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Clarification Questions and Answers
Twenty-Ninth Inter-American Human Rights Moot Court Competition - 2024

Luciano Benítez v. Republic of Varaná

1. Were the environmental impacts of varanatic exploration and exploitation known when researchers discovered varanatic in 2002?

No, the specific environmental impacts of varanatic exploration and exploitation were not known at the time these activities began in Varaná, especially since this was the first documented case of commercially viable exploration and exploitation of polymetallic nodules in abyssal plains. However, some impacts associated with this activity became apparent as the years went by and the extractive activity increased.

Of particular note are a 2010 accident that released heavy metals into the ocean and research by scientists pointing to the risks of disturbing the seafloor. However, to this day, the extent and types of environmental impacts that may be generated by varanatic exploration and exploitation continue to be a matter of scientific dispute.

2. Is the online newspaper *VaranáHoy* state-owned?

Yes, according to paragraph 44 of the hypothetical case, *VaranáHoy* is an official media outlet. However, the blog “Inconsistencies Revealed” is Federica Palacios’ personal blog, so it is not owned by Varaná. The articles published (paras. 46, 52, and 65) by Federica Palacios in *VaranáHoy* and “Inconsistencies Revealed” were independent of each other, but their texts were identical.

3. What do Varana’s laws and legal system look like in relation to environmental matters?

Environmental protection has constitutional status in Varaná and the domestic legal system has several laws related to the subject. These include Law 123 of 1999, which guarantees the right to prior consultation consistent with ILO Convention 169, and Law 2 of 2006, the “Environmental Code.” The code contains civil, administrative, and criminal provisions, regulating, *inter alia*, various aspects of mineral exploration and exploitation in the country, and establishes broad guarantees of access to environmental information. In a report on the Situation of Human Rights in Varaná dated December 31, 2023, the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights of the IACHR considered the Code to be a good practice and model law for other countries in the region. No other information is needed to decide the case.

4. What is the content of the Varanasian law that gave rise to the tort claim brought by Holding Eye S.A. against Luciano (para. 39)?

Article 47 of the Civil Code of Varaná establishes that:



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“Anyone who intentionally causes harm to another must provide compensation to that person.”

5. Did Varan become aware of Luciano’s psychological issues, either through the tort claim against journalist Federica Palacios, Holding Eye S.A., and its subsidiary Lulo, or through the psychological treatment undertaken by the victim (paras. 60 and 67)?

Luciano included facts related to his psychological condition in the tort action he filed against journalist Federica Palacios and in the public action of unconstitutionality (para. 70). The IACHR also considered these facts.

6. What were the impacts on Luciano when his cell phone was unlawfully accessed to collect personal data, including the places he had visited and other private information available on his cell phone, such as his membership in environmental groups on instant messaging apps (para. 63)?

As described in the hypothetical case, the fact that Luciano’s cell phone data was accessed resulted in his removal from all the groups to which he belonged on instant messaging apps, his diminished importance among environmental defenders and the Payas, harassment on social media, and ultimately, his decision to burn his cell phone and disconnect from the digital world.

You may also refer to the news reports that aired on the program “The Varanasian Academy” on December 8, in which journalists Pinzon and Martin interviewed environmental activists who called Luciano an “environmental Judas” and said that he had been “cancelled” for lacking credibility (para. 48).

7. How are the fundamental rights of freedom of expression and internet access guaranteed under the domestic law of the State of Varan? What are their limits and, in particular, how does subsequent liability arise for the abuse of those rights on the internet?

The relevant provisions of Varanasian law are Articles 11 and 13 of the Constitution, Article 11 of Law 900 of 2000, Article 10 of Law 22 of 2009, Article 47 of the Civil Code (see answer to question No. 4), the international law instruments that Varan has ratified, and the judgments cited in the case.

8. Can you describe Holding Eye’s activity in detail? Specifically, who is its principal manager, where is it headquartered, in which countries does it operate, how many people does it employ, where do its earnings come from (mining, apps, etc.), and what was the scale of its political, economic, and journalistic influence on the State of Varan (its share of the GDP, HDI, public debt securities) before and after the change in the Ocean administration? Is Holding Eye legally required to pay any financial obligations, taxes, mining royalties, etc.?



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Holding Eye is a limited liability company headquartered in Cupertino, the capital of the country of Cupertino, in North America. The company controls the capital of a group of corporations and is involved in the management, operation, and planning of activities undertaken by this group. It was incorporated on September 4, 1998, as a management company founded by a mineral exploration and exploitation company and a chip and conductor development company. Eye has been acquiring other companies since its inception, and has also created subsidiary companies. As described in paragraph 19 of the hypothetical case, this allowed for a diversification of the sector in which Eye's subsidiaries operate. From 2007 to the present, it has acquired subsidiaries in hardware, software, and natural resource exploitation sectors key to the information technology industry. Its earnings, therefore, come from these different sectors.

The company has offices in over 50 countries worldwide, not counting the exclusive offices of its subsidiaries.

One of Holding Eye's main objectives, according to a 2021 interview of the company's CEO published by Forbes, is to ensure a "certain coordination and fellowship" among the entire group of subsidiaries. The CEO said, "*our company sees the technology sector as a whole. Lulo's apps rely on people having a phone or a computer, so we are interested in producing high-quality hardware through our subsidiary Tell. In turn, Tell's equipment will only be the most advanced on the market if the chips developed by our subsidiary AND are the best on the market. And AND relies on the best raw material to do this. Today Holding Eye Mining is responsible for extracting vananatic from the ocean. (...). So we control a very interesting cycle in the production chain. Where one of these companies is operating, Holding Eye is operating. And Holding Eye only operates because its subsidiaries are operating.*" Deciding this case does not require having knowledge of all of Holding Eye's subsidiaries.

Eye is managed by a board of directors, composed of the CEOs of each of its subsidiaries. The Board elects, from among its members, the CEO of Holding Eye. However, since its founding, the person elected to lead Holding Eye's board of directors has been the CEO of its subsidiary Holding Eye Mining.

Holding Eye has 182,502 employees worldwide according to a report filed in the last quarter of 2023. Its most recent net income, reported in the fourth quarter of 2023, was US\$76 billion. Since Holding Eye was founded in 1998, during the period in Varaná's history known as the Ocean Era (para. 15), there are no data from before 1998 to report. The company's most recent published reports are from December 2023, so there is not enough information to know what the numbers are with the recent change in government. The company's current market value is US\$1.67 billion.

In Varaná, the company is responsible for all its legal obligations, including the tax obligations arising from the activities directly carried out there. One of the main taxes levied on corporations in Varaná is income tax. The corporate income tax is 12%. Regarding mineral



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exploitation in particular, companies that mine varanatic in Varaná are required to pay the government a tax equivalent to 3% of the gross income resulting from that activity.

According to the latest figures, Varaná's GDP for 2023 was US\$70 billion. Holding Eye's operating activities in the country, especially varanatic mining, account for about 12% of that figure. Varanatic exploration and exploitation is not exclusive to Holding Eye. Mineral exploitation accounts for 23% of the GDP of Varaná.

9. Is the information provided in the registration and creation of social media accounts (profiles) accessible only to the company controlling the platform, or is information and personal data shared (free of charge or commercially) with other state and private actors? Does the State of Varaná regulate this information sharing in terms of the transparency, use, processing, and monetization of data by users and its commercialization by the platform's controlling company?

As stated in the facts of the case, there are still no regulations in force on the processing of personal data in Varaná. Although legislative attempts have been made to regulate the issue, the National Assembly has not passed any such laws.

10. Did Luciano report to the police or other authorities that he was being harassed, or did he report it to the social media companies?

No, Luciano did not directly report the harassment to the authorities, as he was tired and afraid of possible reprisals. However, the facts were described in the legal actions that he brought (see answer to question No. 5). Luciano also sometimes reported insulting messages through the mechanisms available on LuloNetwork. Once a message or post was reported, it would no longer be visible to the person who reported it. However, LuloNetwork's procedures did not include any notice to the complaining party about the final outcome of the complaint.

11. Has Varaná ratified the United Nations Charter and other international instruments of the universal human rights system?

The Republic of Varaná is a founding member of the United Nations and ratified the United Nations Charter at the time of its creation. Varaná has ratified instruments of the universal human rights protection system, including those considered by the OHCHR to be the [core international human rights instruments](#).

12. Does Varaná have a public or private body that establishes requirements for the practice of journalism, and does Luciano Benítez belong to any such body?

There is no public body that sets requirements for the practice of journalism. In the private sphere, there are several civil society organizations for the defense of press freedom that admit members according to their own specific requirements. The main ones are the Varanasian Journalists Association and the National Association of Journalists of the Republic of Varaná.



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Luciano Benítez, Federica Palacios, Claudia Pinzon, and Diego Martin are not formal members of any of these private associations.

13. Are there any regulations in Varan on the processing of personal data by private companies?

Please refer to the answer to question No. 9.

14. In what cases can a judge depart from a binding precedent in Varan?

For the purposes of this case, the Code of Constitutional Procedure, Law 105 of December 13, 2011, should be considered:

“Art. 489. When adjudicating petitions for the protection of constitutional rights, trial courts and appellate courts must follow the precedents set by the Supreme Court of Justice in its exercise of concentrated constitutional review, unless the case before them is distinguished or it is demonstrated that the precedent has been overcome.”

In 2012, in the adjudication of a public action of unconstitutionality challenging several provisions of the recently enacted Code of Constitutional Procedure, including Article 489, the Supreme Court ruled that: *“Article 489 is clearly inspired by the common law system and the doctrine of ‘stare decisis.’ While as a general rule the doctrine of stare decisis argues strongly against the reconsideration of precedent, stare decisis is a policy principle, not to be confused with an inexorable command to strictly obey precedent when it is deemed unworkable or poorly reasoned. Nothing in the Code of Constitutional Procedure indicates that Article 489 deviates from this spirit.”* In his concurring opinion, the Chief Justice of the Court at the time stated that Article 489 reflected a mandate of legal certainty, equality, and justice, explicitly endorsing that *res judicata* in a case of concentrated constitutional review is characterized by its being *res interpretata*, an established interpretation of the law with binding effect.

15. Does Eye’s industrial complex for varanatic exploitation block access to the beaches of Rio del Este?

Yes, besides creating environmental impacts due to varanatic exploitation (see answer to question No. 1), the industrial complex limits public access to some of the beaches of the Ro del Este, which affects the Sea Festival in particular.

16. Are there any other companies in Varan that are internet search engine operators? What other firms/companies offer this service, and what is their market share in Varan?

Paragraph 67 of the hypothetical case notes that LuLook is Varan’s main internet search engine operator, which does not mean that it is the only one. There is no a priori blocking or filtering of other search engines in the country. In 2014, LuLook accounted for 89% of the market share, Zing for 5%, Iarroo for 2%, Pato Pato for 2%, Vaid for 1%, and Nuevo for



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0.5%. The remainder was distributed among other operators. These figures have generally remained constant throughout the years.

17. Are there any regulations and/or laws applicable to internet intermediaries and other telecommunication services in Varan?

There is no specific law applicable to internet intermediaries in Varan. The legislation referenced in the hypothetical case has been used by judges in Varan to decide cases involving internet intermediaries.

18. Does Law 22 or Law 900 contain provisions on the responsibility of operators regarding privacy, reputation, and honor, and for the protection of the honor and dignity of their users?

No. Neither Law 22 of 2009 nor Law 900 of 2000 contains specific provisions on the responsibility of operators to protect the privacy, reputation, honor, and dignity of their users.

19. Besides the apps available from Lulo, a subsidiary of Holding Eye, that were offered free of charge by the mobile operator P-Mobile, were there any other internet service providers and other apps being offered for free in Varan, under the terms allowed by Law 900 of 2000?

Yes, there are other internet service operators in Varan. By 2014, P-Mobile's market share was 39% and it provided Lulo apps to its users free of charge under Article 11 of Law 900 of 2000. The remaining market share was distributed between Kla, with a 33% share, which provided its users with apps from Lulo's main global competitor that never became as popular in Varan as Lulo's apps; Digo, with a 24% share, which also offers Lulo's apps; and Movizz, with a 14% share, which provides no zero-rating apps. There have been no significant changes in these numbers over the last few years.

20. Paragraph 78 of the hypothetical case indicates that the State of Varan did not adopt any of the recommendations made by the Inter-American Commission on Human Rights. What were those recommendations?

According to the Report on the Merits adopted by the Inter-American Commission, the recommendations were as follows:

- 1 - Provide full reparations, both pecuniary and nonpecuniary, for the human rights violations declared in this report. These include measures of economic compensation and satisfaction. The state should disseminate the conclusions and recommendations of this report through the same official media that have made reference to the facts of the case;
- 2 - Bring the domestic legal framework into line with inter-American standards, especially those highlighted in this report;
- 3 - Distribute this report to the judicial, executive, and legislative branches of the Government of Varan.



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4 - Design education, awareness and training programs for judges and members of the Prosecutor's Office on the inter-American human rights system, particularly on the standards related to the human rights violations recognized in this report.

21. Which companies are affiliated with Lulocation?

From 2009 on, Lulocation has had only two subsidiaries: FipDash, which provides real-time traffic analysis, and ImageWorld Airplanes, which specializes in creating aerial images.

22. Did Lulocation ever inform Luciano that his data was being stored?

Yes, Luciano agreed to Lulocation's terms and conditions authorizing the collection and retention of his data under the terms of the app, which included a "user history" that stored data on the places visited by users in the last 120 months. After that time, the collected data was permanently deleted from Lulocation's servers.

23. Does the State of Varaná have legislation on the right to correction and the protection of one's good name?

Article 11 of the Constitution establishes the right to privacy and to a good name, and recognizes the right of individuals to request the correction of information collected about them.

"All persons have the right to a good name and privacy, and the state has the obligation to ensure these rights, as well as to prevent their infringement by third parties. All persons also have the right to know and update the information collected about them, and to request its rectification."

Based on this article, Article 13 of the Constitution, and international standards, the case law has recognized the right to correction.

24. Besides allowing zero-rating, what other public policies has Varaná adopted—either on its own or with companies—to reduce the digital divide?

The State of Varaná had several public policies for the reduction of the digital divide, including:

- WE ALL CONTRIBUTE TO DIGITIZATION: public policy establishing that people who purchased internet service in their homes would make a joint contribution to allow provider companies to expand their coverage to areas with limited internet access.
- RURAL AREAS, WE ARE COMING FOR YOU: public policy through which the state was extending networks to rural areas.



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- VARANÁ CONNECTS YOU TODAY: public policy through which Varaná contributed half of the internet connection costs for low-income and vulnerable populations.

25. According to paragraph 63 of the facts of the case, Paulina González and Pablo Méndez were indicted and prosecuted for computer crimes and abuse of authority. What are these computer crimes and how are they defined under the law?

Varaná's Cybercrime Law was passed on July 4, 2006. Varaná was one of the first states in the world to ratify the Budapest Convention on Cybercrime. Computer-related offenses in the country are defined in strict accordance with Chapter II, Section 1 of the Convention. Paulina González and Pablo Méndez were convicted of the offenses of illegal access and illegal interception.

Abuse of authority is not essentially considered a computer crime in Varaná.

26. Considering that the case refers to two types of legal proceedings, civil proceedings for damages and popular actions of unconstitutionality, what are the phases legally provided for them, and how do they differ procedurally?

Ordinary civil proceedings in Varaná are brought in the trial courts. This involves a preliminary phase, where motions and answers are filed; a pretrial phase, which may include a hearing; and the final trial phase, which basically consists of the drafting and publication of the judgment. Trial court judgments may be appealed, and appeals are adjudicated by the appellate courts.

As stated in paragraph 3 of the hypothetical, cases may reach the Supreme Court by means of extraordinary appeals. However, these have much more limited grounds for admissibility. The final judgment is executed according to the respective procedures.

Appeals may also be filed against the interlocutory decisions of the courts (the name used in Varaná for judicial rulings or orders that advance certain aspects of the proceedings without settling the controversy). In other jurisdictions these decisions are known as "autos" or "decisões interlocutórias").

Petitions for the protection of constitutional rights, which are one instrument for diffuse constitutional review, follow a similar procedure.

Public actions of unconstitutionality are instruments of concentrated constitutional review, according to paragraph 3 of the case, and have their own procedure. The action is filed directly with the Supreme Court of Justice, which forwards it to the executive branch, the legislative branch, the Attorney General's Office and the Prosecutor General's Office for their positions on the action, as well as to any other authority the Court considers an interested party. A public hearing phase follows, allowing for the submission of amicus curiae briefs. When it deems it appropriate, the Court may hold an additional hearing to gather the opinions of the amicus



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curiae and to allow further argument between the parties. The public actions of unconstitutionality referred to in the case included this stage.

There is no remedy called “popular action of unconstitutionality” in Varaná.

27. Paragraph 59 mentions that on February 10, 2016, the appeal against the ruling of August 23, 2015 (which dismissed the petition for the protection of constitutional rights filed by the NGO Blue Defense) was dismissed. What was the basis for the February 10, 2016, decision?

The appellate court found that the lower court’s decision was well-founded and that there was no procedural defect. It therefore affirmed that the precedent was binding, upholding the trial court’s decision of August 23, 2015.

28. How is *res interpretata* regulated under Varanasian law?

Please refer to the answer to question No. 14.

29. What was the basis for the Supreme Court’s denial of the extraordinary appeal referred to in paragraph 69?

The Supreme Court did not find sufficient grounds to amend the lower court decisions and their conclusions regarding the liability of intermediaries in Varaná.

30. Paragraph 41 of the hypothetical case mentions that on November 4, 2014, the judge ordered Luciano to appear at an initial hearing on November 5, 2014; also on November 4, 2014, the NGO Blue Defense filed an appeal challenging the interlocutory order. Luciano appeared at the hearing on the following day. Is there any legal justification under the domestic law of Varaná that would have prevented the judge from suspending the hearing?

In the Republic of Varaná, an appeal does not stay the lower court’s decision, so the trial court judge must proceed to take the appropriate legal steps upon rendering a decision. Consequently, only when the appeal is granted are the effects of the proceedings made retroactive. In this case, as noted in paragraph 42, the Court did not entertain the appeal.

The hypothetical case does not include any hearing held on November 5; it was held on December 5. The authors will consider this date to answer this question (see para. 41).

31. Are there any rules, regulations, or terms of use governing interactions between social media users in the Republic of Varaná?

Beyond Article 10 of Law 22 of 2009, which prohibits anonymity on social media, no other specific provisions regulate interaction between social media users in Varaná. However, when deciding cases concerning social media, judges make use of constitutional provisions on



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freedom of expression and the rules contained in ratified treaties, as well as the ordinary laws of Varaná that they consider applicable, such as the Civil or Criminal Code.

32. In the civil proceedings for correction, what were the judge's criteria for determining that journalist Federica Palacios's second publication was sufficient to protect Benítez's honor and good name?

The trial court judge found that the August 28, 2015, publication by journalist Federica Palacios satisfied the requirements to be considered a proper correction, since in that second installment Palacios included all the evidence that Luciano had provided to her and a statement explaining the facts she published. The judge also considered the fact that this second publication was made in the same media outlets as the original publication: on her blog "Inconsistencies Revealed" and in the online newspaper *VaranáHoy*. In the words of the trial court judge, *"Anything that happened after publication was outside the control of the journalist, Ms. Palacios. In this regard, the simple publication of the new information in the same media satisfied the requirements for correction. It is also important to highlight that Ms. Palacios did not publish falsehoods or make assertions about Luciano; rather, she limited herself to publishing facts that were interpreted by the public."*

33. Since it is clear from the facts of the case that some procedures can only be conducted online, what measures were taken to ensure access to pensions for older adults and [other services] for people who lack access to an electronic device or to the internet?

Starting in 2010, Varaná opened offices in different parts of the country to handle complaints about its software apps for pension claims. They mainly addressed concerns about technological issues with the app, provided training on how to use the technology, and lent computers and cell phones free of charge for people to carry out online procedures.

34. How are monopolies and oligopolies regulated in the State of Varaná?

Under Article 61 of the Constitution of Varaná, "The state facilitates and oversees free competition. It combats all practices that limit free competition and the abuse of dominant or monopolistic positions. No law or agreement may authorize or establish monopolies." Law 251, the Antitrust Law, has been in force since 1999 to regulate this provision.