

## CHAPTER VI

### RIGHT TO FREEDOM OF EXPRESSION AND THOUGHT

#### **A. Introduction: The right of free expression and the rule of law**

365. The right of free expression is essential for the development and strengthening of democracy and for the full enjoyment of human rights. Full recognition of freedom of expression offers a fundamental guarantee for ensuring the rule of law and democratic institutions. This has been acknowledged on many occasions by different sectors of civil society, international organizations, and most nations.[170]

366. The American Convention on Human Rights, Article 13, enshrines the right of free expression in the following terms:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or,

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

367. Protecting the right to freely express ideas is fundamental in ensuring full currency for the other rights: without freedom of expression and information, full democracy cannot exist; and when democracy is absent, the history of the hemisphere has shown that rights ranging from the right to life to that of property are seriously endangered. Clearly, there is a direct relationship between the exercise of free expression and opinion and democratic existence.

368. The Inter-American Court has consistently emphasized the importance of this right, ruling that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.[171]

369. Freedom of expression covers the right of all individuals to seek, receive, and impart information and ideas of all kinds. Thus, this right has a dual dimension: it is both individual and social. In this regard, the Court has said that this dual aspect:

requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.[172]

370. The Inter-American Commission on Human Rights asked the office of the Special Rapporteur for Freedom of Expression (“the Rapporteur’s office”)[173] to prepare this chapter. The Rapporteur’s office did so, chiefly on the basis of the information gathered during the on-site visit, together with other information and complaints received subsequently. The Commission approved the text that was submitted and decided to incorporate it into this Report.

371. The IACHR has paid particular attention to the state of Venezuela’s freedom of expression in the annual reports submitted by the Rapporteur’s office and approved by the Commission, and in the press releases that it has from time to time issued in connection with this matter.[174] The IACHR is concerned because the information gathered during the May 2002 visit indicates that many of the comments made by the Special Rapporteur for Freedom of Expression remain valid as of the drafting of this report.

372. The IACHR and the Rapporteur’s office have noted that much of the Venezuelan media is critical of the government. However, for journalists, the consequences of expressing such opinions include acts of intimidation, some serious. The uninterrupted continuation of those actions could restrict free speech by fostering a climate unfavorable to the pursuit of journalistic endeavors. The IACHR understands that since criticisms of the government are in fact made, it is difficult to speak of widespread self-censorship within the mass media; however, the emergence of potential self-censorship on the part of reporters can, in some cases, be seen, with journalists required to change the tasks they undertake[175]. The protection of free speech cannot be measured solely by the absence of censorship, newspaper shutdowns, or arbitrary arrests of those who freely express their ideas; it also entails the existence of a climate of security and guarantees for communication workers as they discharge their function of informing the public.

373. In addition, the Commission notes the bias found in some Venezuelan media outlets, which reflects the extreme polarization that characterizes the country. As one example of this, at the end of its visit the Commission stated that:

The IACHR has been concerned by the scant information, or at times total lack of information, available to Venezuelan society during the days of the institutional crisis of April. Although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically-motivated editorial decisions, this should be the subject of an essential process of reflection by the Venezuelan media about their role at that moment.[176]

374. In this regard, the IACHR defends the right to follow any editorial line; this does not imply, however, that it shares the position chosen or that it does not regret the loss of objectivity.

375. In Venezuela, the IACHR and the Rapporteur's office have identified three areas related to freedom of expression that warrant particular attention: The first has to do with harassment, attacks, and threats made against media workers, particularly those that work in public spaces, and the failure to investigate those incidents. The second involves the existence of court decisions and draft legislation that, if enacted, could adversely affect the Venezuelan people's full enjoyment of freedom of expression. The third relates to the administrative proceedings initiated by CONATEL and the Ministry of Infrastructure against media outlets in connection with the programming content, applying legal provisions that are in breach of the inter-American system.

376. The following sections will deal with those areas which, for the purposes of this report, are of particular relevance with respect to freedom of expression in Venezuela. Attention is also paid to other important issues, such as media ethics, access to information, and the requirements of truthful reporting.

## **B. Threats, harassment, and attacks against journalists and the media**

377. The uninterrupted continuation of acts of aggression and intimidation directed at media workers in Venezuela reflects the deepening of the institutional and political conflict that has affected the country over the past two years. The legitimate endeavors of media workers in reporting on different situations that affect the country's social, cultural, and economic life and, in particular, the political situation and human rights, have encouraged certain sectors to attempt, in different ways, to silence them.

378. The IACHR and the Rapporteur's office have noted the repeated occurrence of verbal and physical attacks in recent years. There has been no end to the attacks and threats made against media workers, particularly those covering events, political gatherings, and activities relating to the security forces. Before, during, and after its on-site visit, the IACHR was told that reporters working in public spaces were the targets of attacks and harassment. The prevailing general situation in Venezuela has fueled a climate of constant aggression and threats against freedom of expression and, in particular, against the physical integrity of reporters, camera operators, photographers, and other media workers. The recorded incidents range from threats and personal injuries to violations of the right to life, such as the murder of Mr. Jorge Tortosa, a press photographer with *Diario 2001*, during the events of April 11, 2002.

379. A large number of cases dealing with threats and other forms of harassment against journalists have been lodged with the IACHR. On several occasions since late 2001, therefore, the IACHR has requested the adoption of precautionary measures to protect different media workers and media outlets. These include workers and/or executives with the following media companies: *El Nacional*, *El Universal*, *RCTV*, *Globovisión*, *Así es la Noticia*, and *La Razón*. As an example, the IACHR offers the following extracts from the information it has received regarding attacks on reporters: On April 11, Hugo Rafael Sánchez Uzcátegui, an *RCTV* correspondent in Zulia State, received numerous intimidating telephone calls, some threatening him with death, while he was covering the public gathering in front of the *PDVSA* building in Maracaibo. In the early morning of Friday 12, after attending a press conference called by the military high command in Zulia State at the headquarters of the 1st Infantry Division, he was persistently followed by an unidentified automobile. On April 11, members and/or supporters of the government party, the *MVR*, threw stones at reporter Edward Rodríguez and cameraman Hernán Terán, who were in the metropolitan area of Puerto La Cruz – Barcelona, Anzoátegui State, covering a march by the Workers' Federation of Anzoátegui State. On April 13 they were again attacked while attempting to report on protests and looting, and violent threats were made against them.

380. In late 2002 and early 2003, the Commission received information about attacks on the following media workers: José Rodríguez of the daily *El Impulso*; Martín Urteaga

of the daily *El Informador*; Miguel López of Telecentro; Clara Reverol and Gusravo Escalona of Televen; Cristián Rodríguez of Promar TV; Yleana Brett of *Diario Hoy*; and Julio Torres of Venevisión. All these incidents occurred while they were covering a demonstration of government supporters and opponents in the city of Barquisimeto, Lara State. In Caracas, Fernando Malavé of *Diario 2001* and José Antonio Dávila of CMT. In the same city, reports indicate that the journalists Luis Alfonso Fernández of Venevisión and Aymar Lorenzo de Globovisión were beaten by police officers. Mauricio Cabal, cameraman Rubén Brito, and assistant Marcos Martínez of Venevisión were threatened at the entrance to the state-owned oil company *Petróleos de Venezuela (PDVSA)* in the city of Anaco, Anzoátegui State, and their vehicle was damaged. Verioska Velasco, cameraman Luis Mata, and assistant Alfonso Vásquez of *Promar Televisión*, and cameraman Samuel Sotomayor of RCTV were attacked in the city of Barquisimeto. On January 12, Héctor Castillo, a photographer with the Caracas evening paper *El Mundo*, was injured by a baton round while he was covering clashes between members of the armed forces and participants in an opposition march that was attempting to reach the Los Próceres monument, near the military base known as Tiuna Fort.

381. Mention could also be made of a number of examples that serve to indicate the continued perpetration of attacks against media workers: On January 7, 2003, a van belonging to *Puerto Visión* from Puerto Cabello, Carabobo State, was stoned and beaten with iron bars while it was carrying a team of reporters led by Humberto Ambrosino. On January 9, a vehicle carrying reporters from *El Correo del Canoní* was attacked in Puerto Ordaz, Bolívar State. On January 14, hooded individuals on motorcycles attempted to set fire to a vehicle belonging to the Televen network. In light of this, the IACHR has, on several occasions since late 2001, requested the adoption of precautionary measures to protect different media workers and media outlets. These include workers and/or executives with the following media concerns: *El Nacional*, *El Universal*, RCTV, Globovisión, *Así es la Noticia*, and *La Razón*.<sup>[177]</sup>

382. Another case worthy of note is that of the Ecuadorian journalist Mauricio Muñoz Amaya, who was hit by gunfire on November 4, 2002, in the vicinity of the National Electoral Council (CNE) during a Democratic Coordinator march carrying more than two million citizens' signatures calling for a referendum to recall President Hugo Chávez. That same day, November 4, Héctor Castillo, a journalist-cum-photographer attached to the daily *El Mundo*, was beaten up by government supporters during the same event. On September 22, unidentified individuals shot firearms at the home of Carlos Barrios, the director of radio station *Astro 97.7*.

383. During 2002, four bomb attacks were carried out in the vicinity of the premises of the broadcaster Globovisión. The last incident took place on November 17, 2002. Later,

on January 31, 2002, a bomb was thrown in front of the offices of Así es la Noticia; and, on October 19, an explosive device detonated at the premises of Unión Radio in Chacao municipality, Caracas.

384. The IACHR has also noted that sectors of the government are following a line of discourse tending toward the professional discrediting of journalists and the filing of administrative procedures that could lead to the suspension or cancellation of broadcasting licenses and/or permits.

385. To summarize, the situation described above has the effect of intimidating media workers: many are afraid to identify themselves as reporters out of fear of possible reprisals.

386. According to the ninth principle of the IACHR's Declaration of Principles on Freedom of Expression,[178] threats and attacks against social communicators violate the fundamental rights of individuals and strongly restrict freedom of expression. Consequently, irrespective of the actions of the media that the government has repeatedly denounced, attacks on media workers and facilities are inadmissible and unjustified. The IACHR again points out that under Article 1.1 of the American Convention, not only do the states parties agree to respect the rights and freedoms it recognizes, they also undertake to guarantee their free and full enjoyment by all individuals subject to their jurisdiction. With respect to "ensuring" the free and full exercise of the Convention's rights, the Court has ruled that this obligation implies:

The duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[179]

387. It is not only the protection bodies of the inter-American system have ruled that the pursuit of journalistic endeavors must be free of dangerous consequences; in the Plan of Action issued by the Third Summit of the Americas, the Heads of State and Government said that:

Ensure that national legislation relating to freedom of expression is applied equitably to all, respecting freedom of expression and access to information of all citizens, and that journalists and opinion leaders are free to investigate and publish without fear of reprisals, harassment or retaliatory actions, including the misuse of anti-defamation laws.

388. In light of the vulnerable situation faced by media workers during 2002, the IACHR asked the Venezuelan State to adopt precautionary measures on eight occasions, many of which were extended in order to protect the lives, persons, and freedom of expression of journalists, camera operators, and photographers who had been attacked. The Inter-American Court of Human Rights was also asked to issue provisional measures. The Court, in a resolution issued last February 21, reported that the State had not complied. The Commission noted its concern at this failure to comply with the provisional measures granted by the Court and the precautionary measures requested by the Commission. In July 2003 the IACHR once again decided to ask the Court to extend provisional measures to protect two journalists. The IACHR again states that complying with its decisions and those of the Court is essential if the human rights of journalists in Venezuela are to be guaranteed and protected.

389. In addition to this, the IACHR and the Rapporteur's office have been informed that these attacks on media workers and facilities have not been the subject of complete, exhaustive investigations.[180] Impunity in investigations helps create a climate of intimidation and harassment for full enjoyment of free speech in Venezuela.

390. In this regard, the Inter-American Court of Human Rights has ruled that:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.

391. The IACHR maintains that the Venezuelan State's failure to carry out an effective and complete investigation of these attacks on social communicators and its failure to impose criminal punishments on the planners and perpetrators thereof is particularly grave on account of its impact on society. Crimes of this nature frighten not only other media workers; they also intimidate the citizenry in general by making them afraid to report abuses, violations, and crimes of all kinds. The effect can only be avoided through the decisive action of states in publicly condemning such acts of aggression against media workers and punishing the perpetrators. In this way the State can send society a strong and direct message indicating that there will be no tolerance for those who engage in such serious violations of the right of free expression.[181]

392. The IACHR and the Rapporteur's office have on several occasions asked the highest authorities to condemn these acts.[182] This occurred after President Hugo Chávez Frías made certain speeches against the media, which could have been interpreted by his followers as calling for aggression against the press. The IACHR, in requesting the first precautionary measures to protect journalists, was able to note that on occasions, President Chávez's speeches were followed by acts of physical violence. President Chávez, like all the inhabitants of Venezuela, has the right to express himself freely and to offer his opinions about those he believes to be his opponents. Nevertheless, his speeches should take care to avoid being interpreted as incitations to violence. Consequently, the IACHR and the Rapporteur's office are pleased to note the statement made by President Hugo Chávez Frías in April 2003, in which he called for "journalists to be respected and to be given the treatment they deserve." [183] Given the mood described in this report, the IACHR believes that statements of this kind must be neither isolated nor sporadic; on the contrary, they should be offered by the highest echelons of the government on a repeated basis.

393. Finally, the IACHR and the Rapporteur's office reaffirm that it is the responsibility of the State, as a function of its duty of ensuring the human rights as described above, to extend protection to media workers through energetic actions aimed at disarming those sectors of the civil population that operate outside the law and that might be involved in these incidents.

### **C. Comments on the legislative bill and the decisions of the Supreme Court of Justice that could violate freedom of expression**

1. Draft legislation on social responsibility in radio and television

394. Since at least November 2002,[184] the IACHR and the Rapporteur's office[185] have been aware of the existence of a draft Law on Social Responsibility in Radio and Television, intended to regulate the activities of those media in Venezuela.[186] It should be noted that this draft is still being debated by the National Assembly and expressions of concern in connection with it have been made by both the IACHR and the Rapporteur's office.[187]

395. The IACHR and the Rapporteur's office note that the draft was approved on first discussion by the Legislative Assembly. Later, on May 7, 2003, they were informed that the Legislative Assembly's science, technology, and media committee had approved a new version of the draft Law on Social Responsibility in Radio and Television that would be the subject of the second discussion. The amended bill contains 36 articles, which means that its extent was substantially reduced.

396. The articles deleted included No. 115.11[188] which, in the original draft, established punishments for desacato contempt and for contents that promoted disrespect toward the authorities. Also omitted[189] is the creation of the "National Radio and Television Institute," under state control and with heavy influence from the executive branch in its conformation; in light of its powers, it could have been used to control information unfavorable to the government.[190] For example, the President of the Board, who would have been appointed by the President of the Republic, could order precautionary measures in the same administrative procedures as he had initiated.[191]

397. These modifications are positive but inadequate: as the IACHR and the Rapporteur's office understand, the draft under discussion still contains provisions that could undermine the freedom of expression of the Venezuelan people.[192]

398. The IACHR points out that although regulating radio and television programs is compatible with the American Convention when carried out in accordance with the strict parameters of Article 13, the new bill being discussed still contains a series of restrictions, definitions, and regulations applicable to the content of radio and television programs that, if enforced, could violate the Convention's precepts. Moreover, the sanctions provided for are so stiff that, in certain cases, they could lead to self-censorship on the part of the media, which would seriously undermine enjoyment of the right in question.

399. The restrictions in terms of truthfulness, impartiality, and timeliness[193] that the bill would impose on information run contrary to the jurisprudence of the inter-American system for the protection of human rights. The Inter-American Court has ruled that: “One cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor.”[194] The IACHR offers a similar interpretation in the seventh principle of its Declaration of Principles on Freedom of Expression.

400. Breaches of the concepts set forth above (truthfulness, impartiality, and timeliness) can lead to repercussions. Consequently, in light of the international standards that exist for protecting freedom of expression, it is a source of concern that laws such as this could encourage self-censorship, the result of journalists fearing punishments for breaches of conditions that have been ruled inadmissible by the inter-American system’s bodies. The IACHR also believes that a breach of the truthfulness requirement cannot be a reason for imposing subsequent punishment; this is because of the need to distinguish information from opinion, and public from private figures, as will be explained below.

401. The bill still imposes restrictions on the content of radio and television programs, and this, in conjunction with the vague phrasing used in several of its provisions, could also lead to self-censorship by the media in a fashion similar to that described above. For example, the bill would prohibit the transmission, during a protected timeslot, of “commonly used images and sounds that, while not obscene... are crude in nature” (Article 5.1).[195] The extreme subjectivity of this classification, together with the fact that the bill offers no parameters for interpreting these labels and, most particularly, the severity of the punishments potentially applicable to those who commit infractions, forces the IACHR and the Rapporteur’s office to conclude that media self-censorship would be the certain outcome if the initiative currently before the National Assembly were enacted.[196]

402. Equally worrisome is the requirement placed on the media to reveal their sources, even in the situations set forth in Article 4 of the bill,[197] given the poor clarity of the phrasing and the fact that revealing sources is the rule and not the exception. The selection of information sources is part of the ethics and responsibilities of journalism, which can in no circumstance be subjected to state scrutiny. The Commission holds that the right to protect confidential sources is an ethical duty inherent to journalistic responsibility. Furthermore, the IACHR states that this issue also involves the interests of the sources, in the sense of being able to rely on confidentiality – when, for example,

information is given to the journalist on such conditions. The IACHR holds that revealing sources of information has a negative and intimidating effect on journalistic investigations: seeing that journalists are obliged to reveal the identities of sources who provide them with information in confidence or during the course of an investigation, future sources of information will be less willing to assist reporters. The basic principle on which the right of confidentiality stands is that in their work to provide the public with information, journalists perform an important public service by gathering together and disseminating information that would otherwise not be known. Professional confidentiality has to do with the granting of legal guarantees to ensure anonymity and to avoid potential reprisals that could arise from the dissemination of certain information. Confidentiality is therefore an essential element in journalism and in the task of reporting on matters of public interest with which society has entrusted its journalists.[198]

403. The European Court of Human Rights has recognized the importance of the protection of journalistic sources as “one of the basic conditions for press freedom.”[199] The European Court ruled that:

Without such protection, sources may be deterred from assisting the press in informing the public in matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.[200]

404. The Inter-American Commission on Human Rights also indicated, in adopting the Declaration of Principles on Freedom of Expression, that protecting sources is a part of the general guarantee of press freedoms.[201] It should be emphasized that this right does not constitute a duty, as social communicators are not obliged to protect the confidentiality of their sources, except for reasons of professional conduct and ethics.[202]

405. These are some of the bill’s provisions that could undermine free expression in Venezuela. Given that the bill is still being discussed, however, the IACHR and the Rapporteur’s office hope that the debate in the Legislative Assembly will pay attention to the proposed legislation’s compatibility with the State’s international obligations with respect to freedom of expression.

2. Decision of the Supreme Court of Justice of June 12, 2001 (“Judgment 1,013”)

406. At its 118th regular session, in its Report No. 92/03, the Commission declared petition 0453/01, Elías Santana et al., to be inadmissible. In that report, the Commission instructed the IACHR’s Special Rapporteur for Freedom of Expression to prepare a special report on Judgment 1,013 and the inter-American system’s human rights protection standards applicable to freedom of expression under the American Convention and the Declaration of Principles on Freedom of Expression. Article 41 of the American Convention empowers the Commission to prepare such studies or reports as it considers advisable and to serve recommendations on OAS member states with respect to the adoption of measures in favor of human rights within the framework of their domestic laws and constitutional provisions. This instruction was a partial reflection of the importance of the debate surrounding the content of the judgment and of the legitimate interest shown by society in general and the international community about the possible impact on freedom of expression that would follow if the Court’s interpretations were applied by other judicial bodies.

407. Judgment 1,013 was analyzed by the IACHR in an individual petition[203] lodged with it by Elías Santana, Cecilia Sosa, the Venezuelan Press Bloc, and others. The petitioners claimed that the State had violated the right to a fair trial, freedom of expression, right of reply, right to effective remedies, right to participate in government and to equal access to public office, right to equality before the law, right of equal protection, right to property, the scope of restrictions, standards of interpretation, all in conjunction with the State’s obligation of ensuring those rights and implementing domestic legal effects enshrined in Articles 8, 13, 14, 25, 23(a)(c), 24, 21.1, 30, 29(a)(b), 1, and 2 of the American Convention on Human Rights.

408. The IACHR and the Rapporteur’s office note the controversy that this judgment created[204] since the opinions on which the sentence was based were to be, in the Chamber’s view, “binding doctrine for the interpretation of Articles 57 and 58 of the Constitution.” This claim is not merely theoretical, since it has already been used in that way by the Court, as can be seen in the sentence described in the following paragraph.[205] Irrespective of the inadmissibility decision issued by the IACHR, and in compliance with the instruction served on the Rapporteur’s office, the following paragraphs offer a series of thoughts on this matter.

409. First of all, the inter-American system's international instruments for safeguarding freedom of expression clearly protect the right of all individuals to seek and receive information.[206]

410. In turn, Article 14.1 of the Convention, dealing with the right of reply, provides that:

Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

411. One of the basic notions behind these instruments and the rights they enshrine is the full enjoyment, on a nondiscriminatory basis, of the right of free expression and the right of reply. In this respect, provisions that discriminate against individuals and keep them from fully participating in their countries' political, economic, public, and social undertakings are inadmissible. The American Convention on Human Rights protects the right of nondiscrimination as a basic pillar in strengthening and upholding the hemisphere's democratic systems.[207]

412. The exclusion of any sector of society from exercising the rights guaranteed by the Convention hinders the broad development of democratic, pluralistic societies and exacerbates intolerance and discrimination. In the case of María Eugenia Morales de Sierra from Guatemala, the Commission said that "a norm that deprives a portion of the population of some of its rights – for example, because of race – automatically injures all the members of that race." [208] Thus, for example, denying media workers the right to reply would constitute a limitation of a right enshrined in the American Convention with respect to a part of the population – in this case, journalists and similar professions.[209]

413. Secondly, with respect to the conditions placed on information – such as requiring its truthfulness or prior verification – the IACHR refers to the comments given above. The IACHR and the Rapporteur's office again state that such prior conditioning undermines the exercise of free expression.

414. The demand for reasonable verification of all information broadcast<sup>[210]</sup> lies beyond the bounds set by the Convention and does not comply with the legitimate goals set down in Article 13.2 thereof: protecting the rights and reputations of others, or protecting national security, public order, or public health and morals. With respect to the proportionality of the restriction imposed, the Inter-American Court has said that “if there are various options to achieve” one of the legitimate objectives, “that which least restricts the right protected must be selected.”<sup>[211]</sup> In addition, the restriction must be “closely tailored to the accomplishment of the legitimate governmental objective necessitating it.”<sup>[212]</sup>

415. The “reasonable verification” requirement creates the possibility of any member of society requesting that a journalist be legally punished. Such a possibility contravenes the spirit of Article 13.2, because it is not necessary in ensuring a legitimate objective. The stated aim of this requirement is to protect the right to receive truthful information. But the standards state that all individuals have the right to receive information of all kinds, and it is the debating and exchanging of ideas that offers the best way to seek out the truth. The IACHR and the Special Rapporteur note that imposing, *ante facto*, the requirement of solely reporting truthful information serves only to deny the possibility of pursuing the debate necessary to reveal the truth.

416. In addition, the ideological leaning of the person making a given statement is an inadequate element for issuing a verdict on whether that statement is true or false. The IACHR understands that any ideological tendency can contribute to public debate, and so restricting that debate to those who publish in media outlets with a given ideological composition, even a balanced one, is inappropriate under the terms of Article 13 of the Convention.<sup>[213]</sup> This type of demand is supposedly justified by the fact that by providing society with information on the ideologies supported by media workers, the citizenry can more effectively assess the kind of information they receive. On the contrary, the IACHR and the Special Rapporteur believe that such justifications underestimate the capacity of democratic societies to identify information that responds to a given ideological leaning without the imposition of government controls. The right of freedom of expression and the right of access to information are indivisible; hence, the best way to ensure that society receives the information it needs to decide on matters of public interest is by guaranteeing a plurality of information and media voices, with a minimum of restrictions. We also note that requiring media outlets to identify themselves in ideological terms can lead to abuses by the government in controlling voices critical of it.

417. Thirdly, the IACHR points out that any precept that favors public officials by enabling them to impose criminal sanctions on criticisms made of them or their offices is incompatible with the provisions regarding the subsequent imposition of liability set forth in the Convention.[214] A number of comments on this matter are offered in section 2.III of this chapter.

418. In fourth place, and with particular reference to right of reply, the Rapporteur's office repeats and elaborates on some of the ideas that were offered in the inadmissibility ruling in the case of Santana et al.

419. The Commission cannot ignore the controversy arising from the scope of the right of reply in connection with the right of free expression. Among the conflicting arguments, on the one hand are those who believe that the right of reply limits freedom of expression by forcing the media to transmit, free of charge, information that does not necessarily agree with the media outlet's editorial line; on the other side stand those who hold that right of reply strengthens freedom of expression by encouraging and facilitating a more intense exchange of information. Consequently, the scope of the right of reply must be closely watched to ensure it does not undermine the right of free expression.

420. Article 14 of the American Convention provides that:

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

421. The Commission understands that Article 14.1 of the American Convention guarantees the right of reply through the media outlet involved and under the conditions set by law. The Inter-American Court has already provided an analysis of this in its Advisory Opinion on the Enforceability of the Right to Reply or Correction, OC-7/86. On that occasion it determined that Article 14.1 did not indicate whether the victims were entitled to an equal or greater amount of space in which to reply; when the reply, once received, had to be published; within what time frame the right could be exercised; what language was admissible; etc. Under Article 14.1, these conditions are such “as the law may establish.”[215] The phrasing “as the law may establish” refers to a number of conditions related to the enjoyment of this right. The phrase refers to the effectiveness of the right in the domestic sphere, and not to its creation, existence or enforceability on the international plane. Consequently, the Court ruled that:

The fact that the States Parties may fix the manner in which the right of reply or correction is to be exercised does not impair the enforceability, on the international plane, of the obligations they have assumed under Article 1(1). That Article contains an undertaking by the States Parties “to respect the rights and freedoms” the Convention recognizes and “to ensure to all persons subject to their jurisdiction the free and full exercise of these rights and freedoms.” If for any reason, therefore, the right of reply or correction could not be exercised by “anyone” who is subject to the jurisdiction of a State Party, a violation of the Convention would result which could be denounced to the organs of protection provided by the Convention.[216]

422. The Commission notes that under Article 14 of the Convention, an alleged victim can invoke the right of reply to obtain immediate rectification through the publication or transmission, in the same media outlet, of the verifiable truth regarding the incident that was distorted by the reporter in question. Such actions can be taken only with factual information, and not in connection with commentaries or opinions. With reference to the expressing of opinions, the European Court of Human Rights has ruled that there are circumstances in which a value judgment must be backed by facts that are sufficiently solid so as to lead to that opinion. This position consequently allows the rectification of factual information in statements of opinion that are based on verifiable facts. In such circumstances, it would be necessary to demonstrate a relationship between a value judgment and the facts supporting it on a case-by-case basis.[217]

423. In the inter-American system, with respect to the question of what kind of expressions (statements of fact or opinions) can replies or rectification be requested for, the IACHR would like to point out that there is a substantial discrepancy between the wording of the English-language version of Article 14(1) on the one hand and that of the Spanish, Portuguese, and French versions on the other.

424. Article 14(1) of the Spanish version says:

1. Toda persona afectada por informaciones inexactas o agraviantes emitidas en su perjuicio a través de medios de difusión legalmente reglamentados y que se dirijan al público en general, tiene derecho a efectuar por el mismo órgano de difusión su rectificación o respuesta en las condiciones que establezca la ley.

425. Article 14(1) in the English version reads:

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

426. The French version of Article 14(1) provides:

1. Toute personne offensée par des données inexactes ou des imputations diffamatoires émises à son égard dans un organe de diffusion légalement réglementé et qui s'adresse au public en général, a le droit de faire publier sa rectification ou sa réponse, par le même organe, dans les conditions prévues par la loi.

427. In the Portuguese-language version, Article 14(1) states:

1. Toda pessoa atingida por informações inexatas ou ofensivas emitidas em seu prejuízo por meios de difusão legalmente regulamentados e que se dirijam ao público em geral, tem direito a fazer, pelo mesmo órgão de difusão, sua retificação ou resposta, nas condições que estabeleça a lei.

428. In its Advisory Opinion on the Enforceability of the Right to Reply or Correction, the Inter-American Court noted the difference between the original texts – all of which are certified as being equally authentic – but made no statement regarding how the discrepancy might affect the scope of the right protected by Article 14(1).

429. Article 13 of the American Convention protects the expression of both information and ideas. The broad concept of protection enshrined in Article 13 was not followed by the final language of Article 14 of the American Convention in its Spanish, Portuguese, and French versions. Those versions expressly exclude all reference to ideas from their wording, protecting the right of reply solely with respect to inaccurate or offensive information. Omitting from the text the broad treatment given to different types of expression in Article 13 would seem to indicate that the Convention expressly excludes statements of opinion from those expressions to which the right of reply can apply.[218]

430. The IACHR elaborates: the jurisprudence developed by the inter-American system maintains that the falsehood of an idea is clearly impossible to verify.[219] Similarly, within the European system, a judgment issued by the European Court ruled that: “While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfill and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10.”[220] Demanding “truthfulness” in cases involving value judgments can lead to the almost automatic censorship of all information that cannot be proven; this would smother practically all political debate based chiefly on ideas and opinions of an essentially subjective nature. The possibility of correcting or responding to an opinion would pose the risk of an endless succession of interventions that would stifle the media’s own expression, thereby fueling the threat of self-censorship. Admitting the right to reply with respect to an opinion with which readers are not in agreement or which they believe to be offensive to the right of privacy or reputation would create an interminable chain of rectifications and replies.[221] In light of the above, if the purpose of the right of reply is to correct inaccurate or false information, then opinions not subject to such verification must be excluded from it.

431. With reference to the textual discrepancy in the different versions of Article 14 of the Convention, the IACHR believes that this issue must be resolved through the different methods of interpretation offered by international law. In interpreting the Convention, the Court has used traditional international law methods, relying both on general rules of interpretation and on supplementary means, as dealt with in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.[222]

432. Article 32 of the Convention de Vienna stipulates that: “Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.” Article 33.4 of the Vienna Convention on the Law of Treaties provides that: “when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32/39 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.”[223]

433. To achieve this, the IACHR believes a complementary means of interpretation should be used, to analyze the right granted by Article 14 in terms of the right of reply to ideas and, in so doing, reference should be made to the preliminary work that took place in drafting the Pact of San José.

434. In the preliminary documents and proceedings of the Inter-American Specialized Conference on Human Rights, the meaning and wording of Article 14 of the Convention was debated intensely and modified extensively.

435. In its earliest version in Spanish, the article read as follows: “toda persona afectada por informaciones o conceptos inexactos y agravante emitidos en su perjuicio o a través de medios de difusión que se dirijan al público en general, tienen derecho a efectuar por el mismo órgano de difusión, en la misma forma y gratuitamente su rectificación o su respuesta.” The term conceptos in the original Spanish documents could be interpreted as equating to the “ideas” used in the current English-language text of Article 14.1.

436. Because of the heated debate unleashed by this article’s contents, a Working Group was set up during the discussions. The group was composed of the delegates of Argentina, Nicaragua, Panama, Mexico, Ecuador, Colombia, and the United States; and Prof. Justino Jiménez de Aréchaga, a member of the IACHR at the time, was invited to serve as an advisor. The Working Group, under instructions to draft the text of the article, discussed and voted on the new text as agreed upon, which is the current wording of the Spanish version of Article 14.1. However, the text of the English version retained the term “ideas,” and incorporated the other amendments agreed on by the Working Group.

437. Finally, the IACHR understands that were access to the media allowed for the purpose of rectifying or replying to the different ideas or opinions expressed by journalists, interviewees, and other speakers, the result would be to dissuade the transmission or publication of controversial issues. Moreover, media outlets would lose editorial control over their publications and would choose to cover only superficial stories.[224]

### 3. Supreme Court Decision of July 15, 2003

438. On July 15, 2003, the Constitutional Chamber of the Supreme Court of Justice ruled on a motion seeking the annulment, on grounds of unconstitutionality, of Articles 141, 148, 149, 150, 151, 152, 223, 224, 225, 226, 227, 444, 445, 446, 447, and 450 of the Criminal Code. Some of these articles define the crime of desacato contempt; others allow the use of common criminal law provisions to the same end. The Supreme Court upheld most of these precepts.

439. The IACHR and the Special Rapporteur offer an analysis of these articles of Venezuela's law in the section dealing with those precepts that, if enforced, would undermine the right protected by Article 13 of the Convention. Irrespective of that effort, in this section the IACHR notes its concern regarding the Supreme Court's decision, which upholds laws that the IACHR believes to be incompatible with that article of the Convention.

440. With respect to this issue, in a 1995 report the Inter-American Commission studied whether desacato laws were compatible with the American Convention on Human Rights.[225] In summary, the arguments were the following: (a) desacato laws provide public officials with a higher level of protection than private citizens, in direct contravention of the basic principle of democratic systems whereby checks such as public oversight are placed on the government to prevent and control abuses of its coercive powers; and (b) desacato laws dissuade criticism through the fear of legal action or fines that they instill in people. In addition, desacato laws do not allow the mechanism of *exceptio veratit*, since, in general, they rule that affronts to public officials are consummated with the making of the statement itself. Moreover, desacato laws cannot be justified by stating that their goal is to defend "law and order" (a permissible reason for regulating free speech under Article 13), since that would be in breach of the principle

that a properly functioning democracy is the best way to uphold the public order. In contrast to the special protection granted to public officials by desacato laws, the Commission notes that the doctrine established by the Supreme Court of Justice in Judgment 1,013 denies journalists and media workers the right to reply, even following alleged affronts to their persons.

441. The Constitutional Chamber's ruling also provides that:

with respect to communications and in application of other constitutional precepts, the law can prevent the dissemination of information that leave other provisions or principles of the Constitution void of content.

442. Irrespective of the specific cases referred to in the decision, this general claim is a source of concern to the IACHR in that it contradicts the ruling made by the Inter-American Court of Human Rights in its Advisory Opinion OC-5 of November 13, 1985. On that occasion, the Court said that prior censorship was an extreme violation of the right of free expression in that "governmental power is used for the express purpose of impeding the free circulation of information, ideas, opinions or news... The violation is extreme not only in that it violates the right of each individual to express himself, but also because it impairs the right of each person to be well informed, and thus affects one of the fundamental prerequisites of a democratic society." In OC-5 the Court also ruled that prior censorship "is always incompatible with the full enjoyment of the rights listed in Article 13, but for the exception provided for in subparagraph 4 dealing with public entertainments, even if the alleged purpose of such prior censorship is to prevent abuses of freedom of expression. In this area any preventive measure inevitably amounts to an infringement of the freedom guaranteed by the Convention." This aspect of the Court's jurisprudence was reaffirmed in its ruling in the "Last Temptation of Christ" case.[226] In turn, the IACHR has ruled that: "Article 13 of the American Convention expressly prohibits prior censorship except for the regulation of access to public entertainments for the moral protection of childhood and adolescence." [227]

443. Consequently, and over and above the other reasons for concern regarding issues set forth in the judgment, it is clear that upholding desacato crimes, as the Supreme Court's decision does, is in breach of the jurisprudence of the inter-American system.

#### **D. Administrative proceedings against television stations**

444. The IACHR and the Rapporteur's office have been informed of administrative proceedings begun by the Ministry of Infrastructure against a number of Venezuelan television stations. These proceedings are based on legislation that runs contrary to full enjoyment of freedom of expression and could lead to the cancellation of the telecommunications service licenses or permits granted to those companies.[228]

445. According to the information received, on Wednesday, February 5, 2003, officials from the Ministry of Infrastructure visited the headquarters of Venevisión to serve notice of administrative proceedings for the investigation of alleged violations of Article 171 of the Telecommunications Law[229] and Article 53 of the Radiocommunications Regulations.[230] These proceedings were added to others initiated against Globovisión, RCTV, and Televen under the same laws. According to the information received, officials from the Ministry of Infrastructure, who declined to give their names, paid a brief visit to Globovisión to serve notice of the commencement of administrative proceedings on January 20, 2003. That same day, RCTV was also notified of the initiation of administrative proceedings. Carmen Carillo, a legal advisor with the Ministry of Infrastructure, paid a visit to RCTV's headquarters to serve the notice. On January 30, the Ministry of Infrastructure began administrative proceedings against Televen. Ministry of Infrastructure legal advisor Carmen Carrillo was again responsible for serving the notice. On May 20, the Ministry of Infrastructure requested an extension of the deadline in the proceedings against Globovisión and RCTV. On May 31, the Ministry made the same request with respect to the Televen proceedings.

446. Administrative proceedings of this kind are conducted under the aegis of CONATEL (the National Telecommunications Commission), an entity that operates within the framework of the Ministry of Infrastructure, and the Director General and Board members of which are selected by the President of the Republic. Final judgment in these proceedings lies with the Minister of Infrastructure. The close ties between this institution and the executive branch of government means that the punishments available to it could be used to silence criticisms of the government.

447. The factual grounds on which the proceedings are based include statements by opposition leaders that were transmitted by the television stations in question. The comments identified as possible breaches of the law included the following: "With the coup d'état, he failed; with the homeless children, he failed; with corruption, he failed; with law enforcement, he failed; with the unity of Venezuela, he failed"[231] (breach of Article 53.i); "we were told: eight taxi-drivers were murdered last night (...) almost

double-figures (...) eight taxi-drivers were murdered last night, coming up next on Globovisión news”[232] (breach of Article 53.j); “A government that through its president has sown hatred among Venezuelans in a planned and persistent fashion, and has attempted to sow racial differences in a country that is a nation of racial mixing and equality, through a dismissive, high-handed, offensive, and authoritarian line of discourse; a government that extols and justifies violence and seeks fratricidal strife through the government’s constant mockery, manipulation, and disdain toward massive demonstrations of civic protests made by Venezuelan society and toward the mediation of national and international agencies”[233] (breach of Article 53.c).

448. The IACHR and the Rapporteur’s office observe with concern that these proceedings were initiated under legislation contrary to the international standards that govern freedom of expression. Article 53 of Venezuela’s Radiocommunications Regulations provides, *inter alia*, that: “Broadcast stations are absolutely forbidden to transmit: (...) (j) False, deceitful, and biased news or reports.” In this report the IACHR has repeatedly said that the right to information covers all information, including that which, in contrast to truthful, can be “erroneous,” “not timely,” or “incomplete”; this is because it is nothing other than broad debate and exchanges of ideas that provides the best method for seeking out truth in information. If a need to report solely the truth is imposed beforehand – a categorization that, in many cases, is highly subjective – then the possibility of pursuing the debate necessary to reach the truth is denied.

449. Additionally, in these cases the television companies are also being accused of other violations of the Regulations, including the transmission of statements that encourage “disrespect toward legitimate authorities and institutions” (Article 53.c of the aforesaid Regulations). Imposing punishments for statements of this kind contravenes the American Convention on Human Rights; and this is a position maintained by the jurisprudence of the Inter-American Commission on Human Rights since the publication of its report on the incompatibility of desacato laws with the Convention, an issue that the IACHR has reiterated in the present report in connection with the different topics addressed.

450. Finally, the IACHR and the Rapporteur’s office note that in July 2003, at the decision of the management of the Dr. Jesús Verena General Hospital and the Caracas Health Secretariat, the broadcaster CATIA TV was, without prior notice, shut down.[234] Since this was a community television station broadcasting with due authorization from the hospital, the IACHR notes this incident with concern. Community broadcasters of this kind can, while operating within the boundaries of legality, facilitate the free circulation of information, thereby fostering freedom of expression and dialogue within communities

in order to encourage participation. Information received indicates that the station was reopened later that same July.

**E. Other areas of concern**

1. Desacato laws (insults to authority)

451. As was stated in the section dealing with the Supreme Court's judgment of July 15, 2003, Venezuela's criminal laws contain provisions that are incompatible with Article 13 of the Convention. An example of this are those laws that criminalize offensive statements made against public officials, known as desacato laws (insults to authority).

452. Venezuela's Criminal Code contains a series of provisions that, if enforced, would restrict full enjoyment of freedom of expression by criminalizing offensive statements made about public officials. These precepts are the following:

Article 148. Any person who offends, verbally or in writing or in any other fashion, the President of the Republic or the person serving in that capacity shall be punished with a prison term of between six and thirty months, if the offense was serious, and of half that duration, if it was slight.

The punishment shall be increased by one-third if the offense was made publicly.

If the offense was made against the President of either Chamber of the Legislature or the Chief Justice of the Supreme Court, the punishment shall be from four months to two years, if the offense was serious, and half that duration, if it was slight.

Article 149. When the actions described in the Article above are made against the Governor of one of the nation's States, or against Cabinet Ministers, the General Secretary of the President's Office, the Governor of the Federal District or Federal

Territories, Supreme Court Justices, the Presidents of the State Legislatures, and Superior Judges, or against persons serving in those capacities, the punishment indicated in that Article shall be reduced to one-half; and, with respect to Presidents of Municipal Councils, Federal District Department Prefects, or District Civil Chiefs, it shall be reduced to one-third.

Article 150. Any person who publicly insults the Congress, the Chambers of the National Legislature, the Supreme Court of Justice, the Cabinet or Council of Ministers, any of the Legislatures or Legislative Assemblies of the nation's states, or any of the Superior Courts, shall be punished by a prison term of between fifteen days and ten months.

Those who carry out the same acts against Municipal Councilors shall receive half that punishment.

The punishments shall be increased by one-half if the offense was made during performance of official functions by the institutions in question.

Article 151. The courts shall be responsible for distinguishing the serious and slight offenses referred to in Articles 148, 149, and 150.

Article 152. Prosecution for the actions referred to in the articles above shall not commence except at the request of the offended person or institution, lodged with the competent judge through the offices of the Public Prosecution Service.

[...]

Article 223. Any person who, by word or deed, offends in any way the honor, reputation, or dignity of a member of Congress or any public official shall be punished as indicated below, if the offense was made in the presence thereof and in connection with their functions:

1. If the offense was directed against a law-enforcement officer, with a prison term of one to three months.

2. If the offense was directed against a member of Congress or a public official, with a prison term of one month to one year, according to the rank of the person in question.

Article 224. If the action described in the Article above is accompanied by violence or threats, it shall be punishable by a prison term of between three and eighteen months.

Any person who, in another way not provided for in the cases listed in the previous chapter, makes use of violence against or threatens a member of Congress or other public official, should that act take place as a result of the victim's functions, shall be punishable with the same punishments.

Article 225. When any of the actions described in the above articles is committed against a public official not as a result of his functions but at a moment in which he is performing them, the same punishments shall apply, with a reduction of between one-third and one-half.

Article 226. Any person who, by word or by deed, offends in any way the honor, reputation, or dignity of a judicial, political, or administrative body, if the crime is committed at a time when it is established, or any magistrate in a hearing, shall be punished with a prison term of between three months and two years.

If the perpetrator used violence or threats, the prison term shall be from six months to three years.

Prosecution shall take place only by means of a request lodged by the offended party. If the crime is committed against bodies not meeting at the time, the prosecution shall only proceed following a request made by its presiding members.

Said request shall be lodged with the Public Prosecution Service in order for the applicable steps to be taken.

Article 227. In the cases provided for in the Articles above, the guilty party shall not be allowed to admit any evidence regarding the truthfulness or notoriety of the allegations or defects with which the offended party is accused.[235]

453. The IACHR conducted an analysis of the compatibility of desacato laws with the American Convention on Human Rights in a report published in 1995. The IACHR concluded that such laws were not compatible with the Convention. However, the IACHR believes it should point out that the threatening behavior described in Article 224 does constitute a legitimate subject for legislative regulation and even for criminal law.

454. The IACHR and the Rapporteur's office hold that there are other methods – less restrictive than desacato laws – whereby governments can defend their reputations from baseless attacks: these include publishing replies in the media and initiating civil action for defamation or libel.

455. In addition, like most of Latin America's Criminal Codes, Venezuela's establishes laws applicable to defamation, libel, and slander that are intended to protect the right to honor, reputation, and privacy. These rights are protected by Article 11 of the American Convention. The protection of these rights is accepted as a legitimate restriction on freedom of expression. Nevertheless, certain clarifications need to be made on account of the importance of providing equal protection for the free exercise of freedom of expression. Limitations should be imposed restrictively. It is thus necessary to point out that as the Commission has said, the subsequent imposition of liability described in the American Convention must be pursued in harmony with the democratic principles that ensure free and fluid communications between individuals and the authorities.

456. The Commission and the Court have ruled that the possible conflict that could arise from enforcing Articles 11 and 13 of the Convention can be resolved through recourse to the terms used in Article 13.2.

457. Thus, the Inter-American Court of Human Rights has ruled that:

Article 13(2) of the Convention defines the means by which permissible limitations to freedom of expression may be established. It stipulates, in the first place, that prior censorship is always incompatible with the full enjoyment of the rights listed in Article 13, but for the exception provided for in subparagraph 4 dealing with public entertainments, even if the alleged purpose of such prior censorship is to prevent abuses of freedom of expression. In this area any preventive measure inevitably amounts to an infringement of the freedom guaranteed by the Convention.[236]

458. It has also said that:

Abuse of freedom of information thus cannot be controlled by preventive measures but only through the subsequent imposition of sanctions on those who are guilty of the abuses. But even here, in order for the imposition of such liability to be valid under the Convention, the following requirements must be met:

- a) the existence of previously established grounds for liability;
- b) the express and precise definition of these grounds by law;
- c) the legitimacy of the ends sought to be achieved;
- d) a showing that these grounds of liability are “necessary to ensure” the aforementioned ends.

459. All of these requirements must be complied with in order to give effect to Article 13.2.[237]

460. A proper interpretation of the subsequent imposition of liability that is to proceed when the honor or reputation of others is undermined must pay due attention to the legitimacy of the goals sought and ensure that such steps are necessary to secure them.

461. In this connection, the Inter-American Commission has ruled that:

A law that targets speech that is considered critical of the public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression.[238]

The Commission adds:

In democratic societies political and public figures must be more, not less, open to public scrutiny and criticism... Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.[239]

462. Consequently, a penalty that obstructs or restricts the dialogue necessary between a country's inhabitants and those in public office cannot be legitimately imposed. Disproportionate penalties may silence criticism that is necessary to the public administration. By restricting freedom of expression to this degree, democracy is transformed into a system where authoritarianism will thrive, forcing its own will over society's.

463. For those reasons, the Commission has stated that:

The State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.[240]

464. The tenth principle of the Declaration of Principles on Freedom of Expression contains the Commission's interpretation of privacy laws:

Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

465. Therefore, to ensure adequate protection of the right to freedom of expression, states should amend their laws on defamation, libel, and slander so that only civil sanctions can be applied in cases where the aggrieved person is a public official or a person acting in a public capacity. Additionally, liability for offenses to public officials or individuals acting in a public capacity should only be incurred in cases involving "actual malice." The principle of "actual malice" is what the tenth principle of the Declaration (supra) is aimed at: the author of the information in question was fully aware that false news was disseminated, or acted with negligent disregard to the veracity or falsehood of that information.

466. The Bolivarian Republic of Venezuela has still not brought its laws on privacy and the protection of honor and reputation into line with the distinction between public and private persons and actual malice. The following are the provisions of the Criminal Code that require review:

Article 444. A person who, in communication with several others, either together or separately, accuses an individual of a given act that could expose him to public scorn or hatred, or that is offensive to his honor or reputation, shall receive a punishment of between three and eighteen months in prison.

Should the crime be committed in a public document or in writings or drawings displayed or exposed to the public, or through other public means, the punishment shall be a prison term of between six and thirty months.

Article 445. A person charged with the crime of defamation shall not be allowed to argue in his defense the truthfulness or notoriety of the defamatory action, except in the following instances:

1. When the offended person is a public official and provided that the accusation is related to the performance of his official duties; with the exception, however, of the provisions set in Articles 223 and 227.
2. When legal proceedings are begun or stand pending against the defamed person in connection with the allegations.
3. When the plaintiff formally requests that the judgment also rule on the truthfulness or falsehood of the defamatory accusation.

If the truth of the allegation is proven, or if the defamed person is convicted for the content of the defamatory charge, then the person who defamed him shall be exempt from the punishment, except in those instances in which the channels used in and of themselves constitute the crime described in the following Article.

Article 446. A person who, in communication with several others, either together or separately, offends the honor, reputation, or dignity of another individual shall receive a punishment of between three and eight days' arrest or a fine of between VEB 25 and 150.

If the action is carried out in the presence of the offended person, even if he is alone, or in writing and addressed to him, or in a public place, the punishment may rise to 30 days in prison or a fine of VEB 500; and if the presence of the offended person is combined with public disclosure, the punishment may rise to 45 days in prison or a fine of VEB 600.

If the action takes place through the means indicated in the second paragraph of Article 444, the prison term shall be for between 15 days and three months, or a fine of between VEB 150 to 1500.

Article 447. When the crime set forth in the preceding Article is committed against a person legitimately charged with any public service, in the presence of that person and on account of that service, the guilty party shall be punished with a period of arrest of between 15 and 45 days. If made publicly, a prison term of between one and two months may be imposed.

[...]

Article 450. If a conviction is issued for any of the crimes specified in the Chapter, the judge shall order the confiscation and elimination of the printed materials, drawings, and other objects used to commit the crime; in the case of written materials that cannot be eliminated, the judge shall order the inclusion in the margin thereof of a reference to the judgment handed down in the case.

At the plaintiff's request, the judgment of conviction shall be published, at the convict's cost, on one or two occasions, in the newspapers indicated by the judge.

## 2. Requiring impartial, timely, and truthful information

467. Article 58 of the Constitution of the Bolivarian Republic of Venezuela provides: "All persons shall have the right to timely, truthful, and impartial information." In different parts of this report, the IACHR and the Rapporteur's office have made statements regarding those conditions. At the risk of incurring in repetitions, the IACHR and the Rapporteur's office believe that above and beyond journalists' duty to use all means available to them to verify the information that they give to society, for the State to require that all that information be truthful could lead to the censorship of any information that cannot be proven; an example of this is political debate, which is chiefly based on ideas and opinions of a clearly subjective nature.

468. The doctrine of truthful information represents a step backward for freedom of expression and information in the hemisphere; this is because the free flow of information would be limited by its prior classification into “true” and “false,” which goes against the broad concept of this right that the inter-American system observes.

469. There can be no doubt that debating and exchanging ideas is the best way to seek out truth in information and to strengthen democratic systems based on a plurality of ideas, opinions, and information. If a state imposes a priori a requirement to disseminate solely “the truth,” that would deny the possibility of pursuing the debate that serves to construct or reveal it. Imposing punishments for reporting on an issue that is subsequently and through free debate shown to be incorrect raises the threat of self-censorship on the part of reporters wishing to avoid such punishment and harms all those citizens now unable to benefit from exchanges of ideas.[241]

470. The right of free expression also protects all that information termed “incorrect.” Ultimately, under international standards and the most advanced jurisprudence, only that information shown to be produced with “actual malice” could give rise to liability. Even in such a case, however, the ruling on that liability must be given by later proceedings; in no instance can conditions be placed on it beforehand.

### 3. Professional Ethics

471. The IACHR and the Rapporteur’s office heard expressions of concern regarding the possibility that the Venezuelan media did not always act responsibly or ethically.[242] Upon concluding its on-site visit, the IACHR noted the actions by the media that had hindered Venezuelan society’s access to vital information during the tragic events of April 2002 that led to a coup d’état and subsequent restoration of democracy in Venezuela. In its press release the IACHR said that “although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically-motivated editorial decisions, this should be the subject of an essential process of reflection by the Venezuelan media about their role at that moment.”[243]

472. At the time of drafting this report, the IACHR and the Rapporteur’s office note that media coverage of the Venezuelan crisis is guided by politically motivated editorial

decisions. This attitude does not undermine any of the rights granted by the Convention; neither does it justify attacks on journalists, other media workers, and media companies' property.

473. However, the best way to foster a broader debate on ideas in Venezuela, in light of the political crisis conditions it is currently facing, is through those actions that guarantee the editorial independence of the media and enable journalists to perform, with the utmost care, their task of informing the public. This is the challenge facing the media in Venezuela, because their chief responsibility lies with the public and not with the government. The process of reflection that the IACHR called for at the end of its visit to Venezuela is still necessary.

474. In this process, Venezuela's journalists and media owners must bear in mind both the need to maintain credibility with the public – an essential factor in their continued existence – and the key role the press plays in a democratic society. In the Plan of Action of the Third Summit of the Americas, held in Québec City, Canada, in April 2001, the Heads of State and Government said that their governments would promote the self-regulation of the mass media. Self-regulation is a challenge that the Venezuelan press has to face. It can be achieved through different mechanisms and instruments: codes of conduct, style manuals, editing statutes, public defenders, information councils, etc.

475. Also in connection with this issue, the IACHR has received a series of communications regarding offensive or racist statements made by certain commentators and journalists. In this regard, the Commission points out the provisions of Article 13.5 of the American Convention:

Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

476. Even though the Commission has no authority to establish individual responsibilities, it cannot refrain from condemning comments that imply racial hatred or contain extreme racial prejudice; this is particularly true when they are made by journalists or media workers, given that such individuals are the shapers of public opinion.

477. In Venezuela, in light of the political crisis prevailing there, journalistic ethics are essential for the enjoyment of freedom of expression. But it must be made clear that it does not fall to the State to set the standards for ethical conduct that are essential in the work of social communicators. Codes of ethics are an important instrument in guiding journalists in the pursuit of their profession, and they should be adopted voluntarily by the media themselves.[244]

#### 4. The right to information

478. Article 28 of the Venezuelan Constitution establishes the right to habeas data action in the following circumstances:

All persons shall have the right of access to information and data concerning them or their property that is contained in official or private records, with such exceptions as may be established by law, the right to know what use is being made thereof and for what purpose, and the right to petition the competent court for the updating, correction, or destruction of any records that are erroneous or unlawfully affect the petitioner's rights. They may also access documents of any nature containing information of interest to communities or group of persons.

479. In turn, Article 51 of the Venezuelan Constitution establishes the right to petition the authorities:

All persons shall have the right to petition or make representations before any authority or public official concerning matters within their competence, and to obtain a timely and adequate response. Whoever violates this right shall be punished in accordance with law, including the possibility of dismissal from office.

480. In turn, Article 59 of the Organic Law of Administrative Procedures of July 1981 orders access to official sources of information of a public nature to interested persons or their representatives, with the exception of documents classified as confidential.

481. During its on-site visit to the country, the IACHR was informed that although constitutional guarantees exist, in practice there is no real access to information held by the State.

482. The IACHR points out that in light of the need to promote greater transparency in government undertakings as the basis for strengthening democratic institutions, access limitations placed on files kept by the State must be exceptional and interpreted in restrictively. They must be clearly established in law and only applied when there is a real and imminent danger that threatens the national security of a democratic society.

483. The Inter-American Court has determined that restrictions on freedom of expression and information “must be judged by reference to the legitimate needs of democratic societies and institutions.”[245] Within this context, the State must ensure that when a national emergency arises, the refusal to share the information it holds will only remain in force for the period of time strictly necessary in accordance with the circumstances and will be modified once the emergency is over.[246] In addition, steps must be taken to ensure that classified information is reviewed by an independent judicial body capable of balancing the protection of citizens’ rights and freedoms with the interests of national security.

484. The problem of access to public information still remains unanswered in Venezuela, and so any initiative from the government intended to facilitate free access to information would help ensure a better informed citizenry.

## 5. Blanket Broadcasts

485. Another example of how freedom of expression is being affected is the abuse of blanket broadcasts (cadenas nacionales). Blanket broadcasts force media stations to cancel their regular programming and transmit information as ordered by the government.

486. Article 192 of the Organic Telecommunications Law, published in the Official Gazette in March 2002, provides that:

Article 192. Without prejudice to the legal provisions applicable to matters of security and defense, the President of the Republic may, either directly or through the National Telecommunications Commission, order operators of subscription television services, using their customer information channel, and the operators of sound broadcasting and open-to-air television, to carry, free of charge, messages and official addresses made by the President or Vice-President of the Republic or cabinet ministers. Regulations shall be established to determine the mechanisms, limitations, and other features of these transmissions and broadcasts.

487. The IACHR was able to note the large number of blanket government broadcasts in the media. Blanket broadcasts force media stations to cancel their regular programming and transmit information as ordered by the government. Many of them were of a duration and frequency that could be considered abusive in light of the information they conveyed, not always intended to serve the public interest. At the time the IACHR issued a press release noting the abusive and unnecessary use of this mechanism which, if used on a discretionary basis and to serve ends other than the public interest, could constitute a form of censorship.

488. During the on-site visit the Commission was pleased to receive information indicating that there had been a considerable reduction in the use of this mechanism. The IACHR and the Rapporteur's office urge the executive branch of government to adopt clear guidelines in the use of such broadcasts, paying attention to public interest and to situations of genuine national need or emergency.

## **F. Recommendations**

489. In light of the above considerations, the following recommendations are extended to the State of Venezuela:

1. Urgently take specific steps to put a halt to attacks on journalists, camera operators, and photographers, opposition politicians and human rights defenders, and all citizens who wish to exercise their right of free expression.

2. Conduct serious, impartial, and effective investigations into murders of, attacks on, threats against, and intimidation of journalists and other media workers.
3. Publicly condemn, from the highest levels of government, attacks on media workers, in order to prevent actions that might encourage such crimes.
4. Scrupulously respect the standards of the inter-American system for the protection of freedom of expression in both the enactment of new laws and in the administrative and judicial proceedings in which it issues judgment.
5. Work for the repeal of laws that contain desacato provisions; such precepts curtail public debate, which is an essential element in a functioning democracy, and are also in breach of the American Convention on Human Rights.
6. Guarantee the effective right of access to information held by the State in order to promote transparency in the public administration and consolidate democracy.
7. Adapt its national laws in accordance with the parameters set in the American Convention on Human Rights and fully comply with the terms of Article IV of the American Declaration of the Rights and Duties of Man and the IACHR's Declaration of Principles on Freedom of Expression, particularly as regards the demand for truthful, impartial and objective information contained in Article 58 of the Venezuelan Constitution.

[ [Table of Contents](#) | [Previous](#) | [Next](#) ]

[170] As an example of this, at the conclusion of the General Assembly of the Organization of American States held in Santiago, Chile, in June 2003, the hemisphere's foreign ministers adopted by acclamation the Declaration of Santiago on Democracy and Public Trust: A New Commitment to Good Governance for the Americas, which recognizes that democracy is strengthened by full respect for freedom of expression.

[171] Inter-Am.Ct.H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, paragraph 70.

[172] Inter-Am.Ct.H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85, November 13, 1985, paragraph 30.

[173] The office of the Special Rapporteur for Freedom of Expression is a permanent office, with functional autonomy and its own budget. The Inter-American Commission on Human Rights created the office in exercise of its authority and competence, and the office operates within the Commission's legal framework. The Rapporteur's office has received institutional support from the Heads of State and Government at the Summits held both in Santiago, Chile, in April 1998, and in Québec City, Canada, in April 2001.

[174] Several international organizations have also been observing the freedom of expression situation in Venezuela. The Iberoamerican Journalists Organization (OPI) stated that a common front of journalists had to be formed to defend their human rights (see: *Así es la Noticia*, March 26, 2002, p. 6). In April 2002, the International Federation of Journalists (IFJ) condemned the president's campaign against the media in Venezuela. On May 6, 2002, a delegation from the World Association of Newspapers (WAN) traveled to Venezuela and met with President Chávez in order to discuss the country's freedom of expression situation. The Committee to Protect Journalists (CPJ), Reporters Without Borders (RSF), the Press and Society Institute (IPYS), Human Rights Watch (HRW), and many other organizations have, on different occasions, expressed concerns regarding the exercise of free speech in Venezuela.

[175] For example, at the open hearing of the Inter-American Court of Human Rights on February 17, 2003, Liliana Rios informed being in a state of insecurity which impedes her from conducting her job as a journalist, career for which she was formed at the university for 5 years. Additionally she informed that because of security reasons she had to move three times.

[176] IACHR, Press Release No. 23/02, The Inter-American Commission on Human Rights concludes its visit to the Bolivarian Republic of Venezuela, paragraphs 10 and 39.

[177] Other illustrative cases include the following: On February 2, a vehicle belonging to the television company CMT was set on fire while it was transporting a team of on-duty reporters. This incident occurred in the vicinity of the Ministry of Education, in downtown Caracas, when a group of hooded demonstrators began to throw stones, blunt instruments, and firebombs at an opposition group. On February 21, a vehicle transporting a press photographer and a correspondent for Agence France Press (AFP) was attacked by a group of some 60 people, who beat it and damaged the bodywork; the passengers were unharmed. In the afternoon of April 11 a vehicle carrying reporters from the state channel Venezolana de Televisión was attacked. On May 30 an unidentified person fired on a vehicle belonging to the journalist Gustavo Azócar while it was parked

in front of his home; the bullet went through the windscreen and lodged in the dashboard. Press and Society Institute (IPYS), January 8, 24, and 15, February 3 and 25, April 16, and June 4, 2003, respectively. On January 8, 2003, Javier Gutiérrez, a journalist with El Regional del Zulia, was covering a peaceful demonstration by employees of the state-owned oil company when individuals suspected of being members of the National Guard deployed riot gas, intercepted him as he was trying to take photographs, beat him, and relieved him of his camera; the newspaper's editors were later able to get the camera back. On January 10, journalists Daniel Delgado of El Nacional and Félix Moya of the daily El Caribe were attacked, presumably by Nueva Esparta State police officers, while the police were tackling an opposition march in downtown Porlamar; Delgado was kept in police custody for more than an hour and a half, because of attempts to lynch him by a group of protestors. On January 12, Héctor Castillo, a journalist with El Mundo, received gunshot wounds to his right leg while covering an opposition march on Av. Los Próceres. During that same march, Televen journalist Johan Merchán was intercepted by soldiers and his cameraman was forced to hand over his tapes. On January 18, reporters from the Aragua State regional channel TVS were attacked while they were covering a march organized by the Democratic Coordinator in the city of Maracay. Cameraman Carlos Lathosky and journalist Alfredo Morales were physically and verbally assaulted and threatened with lynching. Morales was surrounded, his microphone taken from him, and his audio cable broken. The assailants allegedly used the broken cable to flog the journalist. On February 4, press photographer Ángel Véliz of the daily Impacto was attacked while covering clashes between oil workers and government supporters. Véliz was allegedly beaten; while a member of the armed forces held him down, he was struck with a baseball bat, which caused injuries and bruising to his right arm, lacerations to his right armpit, and a wound on his back. The entire incident was witnessed by members of the National Guard. On February 5, Gabriela Díaz and José Ramón Chico, a journalist and a photographer with the daily El Tiempo, respectively, were abducted for more than an hour by students from Oriente University; the reporters were covering a meeting at which the teaching staff were to decide whether or not to recommence academic activities. On May 2, Radio Caracas journalist Roberto Giusti was attacked while preparing to present his morning show. According to the journalist, about ten individuals were waiting for him "with violent and aggressive attitudes, shouting insults." On May 13, the journalist filed a complaint with the public prosecution service. On May 1, Juan Carlos Amado, a cameraman with the nongovernmental organization Comunidad de Trabajos de Investigación (COTRAIN) was attacked while doing his job. Amado told the Press and Society Institute that he was attacked on Plaza O'Leary, in downtown Caracas, while filming a May Day march organized by the Workers' Confederation of Venezuela and other opposition organizations. In June, a team of reporters from Globovisión was attacked while covering a news story. The incident took place in Petare, one day after riots caused property damage and left dozens of people injured in that populous location. The team, led by Wilmer Solano, was verbally attacked and pushed about while they were trying to collect information and take photographs, and they were ultimately forced to leave. Press and Society Institute, January 16, 24, and 13, 2003, respectively, and February 5, 2003; Globovisión, May 13 and June 14, 2003; and Press and Society Institute, May 7, 2003. Finally, at 5:00 a.m. on Friday, June 27, eight individuals with long-barreled guns tried to set fire to a vehicle transporting reporter Marta Colomina

through the streets of Caracas. According to her report, her car was surrounded and “four men, three of whom had their faces covered with ski-masks, armed with Steyr rifles, approached my car and pointed their weapons at me and at my driver; the one whose face was visible went back to the rear of their vehicle, from which he removed an “enormous molotov-cocktail style device.” The other four men, who were also wearing ski-masks and were armed with Glock pistols, got out of the car in which they had followed me and pointed their guns in every possible direction. When my driver/escort saw that they were about to attack us with a molotov cocktail, he shouted for us to hit the ground and take cover; from the floor of the car I heard a big explosion and could smell vehicle fuel – I thought they had started shooting and had hit the fuel tank, which meant that in a matter of seconds the car would explode and we would be blown into the air. However, the noise had been caused by a heavy 19-liter glass bottle, the kind generally used to sell purified water, that had been transformed into a giant molotov cocktail and that, upon breaking, spilled the gasoline it contained. Since it was impossible to activate the molotov, my assailant merely smashed it against the car’s windscreen; this, since it was protected with an anti-riot security covering, resisted the impact – it collapsed inwards and shattered, but kept the incendiary device outside the vehicle.” In light of this attack on the journalist Ms. Colomina, on July 21, 2003, the IACHR asked the Inter-American Court of Human Rights to order provisional measures whereunder the Venezuelan State would protect the life, person, and freedom of expression of the journalist Marta Colomina and of her assistant Liliana Velásquez, who was in an adjacent vehicle during the attack.

[178] The Inter-American Commission on Human Rights adopted this Declaration at its 108th regular session, in October 2000. The document is an important tool in interpreting Article 13 of the American Convention on Human Rights. Its adoption was not merely a recognition of the importance of protecting free expression in the Americas; it also enabled the inter-American system to incorporate international standards for a more effective defense of this right.

[179] See: Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C No. 4, paragraph 166.

[180] See: Report by Human Rights Watch: Venezuela, Caught in the Crossfire: Freedom of Expression in Venezuela, Vol. 15, No. 1 (B), May 2003.

[181] IACHR., Report No. 50/90, Case No. 11.739, Mexico, OAS/Ser/L/V/II. Doc. 57, April 13, 1999.

[182] IACHR, press release No. 23/02, issued at the conclusion of its May 2002 visit. Office of the Special Rapporteur for Freedom of Expression, letter sent to Foreign Minister Chaderton in January 2003.

[183] See: El Nacional, “Chávez pide creación de un frente nacional,” April 28, 2003.

[184] During its on-site visit in May 2002, the IACHR was told of the government's plans to enact a "content law"; it was informed by the President of the National Assembly, however, that no such bill was currently being processed by the legislature.

[185] The Rapporteur for Freedom of Expression, Eduardo Bertoni, contacted the Minister of Foreign Affairs, Roy Chaderton, in November 2002 asking for information on the background to these plans. As of the publication of this report, no official information has been received.

[186] The bill was formally placed before the National Assembly on January 23, 2003.

[187] Several international organizations have come out against the proposal, including the Committee to Protect Journalists (CPJ), the Inter-American Press Association (SIP-IAPA), the Press and Society Institute (IPYS), and Human Rights Watch (HRW).

[188] Article 115. ADMINISTRATIVE FINES FOR VERY SERIOUS INFRACTIONS BY PROVIDERS OF BROADCAST SERVICES.

The National Radio and Television Institute shall punish, with a fine of up to thirty thousand (30,000) tributary units, any broadcast service provider that:

11. Disseminates contents that promote, justify, or encourage disrespect toward legitimate institutions and authorities, such as: National Assembly Deputies, the President of the Republic, the Vice-President of the Republic, Ministers, Justices of the Supreme Court of Justice, the Attorney General of the Republic, the People's Defender, the Comptroller General of the Republic, the officers of the National Electoral Council, and the nation's Armed Forces, without detriment to the legitimate exercise of the right of freedom of expression and opinion with the constraints set in the Constitution, in the international treaties ratified by the Republic, and in law.

[189] The IACHR notes that the new draft established a Social Responsibility Bureau and a Responsibility Council. The composition of the Bureau is not clear, but its powers remain quite broad; used abusively, they could undermine free expression.

[190] ARTICLE 76. FUNCTIONS OF THE BOARD OF THE NATIONAL RADIO AND TELEVISION INSTITUTE

The Board of the National Radio and Television Institute shall be responsible for the following functions:

1. Approving the operational plan and budget of the National Radio and Television Institute, in compliance with the proposals submitted by the President of the National Radio and Television Institute.

2. Issuing final decisions in the administrative procedures for punishment provided for in this Law, and repealing, either on an ex officio basis or at the request of the parties involved, precautionary measures ordered by the President of the National Radio and Television Institute.
  
3. Proposing that the Minister of Infrastructure revoke the corresponding administrative licenses and permits, in the cases provided for in this Law.
  
4. Adopting technical standards on national production, independent national production, and special programs intended for children and adolescents.
  
5. Approving plans submitted for the funding of national production, independent national production, special programs intended for children and adolescents, and for critical education for the media, in compliance with the Regulations to this Law.
  
6. Drafting and approving the internal regulations of the National Radio and Television Institute.

#### Article 77. COMPOSITION OF THE BOARD

The Board of the National Radio and Television Institute shall comprise eleven (11) members, of whom one (1) shall be appointed by the President of the Bolivarian Republic of Venezuela, as provided for in this Article, for a period of three (3) years, and shall serve as the President of the National Radio and Television Institute. The remaining ten (10) members shall comprise:

1. Three (3) representatives from the National Assembly, of whom one (1) shall be from the committee responsible for radio and television issues, one (1) shall be from the

committee in charge of education, and one (1) shall be from the committee charged with citizen participation.

2. One (1) representative from the Ministry responsible for education issues.
3. One (1) representative from the Ministry responsible for health issues.
4. One (1) representative from the National Telecommunications Commission.
5. One (1) representative from the Ministry responsible for state communications and information.
6. Two (2) representatives from the Radio and Television Users' Committees.
7. One (1) representative of the National Independent Producers.

#### [191] ARTICLE 82. FUNCTIONS OF THE PRESIDENT

The President of the National Radio and Television Institute shall be responsible for: (...)

3. Ordering the initiation and substantiation of, and issuing precautionary measures within, punitive administrative procedures that the National Radio and Television Institute is responsible for hearing in compliance with this Law.

[192] See: Letter from the IACHR to Foreign Minister Chaderton of June 4, 2003; and letter from the Rapporteur's office to Foreign Minister Chaderton of May 27, 2003. As of the drafting of this report, no replies – which would have been of use in its preparation – have been received.

[193] Article 1 stipulates that the law's provisions shall apply to all images and sounds received in Venezuelan territory by means of radio and television services. Article 4 further provides that:

For the purposes of this Law, the following types of programs are established: (...)

2. Informational program: when information about local, national, or international events or personalities is transmitted in an impartial, truthful, and timely fashion.

Other provisions in the law require the broadcasting of “informational programs,” thereby imposing obligations on certain programs with respect to their content.

[194] Inter-Am.Ct.H.R., Advisory Opinion OC-5/85, paragraph 33.

[195] Article 5. For the purposes of this Law, the following classified elements are defined: language, health, sexual, and violence.

1. The following elements of language are defined:

(a) Type “B”: commonly used images and sounds that, while not obscene or classified as type “C,” are crude in nature.

[196] As an example, the provisions of the final section of Article 6 could lead to the same consequences:

In no instance shall it be permissible to disseminate messages using audiovisual or audio techniques that have the intent, aim, or effect of hindering or impeding their conscious perception by the audience.

[197] Article 4 (final section): Educational, informational, opinion, and informational-cum-opinion programs shall identify their documentary sources and their informational sources, with the exception of those journalistic sources of a secret nature whose identity must be protected, in compliance with the Constitution and law.

[198] IACHR, Annual Report 2000, Vol. III, Report of the Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.114, Doc. 20 rev., p. 24. See also: Felipe Fierro Alvédez, El derecho y la libertad de expresión en México, debates y reflexiones, Revista Latina de Comunicación Social, December 2000, at <<http://www.ull.es/publicaciones/latina/04fierro.htm>>.

[199] European Court of Human Rights, Goodwin v. United Kingdom, Judgment of March 27, 1996, Reports of Judgments and Decisions, No. 7, 1966-II, p. 483, paragraph 39.

[200] Ibid., Goodwin v. United Kingdom.

[201] OAS, Basic Documents Pertaining to Human Rights in the Inter-American System (updated January 2003), Declaration of Principles on Freedom of Expression: Eighth Principle, p. 189.

[202] See: 2000 Annual Report of the Rapporteur for Freedom of Expression, (supra).

[203] P 0454/02, Venezuela.

[204] This controversy was reported in the Venezuelan media and in the press releases of a number of international organizations (for example, the Inter American Press Association, Reporters Without Borders, etc.). Indeed, the Constitutional Chamber of the Supreme Court itself, on July 25, 2001, issued an ex-officio “Institutional Clarification” in light of the fact that “several persons have made statements in the media, attributing to judgment No. 1,013 (Case: Elías Santana, Exp. 00-2760), issued by this Court’s Constitutional Chamber, references that it does not contain, or referring to extracts thereof removed from their context, or stating that unspecified international treaties have been violated; as a result, the Supreme Court of Justice deems it necessary to offer a summary of that judgment, which, in addition, is based on decisions of the Constitutional Court of Spain, the Constitutional Court of Germany, and the Supreme Court of the United States of America.”

[205] In a Supreme Court decision of July 15, 2003, the Constitutional Chamber said that: “The Chamber notes that this interpretation guideline is binding, deriving from the freedom of expression set forth in Article 57 of the Constitution and the responsibilities imposed by that precept and referred to in this Chamber’s Judgment No. 1,013 of June 12, 2001 (Case: Elías Santana).”

[206] See: Article 13.1 of the Convention; the second principle of the Declaration of Principles on Freedom of Expression; and Article IV of the American Declaration of the Rights and Duties of Man. These texts invariable state that “everyone” is to enjoy the right in question.

[207] See: American Convention on Human Rights, Chapter I, General Obligations, Article 1: Obligation to Respect Rights; and Chapter II, Civil and Political Rights, Article 13: Freedom of Expression.

[208] See: IACHR, Case 11.625, María Eugenia Morales de Sierra, Guatemala, January 19, 2001.

[209] With respect to the right of reply, the Judgment stated that: “That right does not lie with the media, nor with those who express themselves therein; the Chamber again states that the right of reply and rectification is granted solely to those who receive the information, and not to those who supply it.”

[210] The Venezuelan Supreme Court has ruled that one of the consequences of requiring truthful information is the doctrine whereby the reasonable verification of truthfulness is obligatory.

[211] Inter-American, Obligatory Membership, paragraph 46.

[212] Ibid.

[213] The Supreme Court stated that: “It is also an affront to true and impartial information for a majority of columnists to reflect a single ideological tendency, unless the media outlet in its editorials or through its spokespersons, maintains and identifies itself with a line of opinion that is consistent with that of the columnists and contributors.”

[214] One paragraph in Judgment 1,013 reads as follows: “With the vehicle of dissemination, above all when it is used for communications terrorism aimed at securing public scorn for individuals or institutions, particularly when the content broadcast consists solely of slurs, insults, and attacks that are incompatible with the discussion of ideas and opinions.”

[215] Inter-Am.Ct.H.R., Enforceability of the Right to Reply or Correction (Arts. 14.1, 1.1, and 2 of the American Convention on Human Rights), Advisory Opinion OC-7/86, August 29, 1987. Series A No. 8, paragraph 27.

[216] Ibid., paragraph 28.

[217] See: Eur.Ct.H.R., Feldek v. Slovakia, Judgment of July 12, 2001, paragraph 75.

[218] The courts of several member states have interpreted it that way. See, for example, a judgment by the Supreme Court of Argentina, which ruled that: “Rectification is admissible only when required to refute statements of fact. With respect to Art. 14 of the American Convention on Human Rights, the clear terminology of the precept limits the right to the factual sphere, to facts that can be judicially proven to exist or not. The broad field in which the decisive element is not the facts, but rather their interpretation, is thus excluded: this is the realm of ideas or beliefs, of conjecture, opinion, and value judgment. While it is true that the last field also includes elements of fact, the essence is the acceptance or rejection that the factual basis provokes in the author of the statement. This applies to both inaccurate and offensive information. Also, in the latter case, the offensive element must come from the reported facts themselves, to which the person affected may ultimately choose to respond, and not from the formulation of condemnatory value judgments... Excluding from rectification or reply what can generally be termed opinions is a characteristic that is not exclusive to the Convention.” Case of Petric v. Diario Página 12 of 22/6/99 (LL, 1996-A-689) in: Gregori Badeni, *Tratado de Libertad de Expresión*, LexisNexis, Editorial Abeledo-Perrot, Buenos Aires 2002, p. 332. Similarly, in Judgment 1,013, the Constitutional Chamber of the Supreme Court of Justice of the Bolivarian Republic of Venezuela ruled that: “When what is challenged is an opinion not based on supporting facts, in the Chamber’s view there is no information to disprove, other than the channels of ordinary actions that exist or may be created in the future by law.” Constitutional Chamber of the Supreme Court of Justice, June 12, 2001.

[219] IACHR, Annual Report 1994, Report on the Compatibility of Desacato Laws with the American Convention on Human Rights, OEA/Ser.L/V/II.88, Doc. 9 rev. (1995), Section IV. B. paragraph 5, which states that:

Even those laws which allow truth as a defense inevitably inhibit the free flow of ideas and opinions by shifting the burden of proof onto the speaker. This is particularly the case in the political arena where political criticism is often based on value judgements, rather than purely fact-based statements. Proving the veracity of these statements may be impossible, since value judgements are not susceptible of proof.

See also: Inter-Am.Ct.H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29, American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, Series A No. 5, paragraph. 77:

A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has.

[220] Eur.Ct.H.R., Feldek v. Slovakia, Judgment of July 12, 2001, paragraph 75.

[221] See: Gregori Badeni, Tratado de Libertad de Expresión, LexisNexis, Editorial Abeledo-Perrot, Buenos Aires 2002, p. 301.

[222] Inter-Am.Ct.H.R., Other Treaties Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82 of September 24, 1982, Series A No. 1, paragraph 33.

Article 31 of the Vienna Convention provides as follows:

31. General rule of interpretation I. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 39 of the Vienna Convention provides as follows:

39. General rule regarding the amendment of treaties A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

[223] Vienna Convention on the Law of Treaties, U.N. Doc A/Conf. 39/27 (1969), 1155 U.N.T.S. 331, May 23, 1969, Part III: Observance, Application and Interpretation of Treaties, Section 3, Articles 31 to 33. See also: Inter-Am.Ct.H.R. Advisory Opinion OC-3/83 of September 8, 1983, Restrictions to the Death Penalty (Arts. 4.2 and 4.4 of the American Convention on Human Rights), paragraphs 49-50, in which the Court uses and glosses the interpretation criteria of the Vienna Convention and rules that:

49. These rules specify that treaties must be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose” (Vienna Convention, Article 31.1). Supplementary means of interpretation, especially the preparatory work of the treaty, may be used to confirm the meaning resulting from the application of the foregoing provisions, or when it leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable (Ibid., Art. 32).

50. This method of interpretation respects the principle of the primacy of the text, that is, the application of objective criteria of interpretation. In the case of human rights treaties, moreover, objective criteria of interpretation that look to the texts themselves are more appropriate than subjective criteria that seek to ascertain only the intent of the Parties. This is so because human rights treaties, as the Court has already noted, “are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States”; rather “their object and purpose is the protection of the basic rights of individual human beings.”

[224] Rafael Chavero Gazdik, Un buen Comienzo, la Sentencia 1.013 de la Sala Constitucional y el Derecho de Réplica y Rectificación, p. 197, in: Allan R. Brewé-Carías et al., “La Libertad de Expresión amenazada (La sentencia 1013),” Inter-American Institute of Human Rights, Editorial Jurídica Venezolana, 2001.

[225] See: OEA/Ser. L/V/II.88, doc. 9 rev., February 17, 1995.

[226] Olmedo Bustos et al. v. Chile, Judgment of February 5, 2001.

[227] See: Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002.

[228] The Special Rapporteur sent a letter to Foreign Minister Chaderton expressing his concern regarding the commencement of these proceedings in January 2003. His office had already made a public statement on the matter in its press release No. 45/01 of October 29, 2001.

[229] Article 171. Irrespective of the fines applicable under the terms of this Law, the following shall be punishable by the cancellation of the corresponding license or permit, as appropriate:

1. A person with a Universal Service obligation who fails to perform the activities, duties, and functions deriving therefrom;
2. Any person who fails to meet the quality, coverage, and efficiency parameters set by the National Telecommunications Commission;
3. Any person who does not make effective use of the portion of the radio spectrum assigned to him or her under the terms and conditions established for the purpose;
4. Any person who fails to abide by a provisional or precautionary measure issued by the National Telecommunications Commission in accordance with the terms of this Law;
5. Any person who maliciously causes interference to telecommunications services;
6. Any person who uses, or allows to be used, the telecommunications services for which he or she is authorized as means to assist the commission of crimes;
7. Any person who maliciously furnishes information to the National Telecommunications Commission based on documents that are ruled false by an irrevocable judicial decision;
8. Any person who fails to meet the obligation of securing the approval of the National Telecommunications Commission in the operations described in Article 195 of this Law;
9. Any person who avoids paying the levies set forth in this Law;
10. Repetition of any of the offenses listed in this Section within a period of one year following the irrevocable issuing of the previous punishment.

Cancellation of the radio-frequency concession shall imply the cancellation of the corresponding administrative license, and vice-versa.

[230] The Radiocommunications Regulations read as follows:

Article 53. Broadcast stations are absolutely forbidden to transmit:

- (a) Correspondence of a private nature. However, for as long as the normal channels for official telecommunications are interrupted or congested, this restriction shall not apply to messages broadcast free of charge by stations during and relating to tropical storms, floods, earthquakes, and other public disasters, or to those with places with which there is no other means of communication, in urgent instances and after the prior authorization of the responsible Ministry has been secured.
- (b) Ideas that could compromise good and friendly relations among countries.
- (c) Messages, speeches, exhortations, or lectures that call for rebellion or disrespect toward legitimate authorities and institutions; and showing disrespect toward those same institutions and authorities.
- (d) Propaganda aimed at subverting public or social order.
- (e) Political propaganda, when it entails debates or discussions among competing persons or parties.
- (f) Improvisations on any topic, except those that must necessarily be given because an entertainment is being reviewed.
- (g) News stories, messages, or exhortations aimed at hindering the course of justice.
- (h) Immoderate or insistent incitements to consume alcoholic beverages. In any case, advertisements for such beverages shall require the prior authorization of the Ministry of Health and Social Assistance.
- (I) Ideas that in some way affect the reputation and good name of persons or institutions.
- (j) False, deceitful, and biased news or reports.
- (k) Information encouraging speculation or containing deceitful statements or dubious warnings.
- (l) Advice related to health, hygiene, therapy, and protection against disease; consultations regarding the treatment of disease; recommendations on cure methods or regimes; formulas for medicinal preparations; and diagnoses of a medical nature.

Transmissions of this nature will only be allowed when run or authorized by the Ministry of Health and Social Assistance or sponsored by any other official medical, health, or public assistance institution.

(m) Manifestations of darkness or pathos; sensationalist stories; and narratives of unedifying events.

(n) Programs that present people who appear to possess supernatural powers, such as seers, wizards, and personality analysts; and programs that could induce the public into holding incorrect beliefs.

(o) In general, anything that entails the commission of a crime punishable under Venezuelan criminal law.

Sole Paragraph. – The use of codes in transmissions is also prohibited.

[231] Ministry of Infrastructure. Deed commencing administrative proceedings, February 3, 2003, against the company Corporación Venezolana de Television, C.A. (Venevisión). In the proceedings the entity noted “announcements in breach of the absolute ban on transmitting ideas that in any way affect the reputation and good name of individuals or institutions contained in Article 53.i of the Radiocommunications Regulations.”

[232] CONATEL No. CJ/005457, summary administrative proceedings begun by the National Telecommunications Commission to determine the existence of a breach of Articles 53 and 59 of the Radiocommunications Regulations by the company Corpomedios GV Inversiones, C.A. (Globovisión). Administrative Deed No. 080, October 18, 2001. In these proceedings CONATEL stated that: “the Commission can assume that Globovisión broadcast information relating to the death of taxi-drivers without being certain about it, and that the information in question was transmitted without previously verifying that it was truthful or had originated with trustworthy sources.”

[233] Ministry of Infrastructure No. DM/0046. Deed commencing administrative proceedings, January 17, 2003, against the company Corpomedios GV Inversiones, C.A. (Globovisión). In the proceedings the entity noted that “such messages and statements sponsored by the aforesaid television station are suspected of violating the absolute ban placed on the transmission of messages, speeches, exhortations, or lectures that call for rebellion or disrespect toward legitimate authorities and institutions; and the disrespect toward those same institutions and authorities set forth in Article 53.c of the Radiocommunications Regulations. The provision from the Regulations cited in the last instance is identical to the rules governing desacato.

[234] Following the same procedure as in the above cases against television companies (Globovisión, Venevisión, RCTV, and Televen), on July 15, 2003, the Rapporteur’s office sent Foreign Minister Chaderton a letter expressing its concern over the incident.

[235] Although it does not change the above analysis, the IACHR notes that the judgment of the Supreme Court of Justice resolved to “partially admit” the unconstitutionality suit filed against Articles 223, 224, 225, and 226 of the Criminal Code. Consequently, they were restricted as indicated below:

Article 223. Any person who, by deed, offends in any way the honor, reputation, or dignity of a member of the National Assembly or any public official shall be punished as indicated below, if the offense was made in the presence thereof and in connection with their functions:

1. If the offense was directed against a law-enforcement officer, with a prison term of one to three months.
2. If the offense was directed against a member of the National Assembly or a public official, with a prison term of one month to one year, according to the rank of the person in question.

Article 224. If the action described in the Article above is accompanied by violence or threats, it shall be punishable by a prison term of between three and eighteen months.

Any person who, in another way not provided for in the cases listed in the previous chapter, makes use of violence against or threatens a member of the National Assembly or other public official, if that act takes place as a result of the victim’s functions, shall be punishable with the same punishments.

Article 225. When any of the actions described in the above articles is committed against a public official not as a result of his functions but at a moment in which he is performing them, the same punishments shall apply, with a reduction of between one-third and one-half.

Article 226. Any person who, by word or by deed, offends in any way the reputation of a judicial, political, or administrative body, if the crime is committed at a time when it is

established, or any magistrate in a hearing, shall be punished with a prison term of between three months and two years.

If the perpetrator used violence or threats, the prison term shall be from six months to three years.

Prosecution shall take place only by means of a request lodged by the offended party. If the crime is committed against bodies not meeting at the time, the prosecution shall only proceed following a request made by its presiding members.

Said request shall be lodged with the Public Prosecution Service in order for the applicable steps to be taken.

[236] Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, (*supra*), paragraph 38.

[237] *Ibid.*, paragraph 39.

[238] Report on the Compatibility of Desacato Laws with the American Convention on Human Rights, (*supra*), 218-19.

[239] *Ibid.*, p. 222.

[240] *Ibid.*, p. 223.

[241] The Inter-American Court of Human Rights, in Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5, paragraph 33, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 19 of the American Convention on Human Rights), stated that:

The two dimensions mentioned [individual and collective] of the right to freedom of expression must be guaranteed simultaneously. One cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor.

[242] The Washington Post: A Split Screen In Strike-Torn Venezuela, January 12, 2003; New York Times: Venezuelan News Outlets Line Up with the Foes of Chávez, December 21, 2002. Committee to Protect Journalists: Venezuela, Special Report: Cannon Fodder, In the current battle between the Venezuelan media and President Hugo Chávez Frías,

journalists are being used as ammunition. Press and Society Institute (IPYS), weekly bulletin: *Contrapunto entre corresponsales extranjeros y medios venezolanos*, January 29, 2003. Venezuelan Education Program, Action on Human Rights (PROVEA): Annual Report October 2001 – September 2002, *Sesgo político de los medios públicos y privados*, p. 449, Caracas, Venezuela, November 2002.

[243] IACHR, Press Release No. 23/02: The Inter-American Commission on Human Rights concludes its visit to the Bolivarian Republic of Venezuela.

[244] The sixth principle of the Declaration of Principles on Freedom of Expression provides that: Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.

[245] Inter-Am.Ct.H.R., Advisory Opinion OC-5/85, paragraph 42.

[246] See: Chapter IV, Article 27, of the American Convention, which sets forth the obligations of States during emergency situations.