one of the most dangerous regions in the world to practice journalism, to what it must be added that the new government has had a discriminatory and polarizing discourse with the press, increasing mistrust towards the media. In Brazil, the federal government encourages the violations of freedom of expression; there are reports on attacks and accusations against press work and freedom of expression. In Guatemala a group of journalists, communicators and social organizations signed a public denunciation in which they report the intimidation, disqualification and open censorship that they have received from the President and the Secretary of Social Communication.

In Venezuela there was an increase of the cases of violations of freedom of expression in the frame of the pandemic, even before the declaration to the state of alarm and the beginning of quarantine. From the end of February to April 20, 37 cases related only to COVID-19 search or divulgation were documented; since the quarantine started, from March 16 to April 20, there have been 65 cases that translate into 151 violations; a part of them linked to coverage obstacles (confiscation of equipment, removal of material) and arbitrary arrests, of the latter the most with prolonged deprivation of liberty, transfers, short-term enforced disappearances and the initiation of legal proceedings. Most of the charges are "instigation of hatred" for broadcasting information or opinions; and the victims include not only journalists but also health workers and human rights defenders. At least 11 of the arrests are of press workers.

In Uruguay, the government sent a law project (under the label of urgent consideration) with 501 articles. Five of them affect the right to protest and, thus, freedom of expression. Other two articles introduce changes to the regulations on access to public information, declaring confidential all the information held by the state intelligence system.

Other control practices on expression are also worrying, as the ones in Ecuador, where even if freedom of expression is no normatively limited or restricted when the country declared exceptional circumstances; during the weeks of emergency there were incidents in which police authorities, without an order from the competent authority, arrested citizens for videos on social networks or for spreading news that, in their opinion, are false. In Colombia, in the midst of the Covid-19 crisis, a new case of serious harm to freedom of the press and expression was disclosed due to the illegal monitoring carried out by the National Army intelligence, of at least 130 people that include mostly national and foreign journalists, former public officials, social organizations, politicians and trade unionists.

In this sense, the Decree Law 370 from Cuba also generates an alert, because it allowed the government to extreme censorship of journalists and independent social communicators, through citations to police stations where they are threatened not to publish information that is opposed to the official line in the Covid-19 crisis, in social media or independent media.

## Conclusiones

The IACHR highlighted the importance of “ensuring the right of access to public information in the context of the emergency generated by COVID-19 and not establishing general limitations based on security or public order reasons. The bodies that guarantee this right and the obligated individuals must give priority to the requests for access to information related to the public health emergency, as well as proactively inform, in open formats and in an accessible way to all groups in situations of vulnerability, in a disaggregated form on the impacts of the pandemic and emergency expenses, according to international best practices. In the cases of deadlines postponement for information requests on subjects that are not related to the pandemic, the States must base their refusal, establish a time to comply with the obligation and admit the appeal of these resolutions”. (Res 1/20)

However, the information collected by the organizations that integrate the Alianza presents a concerning outlook in relation to the enjoyment of this right: structural constraints previous to the emergency (both regulatory and practical) leave most of the analyzed countries without a real possibility of accessing information. But even in those countries where there are regulations and a certain exercise of the ATI, the enjoyment is limited by several practices: to the extension of the usual periods of response is added the non-compliance of them; and the guaranteeing bodies do not regularly process the appeals made in the cases of non-compliance in the delivery of information.

On the subject of active transparency, we studied here only some dimensions that we consider relevant, and also in this aspect of the ATI, the situation should call us to reflection and to ask for improvements: the information related to purchases and contracts, as well as the transfer of resources to vulnerable sectors, was considered of low quality and transparency. The information on situations that require urgent actions as gender and intra-family violence and water access, is also limited.

Last, the practices collected in the different countries with regards to direct and indirect limitations for the enjoyment of freedom of expression also generate a certain alert.

At the Alianza Regional, we believe that the enjoyment of these rights requires urgent best practices in the current context given that the absence of this key right limits the possibilities of enjoying a full access to health, integrity and others. Because of that, we commit to monitor its evolution in the region.

