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From Regulation to Pluralism: Reflections on Democratic Reform of Venezuela's RESORTE Law

Introduction

The discussion surrounding the future of the Law on Social Responsibility in Radio, Television, and Electronic Media (RESORTE Law) extends far beyond the legal sphere. In the Venezuelan context, debating this legislation means discussing the model of public communication that will accompany a potential democratic reconstruction. After more than two decades marked by the closure of media outlets, the progressive concentration of communications capabilities in the hands of the state, the shrinking space for the independent practice of journalism, and the expansion of large areas of the country where citizens lack regular access to reliable local information, reforming the regulatory framework governing communications emerges as an essential task for any process of institutional transition.

The Venezuelan experience demonstrates that freedom of expression cannot be understood solely as the absence of prior censorship. Freedom of expression also depends on the existence of material, legal, and institutional conditions that enable citizens to seek, receive, and impart information and ideas of all kinds. This is precisely the conception reflected in Article 13 of the

American Convention on Human Rights, which recognizes the right of every person to seek, receive, and impart information without regard to frontiers and through any medium of their choice.¹

From this perspective, the central question should not be merely how to reform the RESORTE Law, but why it should be reformed. My thesis is that future democratic legislation must definitively abandon the logic of content control and replace it with a regulatory model aimed at guaranteeing rights, promoting pluralism, and strengthening access to public information.

From Communication Control to the Protection of Rights

When the RESORTE Law was introduced to the country, its proponents argued that it was intended as a tool to promote the social responsibility of the media and protect legitimate societal interests. However, the subsequent evolution of the legislation and of the institutions responsible for enforcing it revealed a different trajectory. The law gradually acquired characteristics of a system of permanent content oversight, in which the broad scope of certain legal categories created significant room for discretion in administrative action.

The fundamental problem lies not merely in the existence of sanctions or regulatory mechanisms. Every democracy has rules governing the use of the radio-frequency spectrum, ensuring competition, and protecting the rights of third parties. The problem arises when such powers are exercised through ambiguous concepts or political interpretations that make it

1 Organización de los Estados Americanos. *Convención Americana sobre Derechos Humanos, artículo 13*. Artículo 13 - Libertad de Pensamiento y Expresión (Organization of American States).

possible to punish forms of expression legitimately protected under international human rights law.

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights² has repeatedly held that any restriction on freedom of expression must meet strict standards of legality, necessity, and proportionality. Likewise, the Declaration of Principles on Freedom of Expression reminds us that freedom of expression is an indispensable prerequisite for the very existence of a democratic society.³

The Venezuelan experience forces us to recognize that, for years, many journalists, audiovisual producers, broadcasters, and digital media outlets stopped asking themselves what information was relevant to citizens and began asking what information could lead to administrative or political consequences. When legislation creates permanent incentives for self-censorship, it ceases to serve a democratic function and begins to erode the public debate it should protect.

Concessions as an Instrument of Political Control

There is also a personal dimension that inevitably informs this reflection. Like many Venezuelans of my generation, my interest in public affairs did not begin in a university classroom or in a political organization. It began with observing events

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- 2 Comisión Interamericana de Derechos Humanos. *Relatoría Especial para la Libertad de Expresión*. Relatoría Especial para la Libertad de Expresión (Organization of American States).
 - 3 Comisión Interamericana de Derechos Humanos. (2000). *Declaración de Principios sobre Libertad de Expresión*. OEA. CIDH - Declaración de Principios sobre Libertad de Expresión (Organization of American States).

that shaped the life of the nation when I was just beginning my secondary education. Among them, few had as profound an impact as the taking off the air of Radio Caracas Televisión on May 27, 2007.

Beyond the political positions that, over the years, have sought to reduce that episode to a simple narrative, the RCTV case left an institutional lesson that remains relevant to any debate about the future of communications in Venezuela. For the first time, an entire generation witnessed the state using a formally lawful power—the administration and renewal of radio-frequency spectrum concessions—to make a decision that broad sectors of society perceived as an attempt to punish a critical editorial line. That night, not only did the country’s oldest television channel disappear from free-to-air broadcasting; a question also became firmly established in the public debate, one that remains relevant nearly two decades later: how far should the power of the state extend in deciding who may or may not communicate?

The historical significance of this case lies not only in the fate of a particular media outlet. The Inter-American Court of Human Rights itself subsequently concluded that the non-renewal of the concession constituted an indirect restriction on freedom of expression and warned that frequency allocation and renewal processes must be conducted according to open, independent, and transparent criteria, precisely to prevent regulatory powers from being used as mechanisms of political pressure on the media.

This experience makes it necessary to address an issue that is often sidelined in debates over reforming the RESORTE Law. It is not enough to eliminate provisions that facilitate content censorship. It is also necessary to institutionally constrain

the ability of political authorities to use radio-frequency spectrum concessions as instruments of reward or punishment. A democracy cannot depend on the goodwill of those in power to guarantee pluralism. It must establish legal safeguards that prevent any future administration, regardless of its political orientation, from using the allocation, renewal, or revocation of frequencies to influence the editorial stance of media outlets.

For this reason, any future reform should establish public, competitive, and technically verifiable procedures for the granting and renewal of concessions; objective criteria defined in advance by law; independent appeal mechanisms; public access to all administrative records; and an explicit prohibition against considering factors related to a media outlet's editorial stance, political position, or informational content when deciding whether it may remain on the radio-frequency spectrum. The goal should not be to protect any particular media outlet. The goal should be to prevent the state's regulatory power from ever again being perceived as a tool for shaping the information ecosystem according to the political preferences of those in power.

Access to Public Information as a Guiding Principle

If new legislation genuinely aspires to rebuild Venezuela's communications ecosystem, its central focus should not be content regulation but the effective guarantee of the right to information.

For years, public debate in Venezuela focused on direct censorship, while another equally problematic dimension was often underestimated: state opacity. Citizens cannot engage in democratic deliberation when they lack access to official statistics, public budgets, economic indicators, or information related to government administration.

For this reason, any future reform should explicitly incorporate access to public information as a guiding principle of all communications policy. The state must not only refrain from censorship; it must also actively and transparently produce, preserve, and disclose public information.

From this perspective, future legislation should recognize that freedom of expression and access to information are inseparable rights. There can be no genuine freedom to inform when the state monopolizes the information necessary to understand reality.

Transforming CONATEL into an Independent Authority

Democratic reform of the RESORTE Law also requires a thorough institutional review of the National Telecommunications Commission (CONATEL).

The existence of telecommunications regulatory bodies is common practice in established democracies. What distinguishes democratic regulators from those associated with restrictive systems is their degree of independence from political power.

Accordingly, a democratic transformation of CONATEL should aim to create an independent technical authority, with transparent mechanisms for the appointment of its officials, terms of office protected from partisan interference, public accountability, and effective judicial review of its decisions.

Its mission should focus on the technical administration of the radio-frequency spectrum, the promotion of competition, the expansion of connectivity, and the reduction of gaps in access to telecommunications services. It should not be responsible for determining the political legitimacy of journalistic or editorial content.

Rebuilding Venezuela's Information Ecosystem

One of the least discussed aspects of reforming the RESORTE Law is that Venezuela faces not only a problem of freedoms, but also a problem of information infrastructure and capacity.

In many municipalities, radio stations, newspapers, news bureaus, and local news production outlets have disappeared. Where mechanisms for the circulation of community information once existed, there are now information gaps that are often filled by rumors, mass messaging chains, or unverified information.

Democratic reconstruction requires directly addressing this phenomenon. New legislation should include incentives for the return of regional media outlets, transparent mechanisms for the recovery of concessions, competitive grant programs for independent journalism projects, and programs aimed at strengthening the sustainability of local media.

Reducing information deserts should become a national public policy priority. Democracy cannot take root where sufficient information does not exist for citizens to understand and participate in public affairs.

Independent Producers and Community Media

Particular attention should be paid to the situation of independent national producers and community media outlets.

For years, both sectors were presented as tools for democratizing communication. However, on numerous occasions, they ultimately became subject to administrative or political dynamics that limited their autonomy.

Future legislation should expressly recognize that independent producers are key actors in ensuring informational and cultural diversity. Their relationship with the state should be built on guarantees of independence, not on mechanisms of surveillance.

Likewise, community radio stations should reclaim their original purpose: to serve as media outlets for their communities, rather than as instruments of government communication. A genuine community radio station should be accountable to its community, respond to its information needs, and reflect the diversity of voices present in its surrounding environment.

Reviewing the Law against Hate and the Rabat Plan of Action Standard

Finally, no comprehensive reform of Venezuela's communications system would be complete without a thorough review of the so-called Law against Hate.

From a democratic perspective, I believe the most consistent course would be to repeal it and replace it with legislation compatible with international human rights standards. However, even if the political debate were to lead to partial reform rather than repeal, such reform should expressly incorporate the criteria established by the United Nations Rabat Plan of Action.⁴

This instrument represents one of the most significant efforts to distinguish between forms of expression protected by freedom of expression and forms of incitement to hatred that

4 Naciones Unidas. *Plan de Acción de Rabat sobre la prohibición de la apología del odio nacional, racial o religioso*. ACNUDH - Libertad de expresión y Plan de Acción de Rabat (ohchr.org)

may justify legitimate restrictions.⁵ The so-called Rabat threshold examines six elements: context, the speaker's position, intent, content, reach, and likelihood of harm.

Adopting this standard would significantly reduce judicial and administrative discretion. More importantly, it would prevent ambiguous categories from being used to target critical or dissenting opinions under the pretext of combating hate.⁶

Conclusion

Reforming the RESORTE Law represents an opportunity to redefine the relationship among the state, the media, and citizens in a future democratic Venezuela. For years, a view prevailed according to which communication should be administered by those in political power. The transition requires replacing that logic with one based on rights, pluralism, and transparency.

The central question should no longer be how to better control the circulation of information, but how to ensure that everyone can access it under conditions of freedom and equality. Modern legislation must protect criticism, promote a diversity of voices, strengthen local journalism, guarantee the independence of regulators, and ensure that any restriction on expression complies with strict international standards.

Ultimately, the social responsibility of communications cannot consist in protecting those in power from the public. It must consist in protecting the people's right to be informed.

5 Naciones Unidas. *¿Qué es el discurso de odio?* ONU - Discurso de odio (United Nations).

6 Relatores Especiales de ONU, OEA, OSCE y CADHP. (2011). *Declaración Conjunta sobre Libertad de Expresión e Internet*. Declaración Conjunta sobre Libertad de Expresión e Internet (Organization of American States).