

Case of Luciano Benítez *v.* Republic of Varaná

MEMORIAL FOR THE PETITIONERS

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III. STATEMENT OF FACTS

The Republic of Varaná (Varaná) is a democratic State with a culturally diverse population of Indigenous Paya people, white people and Afro-descendants.¹ During the Ocean Party administrations from 1994 to 2015², Varaná experienced exponential economic growth largely due to the discovery of varanatic metal, a highly valuable raw material for information technology.³ The first company to utilize this varanatic metal was Holding Eye (Eye)⁴, whose subsidiary, Lulo, created a social media platform called LuloNetwork and mapping app Lulocation.⁵

Mr. Benítez, aged seventy-two and of Paya decent⁶, was a widely popular environmental activist and a known human rights defender (HRD) in Varaná, also supporting indigenous causes.⁷ Mr. Benítez utilized LuloNetwork⁸ to broadcast to his 80,000 followers through his blog. In a publication he openly opposed varanatic exploitation perpetrated by Eye⁹ alleging corruption.¹⁰ After this post Mr. Benítez suffered a sharp decline in online presence and a myriad of legal issues arose.¹¹

In 2014, Mr. Benítez faced a “Strategic Lawsuit against Public Participation” (SLAPP) tort action from Eye, claiming an enormous fine of 50,000\$R due to an alleged smear campaign initiated by Mr. Benítez against the company.¹² Amongst others, Eyedemanded the disclosure

¹ Hypothetical, § 1.

² Hypothetical, § 14.

³ Hypothetical, § 15.

⁴ Hypothetical, § 19.

⁵ Hypothetical, §§ 16, 20.

⁶ Hypothetical, § 21.

⁷ Hypothetical, § 24.

⁸ Hypothetical, §§ 27, 28.

⁹ Hypothetical, § 36.

¹⁰ Hypothetical, § 38.

¹¹ Hypothetical, § 39.

¹² Hypothetical, §§ 39, 40.

of his source. Eventually, a comment from the judge of the Civil Trial Court of the Capital made him reveal his source.¹³

Moreover, journalist Federica Palacios wrote an article that went viral on her LuloNetwork blog and state-owned digital media outlet VaranáHoy.¹⁴ The article included Mr. Benítez's whereabouts and was used to discredit his character. After being denied anonymity on the social media platform Nueva, Mr. Benítez faced online harassment and was subsequently removed from activism groups. This denial stemmed from Nueva's policy aligning with Varaná's Supreme Court of Justice ruling 1010/13, interpreting Law 22 of 2009 as prohibiting anonymity. As a result, Mr. Benítez was disconnected from the internet, which led to significant obstacles such as loss of access to his pension and difficulties in paying his water bill. In response, he initiated domestic legal proceedings against Ms. Palacios and Eye seeking damages and removal of information pertaining to him.

On 2 November 2016, Mr. Benítez, supported by the NGO Blue Defense (Blue Defense), filed a petition with the Inter-American Commission on Human Rights (IACHR or Commission) alleging multiple violations of the American Convention on Human Rights (ACHR).¹⁵ On 9 March 2017, the petition was processed and sent to the State and a friendly settlement was made under Article 30(3) ACHR.¹⁶ On 13 April 2022, no friendly settlement was agreed upon, thus the IACHR adopted a Report on the Admissibility and Merits under Article 50 ACHR, which declared the case admissible and found violations of Articles 5, 8, 11, 13, 14, 15, 16, 22, 23,

¹³ Hypothetical, §38.

¹⁴ Hypothetical, §44.

¹⁵ Hypothetical, §75.

¹⁶ Hypothetical, §76.

and 25 ACHR *juncto* Articles 1(1) and 2 ACHR thereof. The case was finally submitted to the Inter-American Court of Human Rights (IACtHR or the Court) on 2 June 2022.¹⁷

IV. LEGAL ANALYSIS

a. Provisional measures

The alleged victim requests the IACtHR, in accordance with Article 63(2) ACHR, to order provisional measures to be taken by Varaná, namely the restoration of Mr. Benítez's access to water, to his pension, past and future, and for the State to order LuloNetwork to de-index Ms. Palacios' article. The alleged victims will demonstrate that the conditions for provisional measures – extreme gravity, urgency and a risk of irreparable harm to a person – are met. The alleged victim requests the IACtHR to order Varaná to take the necessary steps to restore Mr. Benítez's ability to pay his water bill and access to his pension. Firstly, Mr. Benítez's disconnection from the internet has resulted in him no longer having the ability to pay his water bill since 2015 or access his pension payments¹⁸, since both procedures have become completely digitized.¹⁹

Mr. Benítez's deprivation of basic necessities constitutes a situation of extreme gravity, defined as reaching the most elevated degree.²⁰ This situation has significant consequences regarding his right to life (Article 4 ACHR), right to humane treatment (Article 5), right to progressive development (Article 26 ACHR), and right to participate in government, as he lacks access to Varaná's public services (Article 23(1)(c) ACHR).

¹⁷ Hypothetical, §§77,78.

¹⁸ Hypothetical, §61.

¹⁹ *Four Ngöbe Indigenous Communities and Their Members v. Panama* (Provisional Measures), IACtHR, 28 May 2010, §8; *Yanomami, Ye'kwana and Munduruku Indigenous Peoples v. Brazil*, IACtHR, 1 July 2022, §37.

²⁰ *Ibid.*

Secondly, there is an urgent risk to Mr. Benítez's health as he does not have access to a source of water for drinking or bathing which can lead to sanitation and health deterioration, and even death.²¹

Thirdly, the avoidable damage must be irreparable and there must be a “reasonable probability”²² of this damage occurring if preventative measures are not put in place. Mr. Benítez is an elderly person with no access to water and without a steady income, which puts him in a vulnerable position, detrimental to his health and life. The State’s failure to provide an effective and inclusive public services system impedes its obligation to protect every person subject to its jurisdiction.²³ Additionally, in *Yanomami, Ye'kwana and Munduruku Indigenous Peoples* it was shown that a lack of access to water risks irreparable harm endangering one’s right to life and personal integrity.²⁴ The foregoing clearly demonstrates that irreparable damage will occur under Articles 4, 5, 23 and 26 ACHR if immediate action through provisional measures is not taken.

Furthermore, the alleged victims request the IACtHR to order Varaná to take the necessary steps to ensure that Ms. Palacios’ article is de-indexed.

Firstly, Mr. Benítez has faced large-scale online and offline hate due to Ms. Palacios’ article which has impacted Mr. Benítez’s normal life as he suffered from mental illness and has been isolated from his activist groups. This constitutes a situation of extreme gravity²⁵ which is not

²¹ *L.M. v. Paraguay* (Provisional Measures), IACtHR, 23 January 2012, §18; *Yanomami, Ye'kwana and Munduruku Indigenous Peoples v. Brazil* (Provisional Measures), IACtHR, 1 July 2022, §37.

²² *Four Ngöbe Indigenous Communities v. Panama* (Provisional Measures), IACtHR, 28 May 2010, §10; *Yanomami, Ye'kwana and Munduruku Indigenous Peoples v. Brazil*, IACtHR, 1 July 2022, §37.

²³ *Guerrero-Gallucci and Martínez-Barrios v. Venezuela*, IACtHR, 29 November 2007, Preamble, §4.

²⁴ *Yanomami, Ye'kwana and Munduruku Indigenous Peoples v. Brazil*, IACtHR, 1 July 2022, §50.

²⁵ *Four Ngöbe Indigenous Communities v. Panama* (Provisional Measures), IACtHR, 28 May 2010, §8, *Yanomami, Ye'kwana and Munduruku Indigenous Peoples v. Brazil*, IACtHR, 1 July 2022, §37.

“merely hypothetical”²⁶ and which has grave consequences intertwined with his right to life (Article 4 ACHR), his right to humane treatment (Article 5 ACHR) and his right to health (Article 26 ACHR).

Secondly, Mr. Benítez’s previous request to de-index the article in his tort action against Ms. Palacios and Eyewas denied. Varaná’s refusal to de-index the false allegations circulating the internet had a detrimental effect on his mental well-being.²⁷ Despite the State’s awareness of Mr. Benítez’s mental anguish²⁸ Varaná ignores his situation, without any attention to the urgency of the circumstances.

Thirdly, the avoidable damage is irreparable and there is a “reasonable probability”²⁹ of the damage to Mr. Benítez’s deteriorating mental health could be alleviated by the State through the de-indexing of the article, in line with Varaná’s obligation to protect Mr. Benítez.³⁰ Therefore, irreparable damage will materialize to Mr. Benítez under Articles 4, 5 and 26 ACHR if immediate action through provisional measures is not taken.

In conclusion, as the conditions for provisional measures have been met in accordance with Article 63(2) ACHR, the alleged victims request the IACtHR to order the State to restore Mr. Benítez’s access to water, to his pension, past and future, and to order the State to have Ms. Palacios’ article de-indexed.

²⁶ *Peace Community of San José de Apartadó v. Colombia*, IACtHR, 24 November 2000, Concurring Opinion of Judges Alirio Abreu and Sergio Ramírez, §2.

²⁷ *L.M. v. Paraguay*, (Provisional Measures), IACtHR, 23 January 2012, §18, *Four Ngöbe Indigenous Communities*, IACtHR, §9.

²⁸ Clarification Question (CQ) 5.

²⁹ *Four Ngöbe Indigenous Communities v. Panama* (Provisional Measures), IACtHR, 28 May 2010, §10; *Yanomami, Ye'kwana and Munduruku Indigenous Peoples v. Brazil*, IACtHR, 1 July 2022, §37.

³⁰ *Guerrero-Gallucci and Martínez-Barrios v. Venezuela* (Provisional Measures), IACtHR, 29 November 2007, Preamble §4.

In case of non-compliance by Varaná with the provisional measures, the alleged victims request the IACtHR, instead of finding an aggravated violation of the substantive provisions concerned, to further develop its case law, namely by establishing an autonomous violation of Articles 63(2) *juncto* Article 1(1) ACHR.³¹

b. Merits

1. Application of the *iura novit curia* principle

The IACtHR has often used its judicial power under the *iura novit curia* principle to analyze possible violations of the ACHR that were not included in the filed petitions or briefs.³² This is to ensure that a party will not lose the case simply by failing to invoke the correct legal ground. The Court concluded in *Hilaire et al.* that it had “the power and the duty to apply juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them”.³³

2. Mr. Benítez’s intersecting identities

Before delving into the State’s alleged violations, it is imperative to underscore Mr. Benítez’s intersecting identities, as he is a HRD, an elderly person, an indigenous Paya descendant and a

³¹ C. Burbano-Herrera and Y. Haeck, *Letting States off the Hook? The Paradox of Legal Consequences following State Non-Compliance with Provisional Measures in the Inter-American and European Systems*, Netherlands Quarterly of Human Rights, 2017, p.332.

³² *Lhaka Honhat v. Argentina*, IACtHR, 6 February 2020, §200; *Heliodoro Portugal v. Panama*, IACtHR, 12 August 2008, §105; *Velásquez Rodríguez v. Honduras*, IACtHR, 29 July 1988, §163.

³³ *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, IACtHR, 21 June 2002, §§107, 187, referencing *Nicaragua v. US*, ICJ, 27 June 1986, §29.

journalist.³⁴ This intersectionality heightens Mr. Benítez’s vulnerability, which significantly increases the State’s obligations towards him.³⁵

Firstly, HRDs deserve enhanced protection due to their critical role in advocating for fundamental freedoms, holding governments accountable, and protecting vulnerable groups, often at great personal risk.³⁶ This Court, as highlighted in *Kawas-Fernández*, emphasizes the importance of creating legal and factual conditions that enable HRDs to carry out their activities free and without fear of reprisals.³⁷ This includes protecting defenders from threats, refraining from imposing restrictions on their work, and conducting effective investigations into any violations against them.³⁸ Eye’s SLAPP filed against Mr. Benítez serves a stark example of the challenges faced by HRDs worldwide.³⁹ These actions not only aim to stifle his activism but also seek to undermine his credibility and effectiveness in advocating for human rights and environmental justice.

Secondly, elderly people, like Mr. Benítez, need special protection due to their vulnerability to discrimination and human rights violations in various settings, coupled with unequal access to resources and risks of violence and poverty.⁴⁰ Furthermore, Articles 6(2), 12 and 17 of the Inter-American Convention on Protecting the Human Rights of Older Persons (IACPHROP) also

³⁴ *The Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, IACtHR, 15 July 2020, §§190, 197; K.W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, University of Chicago Legal Forum, 1989, p.149.

³⁵ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression *et al.*, *Joint declaration on media freedom and democracy*, 2 May 2023, Recommendations for the States e).

³⁶ IACHR, *Integral Protection Policies for Human Rights Defenders*, 29 December 2017, §§7, 8.

³⁷ *Kawas-Fernández v. Honduras*, IACtHR, 3 April 2009, §145; *Nogueira de Carvalho et al. v. Brazil*, IACtHR, 28 November 2006, §§77, 161; *Valle Jaramillo et al. v. Colombia*, IACtHR, 27 November 2007, §91.

³⁸ *Kawas-Fernández v. Honduras*, IACtHR, 3 April 2009, §145.

³⁹ European Parliament and Council, *Proposal for a directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)*, 27 April 2022; Article 19, *Inter-American Commission on Human Rights: Ensure protection against SLAPPs*, 11 July 2023.

⁴⁰ C. Martin, *et al.*, *Human Rights of Older People Universal and Regional Legal Perspectives*, Springer, 2015, 216.

protect the right to life and dignity for the elderly and explicitly affirm their entitlement to a comprehensive system of care. That includes access to water and social security, rights that Mr. Benítez has been unjustly denied. Additionally, the UN Human Rights Council (UNHRC) urges states to ensure universal access to affordable and quality services for all, including for older persons.⁴¹ Moreover, according to the UN Principles for Older Persons, the elderly should be able to live in dignity and security and be free of exploitation and physical or mental abuse.⁴²

Thirdly, the Court has previously emphasized that indigenous peoples are vulnerable due to a structural context that suppresses them.⁴³ These structural challenges pertain to multiple factors, including historical marginalization, dispossession of land and resources, discrimination, lack of access to basic services, such as healthcare, and often being disproportionately affected by environmental degradation and climate change.⁴⁴

In the present case, Paya people face specific vulnerability and neglect due to the threat posed by a proposed industrial complex by Eye, which not only raises environmental concerns but also jeopardizes the cultural significance of the Sea Festival, an age-old Paya tradition.⁴⁵ Despite the far-reaching impact on all Paya people, Varaná failed to engage them in any consultation process.⁴⁶ However, international agreements like the Escazú Agreement prescribe that each State shall guarantee to identify the people directly affected by the projects or activities

⁴¹ UNHRC, *Centrality of care and support from a human rights perspective*, 11 October 2023, §4(b).

⁴² UN General Assembly, *UN Principles for Older Persons*, 16 December 1991, Principle 17.

⁴³ *Lhaka Honhat v. Argentina*, IACtHR, 6 February 2020, §209; *Sawhoyamaya v. Paraguay*, IACtHR, 29 March 2006, §83.

⁴⁴ UN Declaration on the Rights of Indigenous Peoples, 13 September 2007, Preamble §§6,7,10,11; American Declaration on the Rights of Indigenous People, 15 June 2016, Preamble §§5,7,8,9,10,11.

⁴⁵ Hypothetical, §22.

⁴⁶ American Declaration on the Rights of Indigenous People, 15 June 2016, Article XXVIII(3).

that have or may have a significant impact on the environment and shall promote specific actions to facilitate their participation.⁴⁷

In *Kawas-Fernández* the Court emphasizes that there is a link between advocacy for the environment and the enjoyment of human rights⁴⁸, acknowledging Ms. Kawas' intersecting identity as a HRD, journalist and environmental advocate.⁴⁹ As a descendant of the Paya People, Mr. Benítez embodies a significant aspect of Varaná's indigenous heritage. Ever since his youth, he has been advocacy for the environment, making him a target for harassment, legal intimidation and attacks on his reputation.

Fourthly, Mr. Benítez should be considered a journalist. Even though he is not a professional⁵⁰, he does engage in forms of self-publication. The UN Human Rights Committee recognizes journalism as a function shared by a wide range of actors, including full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.⁵¹ In *Bedoya Lima*, the Court emphasized the State's obligation to protect journalists and ensure their independence⁵² to carry out their duties, free from threats or physical, mental or moral attacks or other acts of harassment.⁵³ According to a report of the UN Special Rapporteur on Freedom of Expression, journalists are entitled to specific legal

⁴⁷ UN ECLAC, *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, 4 March 2018, Article 7(16).

⁴⁸ *Kawas-Fernández v. Honduras*, IACtHR, 3 April 2009, §§148, 149.

⁴⁹ *Ibid*, §147.

⁵⁰ CQ12.

⁵¹ UN Human Rights Commission, *General Comment No. 34: Article 19: freedoms of opinion and expression*, 29 July 2011, §44. Also Committee of Ministers of the Council Of Europe, Recommendation CM/Rec(2016)4,; UN General Assembly, *The safety of journalists and the issue of impunity*, 17 December 2015, Preamble §11.

⁵² *Herrera Ulloa v. Costa Rica*, IACtHR, 2 July 2004, §119.

⁵³ *Bedoya Lima v. Colombia*, IACtHR, 26 August 2021, §152.

protection, states must ensure their safety and freedom to work without obstruction, by putting in place legislative and regulatory measures in line with international human rights standards.⁵⁴

In conclusion, the diverse characteristics of Mr. Benítez collectively shape and influence his experiences. It is crucial to examine all the alleged violations he has endured within the context of these distinct characteristics, and to keep this intersectionality in mind.

3. Mr. Benítez being sued by Eye amounts to a violation of Article 13 *juncto* Articles 1(1) and 2 ACHR

Article 13 ACHR enshrines the freedom of expression. It protects the right to seek, receive and disseminate ideas and information of all kinds, as well as the right to receive and know the information disseminated by others.⁵⁵ Therefore it has two dimensions, an individual and a social dimension.⁵⁶ With regard to the individual dimension, it requires that no one be arbitrarily limited or impeded in expressing their own thoughts.⁵⁷ Since the expression and dissemination of thought and information are indivisible⁵⁸, restricting dissemination directly limits the right to free expression.⁵⁹ The social dimension implies a collective right for the population to receive any kind of information and to have access to the thoughts expressed by others.⁶⁰ It is necessary to indicate that freedom of expression is a way of exchanging ideas and information between persons, it includes the right to communicate one's point of view to others, but it also implies

⁵⁴ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Reinforcing media freedom and the safety of journalists in the digital age*, 20 April 2022, §13; *Centro Europa 7 S.r.l. v. Italy*, ECtHR, 7 June 2012, §134.

⁵⁵ *Grijalva Bueno v. Ecuador*, IACtHR, 3 June 2021, §152; *López Lone et al. v. Honduras*, IACtHR, 5 October 2015, §166.

⁵⁶ IACtHR *Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights)*, 13 November 1985, §§31, 32, 33.

⁵⁷ *Lagos del Campo v. Peru*, IACtHR, 31 August 2017, §89.

⁵⁸ *"The Last Temptation of Christ" v. Chile*, IACtHR, 5 February 2001, §65.

⁵⁹ *Ibid*, §65; *Ivcher-Bronstein v. Peru*, IACtHR, 6 February 2001, §146.

⁶⁰ *Ibid*, §146.

everyone's right to know opinions, reports and news. For the ordinary citizen, the knowledge of other people's opinions and information is as important as the right to impart their own ideas.⁶¹ The Court considers that both dimensions are of equal importance and should be guaranteed simultaneously in order to give total effect to the right to freedom of thought and expression under Article 13 ACHR.⁶²

Furthermore, the obligation of the State to respect and ensure the freedom of expression cover both negative and positive aspects. The negative dimension of the obligation requires the State to not interfere with that freedom unless the interference is fully compatible with Article 13 ACHR. The positive dimension of the obligations requires the State to adopt measures to ensure the freedom of expression. The State may be responsible not only for acts committed by action or omission of its agents but also by other individuals.⁶³

The Court recalled in its case law that the right to freedom of expression not only protects the broadcast of statements that are harmless or well received by public opinion, but also the ones that shock, irritate or disturb public officials or any sector of the population.⁶⁴ Without freedom of expression, exercised in all its forms, democracy is enervated, pluralism and tolerance start to deteriorate, the mechanisms for control and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society.⁶⁵

⁶¹ *"The Last Temptation of Christ" v. Chile*, IACtHR, 5 February 2001, §66; *Herrera-Ulloa v. Costa Rica*, IACtHR, 2 July 2004, §148.

⁶² *Granier et al. (Radio Caracas Televisión) v. Venezuela*, IACtHR, 22 June 2015, §135.

⁶³ L. Hennebel, H. Tigroudja, *The American Convention on Human Rights: A Commentary*, March 2022.

⁶⁴ *Herrera-Ulloa v. Costa Rica*, IACtHR, 2 July 2004, §126; *Álvarez Ramos v. Venezuela*, IACtHR, 30 August 2019, §114; *Palacio Urrutia v. Ecuador*, IACtHR, 24 November 2021, §115.

⁶⁵ *Herrera-Ulloa v. Costa Rica*, IACtHR, 2 July 2004, §116.

In the present case, Eye filed a tort action, alleging that Mr. Benítez started a smear campaign against the corporation.⁶⁶ Its objective was evidently not centered on seeking rectification, as evidenced by the swift withdrawal of all claims and the subsequent motion to dismiss the case upon identification of Mr. Benítez's source. Instead, it is evident that the actual aim was to suppress the criticism made by Mr. Benítez's actions in the public domain. His blogpost had, after all, shed light on illicit payments and other concerning matters. By suing Mr. Benítez for 50,000R\$, a substantial sum he cannot afford given his income is only twice the country's minimum wage, Eye sought to intimidate him into ceasing his critical writing about the company.

Eye's abovementioned action is commonly known as a SLAPP and has a severe "chilling effect" on journalistic and human rights advocacy work.⁶⁷ As mentioned above, the intersectionality of Mr. Benítez's characteristics as a HRD, journalist, descendent of the indigenous Paya people and elderly person renders him more vulnerable for SLAPPs. This was made clear in *Palacio Urrutia*.⁶⁸ In this case, the Court considered that resorting to judicial channels to file lawsuits for slander or insult, with the objective to silence the criticisms made regarding their actions in the public sphere, constitutes a threat to freedom of expression. This type of lawsuits constitute an abusive use of judicial mechanisms that must be regulated and controlled by the State.⁶⁹

In conclusion, the State failed to fulfill its positive obligation under Article 13 ACHR to safeguard freedom of expression by not promptly dismissing Eye's legal action against Mr. Benítez and thereby violated Article 13 *juncto* Articles 1(1) and 2 ACHR.

⁶⁶ Hypothetical, §39.

⁶⁷ *Palacio Urrutia v. Ecuador*, IACtHR, 24 November 2021, §160.

⁶⁸ UNHRC, *The safety of journalists*, 6 October 2020, Preamble.

⁶⁹ *Palacio Urrutia v. Ecuador*, IACtHR, 24 November 2021, §95.

4. Mr. Benítez revealing his source under coercion amounts to a violation of Articles 8, 13 and 25(1) *juncto* Articles 1(1) and 2 ACHR

Article 8 ACHR contains the right to fair trial. The first paragraph outlines the rules of due process, according to which every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law. The second paragraph includes the presumption of innocence, the right to defense and the right to appeal

Article 25 ACHR embodies the right to judicial protection. It includes a positive obligation for states to guarantee that all persons under its jurisdiction have access to an effective judicial remedy against acts that violate their fundamental rights.⁷⁰ However, in order to protect the right to effective recourse, it is crucial that the recourse be exercised in conformity with the rules of due process, protected in Article 8 ACHR.⁷¹

Firstly, according to the Court in *Carvajal Carvajal*, Article 8(1) ACHR protects an individual's right to be heard by an impartial and independent tribunal. This entails a State obligation to diligently investigate, prosecute and punish those responsible for any criminal act.⁷²

In *Álvarez Ramos*, the Court discusses the subjective and objective part of impartiality.⁷³ It emphasized that impartiality requires judges to examine the facts of the case subjectively free of all prejudice, and additionally, that sufficient objective guarantees are offered to exclude any doubt about their impartiality. The objective impartiality test consists of determining whether a

⁷⁰ *Abrill Alosilla et al v. Peru*, IACtHR, 4 March 2011, §75.

⁷¹ *Hilaire et al. v. Trinidad and Tobago*, IACtHR, 21 June 2002, §148.

⁷² *Carvajal Carvajal et al. v. Colombia*, IACtHR, 13 March 2018, §101; *Vereda La Esperanza v. Colombia*, IACtHR, 31 August 2017, §185.

⁷³ *Álvarez Ramos v. Venezuela*, IACtHR, 30 August 2019, §150; *Mikhail Mironov v. Russia*, ECtHR, 6 October 2020.

particular judge offered sufficient elements of conviction to allay any legitimate misgivings or well-founded suspicions of partiality regarding his person.⁷⁴

During the hearing on 5 December 2014 at the Civil Trial Court of the Capital, Eye's attorney demanded disclosure of Mr. Benítez's source.⁷⁵ The judge's statement, favoring Eye by suggesting that the case could end faster if he provided an answer, undermines his objective impartiality. The judge has not provided enough evidence to dispel any legitimate doubts or suspicions of partiality and therefore displayed a clear lack of impartiality. This amounts to a violation of Article 8(1) ACHR.

Secondly, in its established case law, the Court considers that the right to appeal is an essential guarantee that must be respected as part of due process of law, so that a party may turn to a higher court for revision of a judgment that was unfavorable to that party's interest.⁷⁶ Secondly, in its established case law, the Court considers that the right to appeal is an essential guarantee that must be respected as part of due process of law, so that a party may turn to a higher court for revision of a judgment that was unfavorable to that party's interest.⁷⁷ The Court has highlighted that the primary aim of the right to appeal is to safeguard the right to defense. It allows for the filing of an appeal, to prevent a flawed procedure or erroneous interpretations in a judicial decision from becoming final, thus avoiding undue prejudice to the defendant's interests.⁷⁸ Furthermore, the Court has held that Article 8(2)(h) ACHR refers to an ordinary, accessible and effective remedy and for it to be effective, it must constitute an adequate

⁷⁴ *Apitz Barbera et al. v. Venezuela*, IACtHR, 5 August 2008 §56; *Pullar v. UK*, ECtHR, 20 May 1996, §30.

⁷⁵ Hypothetical, §41.

⁷⁶ *Gorigoitía v. Argentina*, IACtHR, 2 September 2019, §47; *Valle Ambrosio et al. v. Argentina*, IACtHR, 20 July 2020, §42; *Zegarra Marín v. Peru*, IACtHR, 15 February 2017, §171.

⁷⁷ *Gorigoitía v. Argentina*, IACtHR, 2 September 2019, §47; *Valle Ambrosio et al. v. Argentina*, IACtHR, 20 July 2020, §42; *Zegarra Marín v. Peru*, IACtHR, 15 February 2017, §171.

⁷⁸ *Amrhein et al v. Costa Rica*, IACtHR, 25 April 2018, §256.

mechanism for seeking the correction of an erroneous conviction. This requires an analysis of the factual, evidentiary and legal issues on which the contested judgment is based.⁷⁹

In *Zegarra Marín*, the Court found a violation of Article 8(2)(h) *juncto* Article 25(1) ACHR. The failure of the appellate instance to ensure a thorough review of the conviction rendered the appeal ineffective, thereby denying the petitioner an adequate remedy to safeguard their violated rights.⁸⁰

After the first instance judge concluded the proceedings on 12 January 2015, Blue Defense filed an appeal on behalf of Mr. Benítez. On 12 February 2015, the appellate court dismissed the appeal as it found that the source had already been revealed and the case was moot.⁸¹ The fact that Mr. Benítez's access to appeal was denied, denying him an effective remedy to protect his violated rights, amounts to a violation of Articles 8(2)(h) and 25(1) ACHR.

Thirdly, Mr. Benítez is entitled to maintain the confidentiality of his sources under Article 13 ACHR and Principle 8 of the Declaration of Principles on Freedom of Expression, endorsed by the Special Rapporteur for Freedom of Expression (RFOE).⁸² The latter safeguards the right of every social communicator to keep their source of information confidential and to withhold disclosure of research findings from private entities, third parties or governmental and legal authorities.⁸³

The right to confidentiality in journalism is crucial for fulfilling the public's right to information by protecting the anonymity of sources, enabling journalists to disclose essential information

⁷⁹ *Valenzuela Ávila v. Guatemala*, IACtHR, 11 October 2019, §120; *Norín Catríman et al. v. Chile*, IACtHR, 29 May 2014, §270.

⁸⁰ *Zegarra Marín v. Peru*, IACtHR, 15 February 2017, §182.

⁸¹ Hypothetical, §42.

⁸² IACHR, *Declaration of the Principles on Freedom of Expression*, 2000.

⁸³ *Ibid*; *Sedletska v. Ukraine*, ECtHR, 1 April 2021, §54.

that would otherwise remain undisclosed.⁸⁴ The fact that Mr. Benítez made blog posts to spread information about the Eye project and the subsequent protests makes him a social communicator with the right to confidentiality.⁸⁵

Consequently, due to the partiality of the judge, denying Mr. Benítez's access to appeal and Mr. Benítez being obliged to reveal his source, the State violated Articles 8, 13 and 25 *juncto* Articles 1(1) and 2 ACHR.

5. Mr. Benítez being hacked amounts to a violation of Articles 11, 15, 16 and 22(1) *juncto* Articles 1(1) and 2 ACHR

a. The State violated Mr. Benítez's right to privacy

The IACHR has indicated that the right to privacy protects the right to confidentiality of all data produced in an individual's private space, with a corresponding prohibition on disclosure or circulation of information captured without the consent of its owner.⁸⁶

To fully respect and guarantee the right to privacy under Article 11 ACHR, states must avoid arbitrary interference and adopt measures to protect individuals from third-party intrusion.⁸⁷ In *Fontevicchia and D'Amico*, the Court clearly established that the State has an obligation to guarantee the right to privacy through positive actions, which may involve the adoption of measures to ensure that private life is protected against interference by public authorities as well as by individuals or private institutions, including the media.⁸⁸

⁸⁴ IACHR, *Special Rapporteur for Freedom of Expression: Background and Interpretation of the Declaration of Principles*, 2013, §37.

⁸⁵ Hypothetical, §36.

⁸⁶ IACHR/RFOE, *Standards for a Free, Open, and Inclusive Internet*, 15 March 2017, §191.

⁸⁷ *Ibid*, §192.

⁸⁸ *Fontevicchia and D'Amico v. Argentina*, IACtHR, 29 November 2011, §49.

Recently, the IACHR and the RFOE have expressed their concern regarding allegations that the communications of an investigative journalist were being illegally surveilled. They have called on the state concerned to carry out a complete, exhaustive investigation of the facts and to prosecute and punish those responsible. Illegitimate interference with the communications of HRDs and journalists violates their right to privacy but also endangers the rights inherent to the practice of journalism, including the confidentiality and integrity of sources and the rights to life and physical integrity of those around them.⁸⁹

According to the UNHRC states must adopt policies to prohibit data processing – including storage, analysis, and disclosure of personal data – except when authorized or when the person affected has given informed consent.⁹⁰

The European Court of Human Rights (ECtHR) has construed informed consent under the General Data Protection Regulation (GDPR) as requiring consent to be provided “freely, specifically, and unequivocally” and to be informed through a clear affirmative act.⁹¹ Mr. Benítez, however, was forced to agree to the terms and conditions since he could not afford to access any competing app. Moreover, there may be grounds for questioning the validity of the consent, since it can be demonstrated that he was not adequately informed about the implications of consenting to location tracking. The Commission already stated in 2017 that positive measures must be taken to educate people on their rights and the legal requirements for processing personal data and to inform them when their data has been collected, stored, processed, or disclosed.⁹² As the government of Varaná failed to implement such measures, Mr.

⁸⁹ IACHR/RFOE: *Dominican Republic Must Investigate Spying on Investigative Journalist Using Pegasus Spyware*, 1 June 2023.

⁹⁰ IACHR/RFOE, *Standards for a Free, Open, and Inclusive Internet*, 15 March, 2017, §205.

⁹¹ European Parliament and Council of the European Union, *General Data Protection Act*, 27 April 2016, §32.

⁹² IACHR/RFOE, *Standards for a Free, Open, and Inclusive Internet*, 15 March, 2017, §205.

Benítez's acceptance of the terms and conditions of the application did not amount to a valid consent.

In *Velásquez Paiz*, the Court noted that Article 11 ACHR establishes the right of every person to have their honor respected and dignity recognized. The Court further noted that this requirement prohibits an illegal attack upon an individual's honor or reputation, thus imposing a duty upon the State to provide protection. Reputation, as defined by the Court, pertains to the perception others hold about an individual.⁹³

It is clear that by unlawfully accessing Mr. Benítez's data and sharing this information anonymously with numerous journalists, there has been an unlawful interference in his private sphere and disclosure of his data without the consent of Mr. Benítez. This interference also harmed his reputation, as he is called an "environmental judas" and he was removed from all groups he belonged to on his instant messaging apps.⁹⁴

Especially keeping in mind his intersectionality, the State bears grave responsibility for failing to provide adequate protection, evidenced by its failure to adopt specific measures to ensure that there is no interference with Mr. Benítez's private life and to ensure the protection of his dignity.

b. The State violated Mr. Benítez's right of assembly and freedom of association

Article 15 ACHR protects the right to assemble in public spaces without undue interference from the government. Article 16 ACHR protects the freedom to associate with others for various lawful purposes. Both articles play a crucial role in democratic societies.

⁹³ *Velásquez Paiz et al. v. Guatemala*, IACtHR, 19 November 2015, §219; *Tristán Donoso v. Panama*, IACtHR, 27 January 2009, §57.

⁹⁴ Hypothetical, §§48, 49.

In its 2019 Report “Protest and Human Rights” the RFOE said that infiltrating social networks or using false identities in order to obtain information about social movements and the organization of demonstrations and protests may be considered a serious violation of the rights of assembly and freedom of association.⁹⁵ Under no circumstances are online intelligence actions allowed to monitor people who organize or take part in social protests.⁹⁶

According to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, states must uphold the right to freedom of peaceful assembly and association rights online as well as offline. This includes a negative obligation to abstain from undue interference, but also a positive obligation to take measure sto prevent actions by non-state actors, including businesses, that could infringe upon these rights.⁹⁷

In the present case, Méndez and González, two IT experts working for the Ministry of the Interior⁹⁸ utilized the software Andromeda to obtain personal data of human rights activists, including Mr. Benítez, and shared this information anonymously with numerous journalists. They sought to acquire information to counteract the public engagement of profiles that had the potential to impede the Ocean Party’s electoral success.⁹⁹ As Mr. Benítez focuses on protection the environment, he undermined their political agenda. Drawing on the 2019 Report “Protest and Human Rights”, this is a serious violation of the right of assembly and freedom of association. This resulted in the publication of an article by journalist Federica Palacios, causing Mr. Bénitez to withdraw from public life. This indicates a lack of proactive measures to prevent non-state actors from unduly interfering with the rights to freedom of peaceful assembly and

⁹⁵ IACHR, *Protest and Human rights*, September 2019, §300.

⁹⁶ *Ibid*

⁹⁷ *Ibid*,§14; UNHRC, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*,17 May 2019,§§13,14.

⁹⁸ Hypothetical,§62.

⁹⁹ Hypothetical,§63.

association¹⁰⁰, thereby violating his rights to freedom of assembly and association under Articles 15 and 16 ACHR.¹⁰¹

c. The State violated Mr. Benítez's right to freedom of movement and residence

Article 22(1) ACHR protects the freedom of movement, which includes two sets of rights, namely the right of all persons lawfully present on the State's territory to move freely and to choose their place of residence on the one hand and their right to enter, to remain in, and to leave the territory of the State without unlawful interference on the other hand.¹⁰² This right can be violated formally or by *de facto* restrictions when the State has not established the conditions or provided the means to exercise it.¹⁰³ These *de facto* violations may occur when a person is the victim of threats or harassment and the State does not provide the necessary guarantees to move freely and reside in the territory in question.¹⁰⁴

Mr. Benítez's freedom of movement has been violated, since the tracking and surveillance tactics employed against Mr. Benítez ultimately impeded his ability to move freely without unlawful interference or monitoring. Due to the surveillance and dissemination of his personal data, Mr. Benítez has become a target of threats and harassment. The State, in failing to afford the essential safeguards, as it does not de-index the article, precludes his ability to move freely within the territory, as Mr. Benítez has been isolated at home because of those threats and harassment. This amounts to a violation of Article 22(1) ACHR.

In conclusion, due to the illegitimate interference with the communications of Mr. Benítez, the lack of proactive measures to prevent unduly interfering with Mr. Benítez's rights to freedom

¹⁰⁰ UNHRC, *Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*, 17 May 2019, §14.

¹⁰¹ Hypothetical, §§60,61.

¹⁰² *Lysias Fleury et al. v. Haiti*, IACtHR, 23 November 2011, §93.

¹⁰³ *Omeara Carrascal et al. v. Colombia*, IACtHR, 21 November 2018, §272.

¹⁰⁴ *Alvarado Espinoza et al. v. Mexico*, IACtHR, 28 November 2018, §274; *Palacio Urrutia v. Ecuador*, IACtHR, 24 November 2021, §145.

of assembly and association and the inability to move freely without unlawful interference, the State violated Articles 11, 15, 16 and 22 *juncto* Articles 1(1) and 2 ACHR.

6. The impact of the State allowing cell phone carriers to offer zero-rating apps within Varaná amounts to a violation of Articles 13 and 24 *juncto* Articles 1(1) and 2 ACHR

Article 13 ACHR entails the right of persons to freely seek, receive and impart information. The RFOE confirmed this in Principle 2 of the Background and Interpretation of the Declaration of Principles.¹⁰⁵ Principle 2 emphasizes the imperative of ensuring equal opportunities for all individuals to access, seek, and share information through any communication means, without facing discrimination.¹⁰⁶ This entitlement also applies to the internet.¹⁰⁷ Furthermore, according to Article 24 ACHR all individuals are equal under the law, thus entitled to unbiased protection and treatment.

Law 22 of 2009 pertains to net neutrality and ensures free access to the internet and indicates that it does not allow for discrimination.¹⁰⁸ While the law permits zero-rating and explicitly states it does not constitute discrimination, it is important to acknowledge that zero-rating can still lead to unequal outcomes.

As to the material scope, the right to equality before the law entails different obligations on the State. As summarized in *Yatama*, states are obliged to eliminate discriminatory regulations and

¹⁰⁵ IACHR, *Special Rapporteur for Freedom of Expression: Background and Interpretation of the Declaration of Principles*, 2013.

¹⁰⁶ IACHR, *Special Rapporteur for Freedom of Expression: Background and Interpretation of the Declaration of Principles*, 2013; A. Von Bogdandy *et al.*, *The Impact of the Inter-American Human Rights System Transformations on the Ground*, OUP, 2024, p.506.

¹⁰⁷ IACHR/RFOE, *Standards for a Free, Open and Inclusive Internet*, 15 March 2017, §4.

¹⁰⁸ Hypothetical, §9.

practices and establish norms and measures that recognize and ensure effective equality before the law for each individual.¹⁰⁹

Net neutrality is described as the principle that all internet data should be treated equally, without any undue interference.¹¹⁰ This means that Internet Service Providers (ISPs) should not discriminate or prioritize certain types of data or content over others.¹¹¹ Net neutrality is crucial for promoting the widest possible access to information. In a digital age where people rely heavily on the internet for information, having equal and non-discriminatory access to various content and applications becomes essential. In this context, supporting net neutrality is presented as a way for the State to fulfill its duty under Article 13 ACHR by ensuring non-discriminatory access to information. In summary, net neutrality is essential for upholding freedom of expression, enabling diverse access to information and preventing both State and non-state actors from unduly interfering with the transmission of internet content and applications.¹¹²

Zero-rating is a practice in the telecommunications and ISPs industry whereby certain data usage is not counted towards a user's data cap or usage limits.¹¹³ Taking into account that ISPs can determine which apps do not count towards data usage, companies have the ability to reduce a person's freedom of choice regarding the sites a person visits and which apps that person uses. This practice creates an unfair situation in which it becomes very difficult for small companies to enter the market and the big companies who offer zero-rating apps can strengthen their position. The Constitution of Varaná explicitly forbids practices that limit free competition.¹¹⁴

¹⁰⁹ *Yatama v. Nicaragua*, IACtHR, 23 June 2005, §185.

¹¹⁰ UNHRC, *Report of the Special Rapporteur on the promotion and protection of the Right to Freedom of Opinion and Expression*, 17 March 2017, §21.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*, §29.

¹¹⁴ CQ34.

Zero-rating fosters an environment conducive to monopolies by privileging certain content, contradicting Varaná's stance against practices that hinder free competition. Despite its purported net neutrality, zero-rating can subtly disadvantage smaller competitors, perpetuating monopolistic tendencies that undermine the principles of fair competition upheld by the State of Varaná.

Mr. Benítez was offered all apps available from Lulo for free on his mobile phone plan¹¹⁵, constituting zero-rating.¹¹⁶ Due to his older age and limited internet literacy, he was unaware of how this zero-rating app limited his freedom of choice. P-mobile offered this plan in accordance with Law 22 of 2009, which treats people unequally. Zero-rating is discriminatory because it prioritizes certain internet content by exempting it from data charges, thus favoring content from certain providers or sources over others. The fact that certain data is treated unequally, constitutes discrimination. Therefore this law is discriminatory. This situation constitutes a violation of Article 24 ACHR. Subsequently, zero-rating undermines the equal opportunities to receive, seek and impart information by any means of communication without any discrimination.¹¹⁷ People using zero-rating apps, like Mr. Benítez, do not have the equal opportunity to receive, seek and impart all information. This is opposed to the principle of net neutrality and violates Article 13(1) ACHR.

In conclusion, the detrimental impacts of the State allowing ISPs to offer zero-rating apps within the jurisdiction of Varaná is not in accordance with the principle of net neutrality and violates Articles 13 and 24 ACHR *juncto* Articles 1(1) and 2 ACHR.

¹¹⁵ Hypothetical, §29.

¹¹⁶ CQ9.

¹¹⁷ IACHR, *Special Rapporteur for Freedom of Expression: Background and Interpretation of the Declaration of Principles*, 2013, §9.

7. The refusal of the State's courts to order the de-indexing of the news article amounts to a violation of Articles 5, 11, 14(1) *juncto* Articles 1(1) and 2 ACHR

a. The State violated Mr. Benítez's right to dignity and honor

Firstly, Article 11(1) ACHR explicitly safeguards the dignity and honor of all individuals.¹¹⁸ According to Article 11(3) ACHR, as confirmed in *Velásquez Paiz*¹¹⁹, an illegal attack upon an individual's honor or reputation is prohibited, thus imposing a duty upon the State to provide protection. The Court clarified in its case law that the right to reputation refers to the opinion others have about someone.¹²⁰ Mr. Benítez's reputation has clearly been unjustly tarnished, causing him significant harm. Since the publication of the distressing article, people started describing him as an "environmental judas", resulting in his removal from various groups he belonged to on his instant messaging apps.¹²¹

In the landmark case *Google*, the Court of Justice of the European Union (CJEU) affirmed individuals' rights to request the de-indexing of search results that are inadequate, irrelevant or no longer relevant, even if the information itself was accurate and lawfully published.¹²² This decision sparked a new debate with regard to this so-called "right to be forgotten"¹²³ under Article 17 GDPR.¹²⁴ In the present case, Mr. Benítez sought to have Ms. Palacios original article altered and requested LuLook to de-index it.¹²⁵ Nevertheless, the Varanasian domestic courts rejected these requests, neglecting Mr. Benítez's heightened vulnerability following from his

¹¹⁸ *Gallardo v. Mexico*, IACtHR, 15 October 1996, §76.

¹¹⁹ *Velásquez Paiz et al. v. Guatemala*, IACtHR, 19 November 2015, §§219-220.

¹²⁰ *Tristán Donoso v. Panama*, IACtHR, 27 January 2009, §57; *Mémoli v. Argentina*, IACtHR, 22 August 2013, §124.

¹²¹ Hypothetical, §48; CQ6.

¹²² *Google Spain*, CJEU, 13 May 2014, §§92, 93, 94.

¹²³ IACHR/RFOE, *Standards for a Free, Open and Inclusive Internet*, 15 March 2017, §128.

¹²⁴ European Parliament and Council of the European Union, *General Data Protection Regulation*, 27 April 2016, §32.

¹²⁵ Hypothetical, §67.

intersecting identity, which renders him particularly susceptible to unwarranted privacy and reputation attacks.

b. The State violated Mr. Benítez's right to correct inaccurate statements

Secondly, Article 14(1) ACHR explicitly grants individuals the right to correct inaccurate or offensive statements disseminated to the public through media outlets. Moreover, according to case law of this Court, the State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.¹²⁶

In the present case, Ms. Palacios' article contained false and damaging information about Mr. Benítez. Despite Mr. Benítez's explicit request in his lawsuit to have the article de-indexed¹²⁷, no effort was made to rectify these inaccuracies within the article itself and no steps were taken to de-index the article. The mere inclusion of a hyperlink to Benítez's response, without altering the original article nor de-indexing the article, is insufficient to fulfill the State's obligations. The failure to de-index the hurtful article does not only violate the Varanasian Constitution¹²⁸, it also amounts to a violation of Article 14(1) ACHR.

c. The State violated Mr. Benítez's right to personal integrity

Lastly, as stated in *Vélez Restrepo and Family*, the State violates the right to personal integrity when it is demonstrated that a citizen in its jurisdiction suffers from depression due to threats and intimidation.¹²⁹ The persistent harassment directed to Mr. Benítez and his isolation at home

¹²⁶ *Velásquez Rodríguez v. Honduras*, IACtHR, 29 July 1988, §174; *Barrios family v. Venezuela*, IACtHR, 24 November 2011, §116.

¹²⁷ Hypothetical, §67.

¹²⁸ Hypothetical, §7.

¹²⁹ *Vélez Restrepo and Family v. Colombia*, IACtHR, 3 September 2012, §180.

ultimately resulted in severe depression. The State's failure to take appropriate measures to address this situation, amounts to a violation of Article 5(1) ACHR, which guarantees not only the right to physical integrity, but also to mental and moral integrity.

In conclusion, the failure of the State's courts to de-index Palacios' damaging news article labelling Mr. Benítez an "environmental fraud", constitutes a clear violation of Article 14(1) *juncto* Articles 1(1) and 2 ACHR. This omission has caused severe threats and intimidations towards Mr. Benítez, thereby also infringing upon his right to personal integrity (Article 5 ACHR) and his right to dignity (Article 11 ACHR). Moreover, the State has a heightened obligation to protect, particularly given Mr. Benítez's intersecting identities.

8. The State's refusal to acknowledge the liability of LuLook amounts to a violation of Articles 13(2), 13(5) and 14(3) *juncto* Articles 1(1) and 2 ACHR

Article 13 ACHR holds that everyone has the right to freedom of thought and expression. However, the RFOE has indicated that clearly illegal content, like hate speech, is not covered by the right to freedom of expression and that the adoption of measures to block and filter specific content is admissible.¹³⁰ Moreover, it should be highlighted that Article 13(5) ACHR obliges states to criminalize certain kinds of expression such as hate speech. According to the IACHR, Article 13 ACHR mandates that anyone who has exercised the freedom of expression shall be answerable for the consequences for which he is responsible.¹³¹ In other words, the exercise of freedom of expression is not absolute and entails duties and responsibilities for those who use it.

¹³⁰ IACHR, *Report of the Special Rapporteur for Freedom of Expression 2013*, 31 December 2013, Chapter IV (Freedom of Expression), §§85,86.

¹³¹ IACHR, *Francisco Martorell v. Chile, Case 11.230, Report No. 11/96*, 3 May 1996, §58.

An important limitation on the abusive exercise of freedom of expression, such as hate speech, refers to the intermediary liability regime, which is fundamental for creating the appropriate incentives for the protection and guarantee of human rights.¹³² However, the imposition of intermediary liability to combat hate speech is a measure of last resort and must meet certain conditions.¹³³ In all cases, this liability regime for third-party content must follow the three-part test of legality, necessity, and proportionality.¹³⁴

Primarily, this Court has pointed out that “restrictions on freedom of information must be established by law”.¹³⁵ In this regard, any limitation or restriction must be formulated previously, in an express, accurate, and restrictive manner.¹³⁶ Article 11 of the Varanasian Constitution explicitly states that all persons have the right to a good name and privacy, and that the State is obligated to ensure these rights and prevent their infringement by third parties. Consequently, this constitutional provision warrants the legality criterion.¹³⁷

Secondly, measures taken in response to any content must be necessary in a democratic society to accomplish the aim they pursue¹³⁸, namely the prevention of the serious harm stemming from defamatory articles.

In this case, Mr. Benítez’s isolation and depression resulting from the false allegations in the article written by Ms. Palacios and published on her blog, illustrates the necessity and a pressing

¹³² UNESCO, *Fostering Freedom Online: the role of Internet Intermediaries*, 2014, p3.

¹³³ IACHR, *Report of the Special Rapporteur for Freedom of Expression 2013*, 31 December 2013, Chapter IV (Freedom of Expression and the Internet), §85.

¹³⁴ IACHR/RFOE, *Standards for a Free, Open, and Inclusive Internet*, 15 March 2017, §104.

¹³⁵ IACtHR *Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights)*, 13 November 1985, §89.

¹³⁶ *Kimel v. Argentina*, IACtHR, 2 May 2008, §63.

¹³⁷ Hypothetical, §7.

¹³⁸ IACtHR *Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights)*, 13 November 1985, §16; *Claude Reyes et al. v. Chile*, IACtHR, 19 September 2006, §91.

aim. Mr. Benítez's well-being, reputation and, importantly, his mental health are at stake, as the article promotes serious animosity towards him. Several environmental activists criticized Mr. Benítez and described him as an "environmental Judas" and he was "canceled" in progressive circles while also having zero credibility among conservatives. He was removed from all the groups he belonged to on his instant messaging apps and his prominence among environmental advocates and Payas faded away¹³⁹, rendering his indispensable work as a journalist and HRD impossible. By imposing liability on LuLook, Mr. Benítez could address the harm caused by the hate speech and present his version of events in a public hearing before an impartial judge, without imposing a duty to monitor or filter legal content proactively or entailing any form of mass surveillance.

Lastly, the liability must be strictly proportionate to the aim pursued. Given Mr. Benítez's vulnerability stemming from his intersecting identities, it is clear that this intervention would balance the protection of Mr. Benítez's rights on the one hand, and the freedom of expression of LuLook on the other. In the present case, the imposition of liability would only be conducted on a limited and targeted basis and is nothing like a disproportionate mass surveillance of communications.¹⁴⁰ In accordance with Principle IV(a) of the Manila Principles, liability should exclusively target the illegal content without affecting other content.¹⁴¹ Moreover, consistent with Principles II and III, the intermediary liability should not be imposed without an order from a judicial authority, guaranteeing due process. In the present case, any liability imposed on LuLook would be determined by an impartial judge and only target the specific illegal content contained within the defamatory article. Consequently, intermediary liability in Mr.

¹³⁹ Hypothetical, §48.

¹⁴⁰ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression *et al.*, *Joint Declaration on Freedom of Expression and Responses to Conflict Situations*, 4 May 2015, §8(e).

¹⁴¹ *Manila Principles on Intermediary Liability*, 24 March 2015, p6.

Benítez's case would involve targeted and proportionate action against the illegal content and ensure due process.

Furthermore, in *Delfi* before the ECtHR, a company operating a news portal was also held liable for failing to expunge hate speech and content inciting violence from user-generated comments.¹⁴² Drawing from this, it can be argued that LuLook should bear responsibility for the intimidating messages and threats present on its internet search engine, due to its failure to address the contentious article.

Consequently, the State's failure to acknowledge the liability of LuLook amounts to a violation of Articles 13(2) and 13(5) ACHR, especially given Mr. Benítez's intersecting characteristics.

Article 14(3) ACHR aims at ensuring the effectiveness of the right to honor and reputation by requiring all intermediaries to identify an accountable person who is not protected by immunities or special privileges. In this case, Mr. Benítez initiated legal action against Ms. Palacios and Eye.¹⁴³ In response to the lawsuit, Eye asserted that it could not be held liable as a mere intermediary. The State's courts upheld this defense, subsequently dismissing Eye as a defendant in the tort action. Since Article 14(3) ACHR mandates the appointment of at least one responsible individual, the failure of the State to fulfill its duty to ensure the identification and sanctioning of those responsible grants *de facto* impunity to LuLook and amounts to a violation of Article 14(3) ACHR.

In conclusion, the failure of the State to acknowledge LuLook's liability amounts to a violation of Article 13(2) ACHR *juncto* Article 1(1) ACHR, taking into account the lack of response to the hate speech present in the article and causing significant harm to Mr. Benítez's well-being.

¹⁴² *Delfi AS v. Estonia*, ECtHR, 4 November 2015, §162.

¹⁴³ Hypothetical, §67.

Furthermore, the State, by neglecting its obligation to identify and sanction those responsible within LuLook, violates Article 14(3) ACHR *juncto* Articles 1(1) and 2 ACHR.

9. Mr. Benítez’s inability to create an anonymous account on Nueva amounts to a violation of Articles 11, 13, 15 and 16 *juncto* Articles 1(1) and 2 ACHR

According to the IACHR, anonymity is a means of protecting privacy, as outlined in Article 11 ACHR. It is also connected to the freedom of expression, as safeguarded in Article 13 ACHR, because it facilitates participation in the public discourse without the need to identify oneself, thereby mitigating the risk of reprisals for expressing an opinion.¹⁴⁴ The RFOE has held that anonymous spaces that are free of observation and where identities and activities are not documented must be guaranteed.¹⁴⁵ States have an obligation to respect anonymous discourse as an exercise of privacy and freedom of expression.¹⁴⁶ The IACHR also underlined the utmost importance of the internet as “a fundamental communication tool that enables people to link up and connect” and is considered a tool with unique potential for the exercise of freedom of expression. States should therefore guarantee the full protection of anonymous speech.¹⁴⁷

In its 2019 Report on Protest and Human Rights, the IACHR stated that the guarantee of anonymity is also part of the rights of assembly and association, as enshrined in Articles 15 and 16 ACHR. States should guarantee the full protection of anonymous speech and regulate specific cases and conditions when such anonymity must be lifted.¹⁴⁸

¹⁴⁴ IACHR/RFOE, *Standards for a Free, Open, and Inclusive Internet*, 15 March, 2017, §227.

¹⁴⁵ IACHR, *Annual Report 2013 of the Office of the Special Rapporteur for Freedom of Expression*, 31 December 2013, §§130,134.

¹⁴⁶ *Ibid.*, §134.

¹⁴⁷ IACHR/RFOE, *Protest and Human Rights*, September 2019, §302.

¹⁴⁸ IACHR/RFOE, *Freedom of Expression and the Internet*, 31 December 2013, §36.

Mr. Benítez himself also sought to engage in the public discourse without identifying himself. He thought about creating an anonymous account on Nueva, as he was trying to protect his honor, which he considered to have been harmed by Palacios' article. However, Mr. Benítez found that Nueva required him to attach a photo of his ID card, a requirement derived from Article 13 of the Constitution, Article 10 of Law 22 of 2009 and the Supreme Court of Justice.¹⁴⁹ Nor did Varaná regulate any specific cases necessitating the lifting of anonymity. Consequently, he was unable to publish the actual facts from the point of view of a third party, under a pseudonym, to see if he could rehabilitate his life, his name, and his reputation. This denial further exacerbated Mr. Benítez's already precarious situation, compounded by the intersecting layers of his identity.

In conclusion, the State violated Articles 11, 13, 15 and 16 ACHR *juncto* Articles 1(1) and 2 ACHR, by not providing the possibility to create an anonymous account on Nueva.

10. Mr. Benítez's inability to access water and public services amounts to a violation of Articles 4, 5, 23(1)(c), 24 and 26 *juncto* Articles 1(1) and 2 ACHR

Firstly, Article 4(1) ACHR recognizes every person's right to a dignified life and the obligation to take steps to stop infringements of this right.¹⁵⁰ Article 5(1) ACHR stipulates that everyone has a right to humane treatment. In *Yakye Axa*, the Court established that the right to clean water correlates with damage to the right to health and to a dignified life.¹⁵¹ Also, the ECtHR established that "persistent" restricted access to water will impact the right to health and human dignity.¹⁵² By halting his access to water, Varaná is therefore risking Mr. Benítez's life.

¹⁴⁹ Hypothetical, §§6,12,56.

¹⁵⁰ *Zambrano Vélez et al. v. Ecuador*, IAtCHR, 4 July 2007, §79.

¹⁵¹ *Yakye Axa v. Paraguay*, IACtHR, 17 June 2005, §167.

¹⁵² *Hudorovič and others v. Slovenia*, ECtHR, 10 March 2020, §115.

Furthermore, in case law of the IACtHR, it is stated that the right to water is interlinked with personal hygiene.¹⁵³ Mr. Benítez not having access to water therefore also constitutes a violation of his personal integrity. Consequently, the restriction of Mr. Benítez's access to water violates Articles 4 and 5 ACHR.

Secondly, Article 23(1)(c) ACHR recognizes a person's right to participate in government through having access to public services. In Article 25(b) IACPHROP, this right is recognized with specific reference to elderly individuals, such as Mr. Benítez. This provision stipulates that an elderly person needs to have access to basic public services "on an equal basis with others". Mr. Benítez has been excluded from accessing public services because water and pension payments are now an exclusively online procedure in Varaná. The European Union Agency for Fundamental Rights (FRA) states that there should be "non digital access" to public services and if this is not respected it discriminates the elderly.¹⁵⁴ Therefore, Mr. Benítez only having online access to the public services violates Article 23(1)(c) ACHR.

Thirdly, Article 24 ACHR guarantees equality before the law without discrimination. The principle of non-discrimination obligates states to address and rectify any discriminatory practice.¹⁵⁵ In case of structural discrimination, the State has an international responsibility to absolve this situation.¹⁵⁶ Moreover, Article 17 of the Protocol of San Salvador states that there must be special protection for the elderly. Mr. Benítez's lack of access to public services due to him being disconnected from the internet constitutes structural discrimination, considering that

¹⁵³ *Dial et al. v. Trinidad and Tobago*, IACtHR, 21 November 2022, §73.

¹⁵⁴ European Union Agency For Fundamental Rights (FRA), *Fundamental rights of older people – Ensuring access to public services in digital societies*, 2023, p48.

¹⁵⁵ *Ramírez Escobar et al. v. Guatemala*, IACtHR, 9 March 2018, §270; *Atala Riffo v. Chile*, IACtHR, 24 February 2012, §79.

¹⁵⁶ *Brasil Verde Farm v. Brazil*, IACtHR, 20 October 2016, §336.

Varaná failed to consider the impact of digitalization on its older population. This failure to address discrimination consequently violates Article 24 ACHR.

Fourthly, Article 26 ACHR recognizes the right to progressive development, requiring states to support citizens' advancement.¹⁵⁷ In *Lagos del Campo*, the Court established that civil, political, economic, social, and cultural rights are equally justiciable.¹⁵⁸ Moreover, in *Yakye Axa* the Court emphasizes the obligation to particularly support individuals in vulnerable groups, like Mr. Benítez.¹⁵⁹ Varaná should have taken into account the possibility that a completely digitalized process would completely isolate older persons who cannot or do not want to engage in online public services.¹⁶⁰ Therefore, Varaná did not take effective measures for equal access to public services, violating Article 26 ACHR.

Fifthly, the right to care, although not explicitly outlined in OAS instruments, is an autonomous and implied right under the standards of the American Declaration of the Rights and Duties of Man¹⁶¹ and OAS Conventions, like the IACPHROP.¹⁶² Linked to Articles 4, 5, 23, 24, 26 *juncto* Articles 1(1) and 2 ACHR, the right to care encompasses the right to receive care throughout one's life cycle.¹⁶³ Firstly, it is tied to the right to life (Article 4 ACHR) and humane treatment (Article 5 ACHR), especially crucial for vulnerable individuals with intersecting characteristics like Mr. Benítez.¹⁶⁴ Secondly, it pertains to access to public services (Article 23(1)(c) ACHR), violated in Mr. Benítez's case due to complete digitization, rendering the public service system

¹⁵⁷ *Poblete Vilches et al. v. Chile*, IACtHR, 8 March 2018, §100; *Cuscul Pivaral et al. v. Guatemala*, IACtHR, 23 August 2018, §141.

¹⁵⁸ *Lagos del Campo v. Peru*, IACtHR, 31 August 2017, §141.

¹⁵⁹ *Yakye Axa v. Paraguay*, IACtHR, 17 June 2005, §162.

¹⁶⁰ FRA, *Fundamental rights of older people – Ensuring access to public services in digital societies*, 2023, p59.

¹⁶¹ IACHR, *Compendium on Economic, Social, Cultural and Environmental Rights: Inter-American Standards*, 2022, §§67-69.

¹⁶² IACPHROP, Article 17, *Vera Rojas et al. v. Chile*, IACtHR (public hearing), 2 February 2021.

¹⁶³ IACHR, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights*, 2021, §1641.

¹⁶⁴ *Yakye Axa v. Paraguay*, IACtHR, 17 June 2005, §162.

inaccessible to older persons.¹⁶⁵ Thirdly, it intersects with the right to non-discrimination (Article 24 ACHR), as Varaná's digitized system discriminates against older persons with limited digital literacy. Finally, it is connected to the right to health (Article 26 ACHR), as his restricted access to water diminishes Mr. Benítez's health rights.¹⁶⁶ Therefore, Varaná has failed to uphold Mr. Benítez's right to care as an elderly person by impeding his access to water and essential public services.

In conclusion, the State's refusal to allow Mr. Benítez's equal access to water and public service amounts to a violation of Articles 4, 5, 23(1)(c) and 26 *juncto* Articles 1(1) and 2 and the autonomous right to care linked to these rights under the ACHR.

¹⁶⁵ UNHRC, *Centrality of care and support from a human rights perspective*, 11 October 2023, p2.

¹⁶⁶ *Vera Rojas et al. v. Chile*, IACtHR(public hearing), 2 February 2021.

V. REQUEST FOR RELIEF

The alleged victim respectfully requests this Honorable Court to declare the present case admissible and to grant provisional measures pertaining to the de-indexing of the article authored by Federica Palacios, to secure access to water for Mr. Benítez, to facilitate the payment of water bills without reliance on internet services and to ensure the timely disbursement of his pension.

The alleged victim respectfully requests this Honorable Court to rule that the State of Varaná has violated Articles 4, 5, 8, 11, 13, 14, 15, 16, 22, 23, 25 and 26 ACHR *juncto* Articles 1(1) and 2 ACHR, as well as Article 63(2) *juncto* Article 1(1) ACHR in case of non-compliance with the provisional measures. Additionally, the alleged victim respectfully requests this Honorable Court to order that:

- Varaná covers all costs of Mr. Benítez's proceedings on domestic and international level;
- Varaná financially supports the NGO Blue Defense to aid HRDs;
- Varaná publicly apologizes for unlawfully accessing and sharing Mr. Benítez's data, delivered in the indigenous language and across various physical and online (social) media platforms, including in national and local newspapers, on radio and television channels;
- Varaná offers free courses, physical as well as online, to educate people on their rights and the legal requirements for processing personal data and to inform them when their data has been collected, stored, processed, or disclosed, thereby especially focusing on groups in vulnerable situations, such as elderly people and indigenous groups in the Paya language;

- Varaná organizes compulsory, free, physical and online courses about the standards of freedom of expression to judges, with special attention for intersectionality and SLAPPs;
- Varaná amends its laws in order for SLAPPs to be rejected in an earlier stage and for victims of SLAPPs to have adequate protection and options to tackle the SLAPP;
- Varaná amends Article 13 of the Constitution and Article 10 of the Law of 22 of 2009 and requests the Varanasian Supreme Court of Justice to revoke its Public Action of Unconstitutionality 1010/13, so as to allow anonymity on social media;
- Varaná amends Article 11 of the Law of 22 of 2009, so as to prohibit zero rating apps and ensure net neutrality;
- Varaná adapts domestic legislation regarding offline access to pension and public services in accordance with international human rights standards;
- Varaná adopts domestic legislation to ensure maximal data protection of all Varanasian citizens, including on data storage;
- Varaná orders the de-indexing of the article “Luciano Benítez: Environmental fraud and Partner of Extractivists?”;
- Varaná pays a fair compensation for the psychological damage suffered by Mr. Benítez in compliance with the case law of the IACtHR;
- Varaná adopts legislation on the rights of the elderly, which should enshrine the right to free and easy access to public services;
- Varaná to establish a Ministry of Internet Affairs.