



# **Communication and Journalism: A Comparative Statutory Study in Cuba and Venezuela**

Executive Summary  
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In this study, we review the regulations on freedom of expression and, within such framework, the exercise of journalism in force in Cuba and Venezuela. Two countries with governments that regard each other as kindred and partners against the colonizing war represented primarily by the US government. Cuba, declared openly socialist in its Constitution, and Venezuela, which proclaims itself a democratic and social state of law and justice in its Constitution, as well as the standard-bearer of the so-called 21st Century Socialism according to the discourse of its government.

During our research, we found similarities and differences in the laws of these countries, their attachment to and distancing from international agreements, treaties and conventions on these rights. Additionally, upon analyzing these realities, some issues on which we must reflect from the Academia, civil groups, and the journalistic community arise, for the purpose of subjecting them to political discussion.

The constitutional texts of both governments claim to recognize freedom of expression and information, along with freedom of thought, artistic and intellectual creation, access to public information, etc. However, their statutes on the subject weaken the exercise of these rights by their citizens, because they subject it to the discretionary interpretations regarding national security and defense that these regulations allow for.

The constitutional provisions seem to have a relative and instrumental validity that must be subject to the convenience of what the Communist Party of Cuba or the Venezuelan government deems appropriate for political purposes. In the case of both countries, the citizens, who see their fundamental right to communication diminished in its broadest sense, are sacrificed.

In any case, it is appropriate to emphasize that, although both constitutions recognize freedom of expression and opinion as a fundamental human right, the Cuban constitution places inescapable constraints: In its Article 5, the Communist Party is enshrined as “the leading political force of society and the State” which, as such, “organizes and leads the common efforts in the construction of socialism and the advance towards communist society”. In addition, it inflexibly provides for the monopoly of the media, a socialist property (Article 55), and exercises absolute sovereignty and jurisdiction over the frequency spectrum (Article 11.a).

The Venezuelan Constitution does not set forth the limitations that the Cuban one provides for; but that has not been an obstacle for its government to attempt restrictive measures by sub-legal (regulatory / bureaucratic) means and via executive acts pointing to this tendency. In this regard, widely known are the activities conducted by [Venezuela’s] National Telecommunications Commission (Comisión Nacional de Telecomunicaciones, CONATEL) as the agency of the Executive branch controlling the frequency spectrum, by closing media and imposing censorship. To that end, it issues questionably discretionary administrative acts seeking to bypass any constitutional checks. To this fact, the recent creation of the Socialist Corporation of Telecommunications and Postal Services (Corporación Socialista de Telecomunicaciones y Servicios Postales), a holding company that could become the only one with the authority to offer telecommunications services, is added. Similarly, a brief mention can be made of the adoption of the “socialist modality”, not only legally groundless but also openly contradicting the constitution of the country.



The communicational models that both governments encourage focus on the exclusive control of the public discussion, therefore excluding all others. These are two governmental narratives revolving around economic warfare, the embargo, and the threat of the American empire. Within this framework, the monitoring of contents, monopoly of the media, criminalization of dissenting opinion, restriction of access to public information are conducted, journalism is hindered, and absolute control is exercised over the frequency spectrum. Simply put, restriction is the norm and not the exception.

The criminal codes of the two nations list a plethora of crimes of expression with the objective of restricting that freedom. Special emphasis is placed on such crimes as slander, defamation and vilification, equating offenses to the honor and reputation of public officials to crimes against the independence and security of the nation, as they are called in Venezuela (Articles 147 to 149). For its part, Cuba describes the dissemination of fake news as an offense against international peace thereby jeopardizing the prestige or credibility of the Cuban State (Article 115).

It must be stressed that contempt laws affect freedom of expression and information. The American Convention on Human Rights and the Universal Declaration of Human Rights, part of this paper's framework of reference, have established that contempt laws provide a greater level of protection for public officials than for private citizens, also that this contradicts the fundamental principle of a democratic system: The subjection of the government to checks, such as public scrutiny, to prevent the abuse of its coercive powers. In the same vein, the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) proclaims, in Principle N° 11, that: "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws", [sic] restrict freedom of expression and the right to information."

To these contempt offenses, many others are added. An especially noteworthy one is in Cuban Criminal Code Article 149 that sets forth the "usurpation of legal capacity." This offense has put journalists independent from the Cuban public media system in jail. And on the Venezuelan end, the special inclusion of Article 297-A is of interest, as it deems any person who spreads false news by radio, press, television, telephone, emails, or writings on pamphlets causing panic in the community or triggering anxiety in its midst prosecutable. In practice, this statute has served to make any rumor, criticism, or uncomfortable message equivalent to fake news.

This outlook highlights the true importance of freedom of expression and information, not only for its intrinsic value but also for being a right that makes the exercise of other fundamental rights possible. The United Nations (UN) General Assembly has already stated it since its inception: "Freedom of information is a fundamental human right and the touchstone of all freedoms to which the United Nations is consecrated."

Gathering the relevant statutes has required a great deal of effort because, in addition to the constitutional provisions and the content of the criminal codes of both countries, plus several laws, and below the legal category, there is a considerable output of regulations difficult to collect and of unclear validity. Such fact unavoidably affects the citizen's legal security. Exceptionally necessary cases of restriction to constitutional rights require provisions at the level of law, drafted by legitimately elected legislative bodies, with justified limitations proportionate to the legitimate interest that is sought to be protected.



As stated in International Covenant on Civil and Political Rights Article 19, the necessary restrictions are admissible: a) For respect of the rights or reputations of others; and b) For the protection of national security or of public order (ordre public), or of public health or morals.

However, even in these cases, it is necessary to use these restrictive mechanisms rationally. We notice that the legislation reviewed, in line with the narrative of the alleged threats from domestic and foreign enemies, frequently appeals to protecting national security, public order, and morals. In this regard, the problem is not to downplay the importance of these national security reasons. What is of concern is the widespread use of such arguments to disguise censorship in pursuing and punishing dissent.

In Venezuela, for example, we find executive orders which created the Strategic Center for Homeland Security and Protection (Centro Estratégico para la Seguridad y Protección de la Patria, CESPPA), the Special Brigade against Violence-Generating Groups and the Popular System of Protection for Peace (Sistema Popular de Protección para la Paz, SP3), all focused on intelligence and espionage activities to detect and neutralize any threat. With such kind of excuse, large amounts of private citizens' data are gathered without their knowledge, without the possibility of accessing them, all under a shroud of secrecy and without a court order buttressing such actions. Cuba has regulations with similar purposes: The Law for the Reaffirmation of Dignity and Sovereignty (Ley de Reafirmación de la Dignidad y Soberanía, Law 80 a.k.a. anti Helms-Burton Law) and the Law of Protection of National Independence and Economy (Ley de Protección de la Independencia Nacional y la Economía, a.k.a. "Gag Rule"). Both support, to a great extent, government action against the enemy, that is, the United States, and its possible domestic allies.

The use of communication and information technologies is part of the modalities of access to media that both nations are targeting. In the full-length paper, we demonstrate that these governments also have a double standard regarding them. On the one hand, the Constitution of Cuba declares its commitment in the construction of an information and knowledge society, in favor of the democratization of cyberspace. Nevertheless, within its borders, Cuban citizens do not have easy, safe, and affordable internet access. Recently, two orders from ministries (departments of the Executive) imposing severe requirements on wireless networks were issued. Citizen initiatives like those of the Street Network (SNet), which wove a citizen network outside the state-run Wi-Fi, are thereby blocked.

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In Venezuela, the use of technology does not escape the situation described above. Use of and access to the internet went from a priority policy for the development of the country to a luxury expenditure. No longer a priority, they became an instrument of surveillance and restriction of access because authorities have established the practice of blocking the Internet every time they consider that citizens may access information inconvenient for the government. In addition, opinions expressed on social media can be considered hate speech and a threat to the peace of the nation, under the Law against Hate and for Peaceful Coexistence (Ley contra el Odio y por la Convivencia Pacífica), passed by the National Constituent Assembly[1].

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These regimes do not promote open government practices, which put technology in service of access to information, open data to institutions and citizens, thereby avoiding the opacity that encourages corruption at different levels.

This whole scenario not only affects the freedom of expression and opinion but also hinders the free exercise of journalism, under the pressure of scattered, dubiously legitimate regulations posing a threat to the personal security and freedom of those who exercise it. By compromising the practice of journalism, people are deprived of their right to access diverse and plural information, that is, freedom of expression is violated in its social or collective dimension.

In Venezuela, journalists work within a legal and deontological framework that commits them to respect freedom of expression, democracy and accurate information. However, access to public information sources is forbidden, they may be subject to slander or libel lawsuits with prison sentences, or accused of instigating hatred. Cuba, on the other hand, has no practice law for journalists and the government only recognizes as such those who work at state-run media. Those who have exercised that profession outside the scope of state-owned media incur the crime of professional usurpation (usurpation of legal capacity) and, if the government considers that the information favors the enemy, they could be prosecuted under the Gag Rule.

An overall review of statutes has shown us a grim outlook worthy of further research allowing us to fix our eyes, in greater depth, on very sensitive issues for freedom of expression, access to public information, protection of the enormous amount of private data that governments handle without any protection criteria.

Furthermore, it is an opportunity for journalism to rethink its role before citizens who, now aided by technology, produce information beyond news delivered by journalists. That same technology is what has put them in the place of rethinking business models different from those currently in place on mainstream media, without diminishing their commitment to citizens, plurality and democracy.

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