

LUCIANO BENÍTEZ

PETITIONER

v.

REPUBLIC OF VARANÁ

RESPONDENT

MEMORIAL FOR THE REPUBLIC

TABLE OF CONTENTS

| | |
|---|----|
| Table of Contents | 1 |
| Index of Authorities | 2 |
| Statement of Facts | 8 |
| Legal Analysis | 11 |
| I. Internal Proceedings..... | 11 |
| II. Statement of Jurisdiction..... | 11 |
| III. Merits..... | 12 |
| A. <i>The Republic of Varaná respected Article 13 (Freedom of Thought and Expression) in conjunction with Article 1(1) of the ACHR</i> | 12 |
| B. <i>The Republic of Varaná respected Article 11 (Right to Privacy) in conjunction with Article 1(1) of the ACHR</i> | 19 |
| C. <i>The Republic of Varaná respected Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in conjunction with Article 1(1) of the ACHR</i> | 26 |
| D. <i>The Republic of Varaná respected Article 14 (Right of Reply) in conjunction with Article 1(1) of the ACHR</i> | 30 |
| E. <i>The Republic of Varaná respected Article 15 (Right of Assembly) and Article 16(1) (Freedom of Association) and 22(1) Freedom of Movement in conjunction with Article 1(1) of the ACHR</i> | 33 |
| F. <i>The Republic of Varaná respected Article 23 (Right to Participate in Government) in conjunction with Article 1(1) of the ACHR</i> | 37 |
| G. <i>The Republic of Varaná respected Article 5 (Right to Humane Treatment) in conjunction with Article 1(1) of the ACHR</i> | 39 |
| IV. Request for Relief..... | 41 |

INDEX OF AUTHORITIES

I. Inter-American Human Rights System Cases and Instruments

A. Inter-American Court of Human Rights Cases

Acevedo Buendía et. al. v. Peru, IACtHR (ser. C) No. 198, ¶¶77, 88 (2009).

Andrade Salmón v. Bolivia, IACtHR (ser. C) No. 330, ¶140 (2016).

Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, IACtHR (ser. C) No. 270, ¶¶323-24 (2013).

Apitz Barbera et al. v. Venezuela, IACtHR (ser. C) No. 182, ¶206 (2008).

Baena Ricardo et al. v. Panamá, IACtHR (ser. C) No. 72, ¶¶148-49 (2001).

Carranza Alarcón v. Ecuador IACtHR (ser. C) No. 399 (2020).

Casa Nina v. Peru, IACtHR (ser. C) No. 419, ¶20 (2020).

Duque v. Colombia, IACtHR (ser. C) No 310, ¶165 (2016).

Escher et al.v. Brazil, IACtHR (ser. C) No. 208, ¶¶39, 117, 155, 169, 196, 208 (2009).

Flor Feire v. Ecuador, IACtHR (ser. C) No. 315, ¶155 (2016).

Fontevicchia & D'Amico v. Argentina, IACtHR (ser. C) No. 238, ¶¶48-49, 59-62, 66 (2011).

Herrera Ulloa v. Costa Rica, IACtHR (ser. C) No. 107, ¶¶121-23 (2004).

Herzog et al. v. Brazil, IACtHR (ser. C) No. 353 (2018).

J. v. Peru. IACtHR (ser. C) No. 275, ¶362 (2013).

Kaliña and Lokono Peoples v. Suriname, IACtHR (ser. C) No. 309, ¶237 (2015).

Lagos del Campo v. Peru, IACtHR (ser. C) No. 340 ¶155 (2017).

Landaeta Mejias Brothers et al. v. Venezuela IACtHR (ser. C) No. 281, ¶203 (2014).

López Lone v Honduras IACtHR (ser. C) No. 302 ¶¶167, 226 (2015).

Manuel Cepeda Vargas v. Colombia, IACtHR (ser. C) No. 213, ¶¶172, 176, 179 (2010).

Manuela et al. v. El Salvador, IACtHR (ser. C) No. 441 (2021).

Moiwana Community v. Suriname IACtHR (ser. C) No. 124, ¶119 (2005).

Norín Catrیمان et. al. v. Chile, IACtHR (ser. C) No. 279, ¶¶379-86 (2014).

Pacheco Tineo Family v. Bolivia, IACtHR (ser. C) No. 272, ¶¶207-08 (2013).

Palamara Iribarne v. Chile, IACtHR (ser. C) No. 350, ¶146 (2005).

Perrone & Preckel v. Argentina, IACtHR (ser. C) No. 385, ¶121 (2019).

Residents of La Oroya v. Peru, IACtHR (ser. C) No. 511 (2023).

Ricardo Canese v. Paraguay, IACtHR (ser. C) No. 111, ¶96 (2004).

Tristán Donoso v. Panamá, IACtHR (ser. C) No. 193 (2009).

Uzón Ramírez v. Venezuela, IACtHR (ser. C) No. 207, ¶130 (2009).

V.R.P, V.P.C. et al. v. Nicaragua IACtHR (ser. C) No. 350, ¶¶277, 285 (2018).

Yatama v. Nicaragua, IACtHR (ser. C) No. 127, ¶¶181- 229 (2005).

B. Inter-American Court of Human Rights Advisory Opinions

Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-05/85, IACtHR (ser. A) No. 5 (1985).

Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-7/86, IACtHR (ser. A) No. 7 (1986).

Entitlement of Legal Entities to Hold Rights under the Inter-American Human Rights System, Advisory Opinion OC-22/16, IACtHR (ser. A) No. 22 (2016).

Environment and Human Rights, Advisory Opinion OC-23/17, IACtHR (ser. A) No. 23, (2017).

Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to Other Rights, with a Gender Perspective, Advisory Opinion OC-27/21, IACtHR (ser. A) No. 27 (2021).

C. Inter-American Commission on Human Rights Cases

Elías Santana et al v. Venezuela, Inadmissibility, IACtHR, No. 92/03 Petition 453/01, ¶66 (2003).

Marzoni v. Argentina, Case 11.673, IACtHR, Report No. 76/96, OEA/Ser.L/V/II.95, Doc. 7 Rev. (1997).

D. Other Inter-American Instruments & Documents

Catalina Botero Marino, Special Rapporteur for Freedom of Expression, IACtHR, *Freedom of Expression and the Internet*, OEA/Ser.L/V/II (2013).

Human Rights of the Elderly and National Protection Systems in the Americas, IACtHR, OEA/Ser.L/V/II.doc.397/22 (2022).

IACtHR, Annual Report 1994. The Inter-American Legal Framework regarding the Right to Freedom of Expression. OEA/Ser.L/V.88. Doc. 9, rev. 1, ch. V (1995).

IACtHR, Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013 Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. (2013), ¶15.

IACtHR, Declaration of Principles of Freedom of Expression, 108th session (2000).

IACtHR, Press Release, *IACHR and RFOE Call on States to Adopt Measures to Reduce Digital Divide for Older People* (2021).

Edison Lianza, Special Rapporteur for Freedom of Expression, IACtHR, *Protests and Human Rights*, OEA/Ser.L/V/II CIDH/RELE/INF.22/19 (2019).

Edison Lianza, Special Rapporteur Freedom of Expression, Childhood, Freedom of Expression, and the Media, OEA/SER.L/V/II, ¶212 (2019).

Edison Lianza, IACtHR Special Rapporteur for Freedom of Expression, *Standards for a Free, Open and Inclusive Internet* (2017).

Organization of American States, *American Convention on Human Rights*, Nov. 22, 1969, O.A.S.T.S. No 36 1144, U.N.T.S. 123.

Organization of American States, *Inter-American Convention on Protecting the Human Rights of Older Persons*, Jan. 11, 2017, U.N.T.S. 3175.

Organization of American States, *Inter-American Democratic Charter* (Sep. 11, 2011).

Organization of American States, *The Key Role of the Inter-American Telecommunication Commission in Advancing Telecommunications/Information and Communication Technologies*, AG/Res. 3000, LIII-O/23 (June 22, 2023).

Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Apr. 22, 2021.

II. European Court of Human Rights Cases

Axel Springer AG v. Germany, App. No. 39954/08 (Feb. 7, 2012)

Hurbain v. Belgium, App. No. 57292/16 (July 4, 2023)

Kroon & Others v. Netherlands, No. 18535/91, ¶31 (Oct 27, 1994)

Libert v. France, App. No. 588/13 (July 2, 2018)

Pabla Ky v. Finland, App. No. 47221/99, ¶27 (June 22, 2004)

Sanchez v. France (GC), App. No. 45581/15, (May 15, 2023)

III. Foreign Cases

C.S.J. 21 enero 2016, “Grazinai v. El Mercurio,” Rol de la cause: 22243-2015 (Chile).

Curi et al v. Globo Comunicação., S.T.F., RE 1.010.606, Relator: Min. Dias Toffoli, 11.02.2021 (Braz.).

Gazeta do Povo v. Batista et., S.T.F. Reclamação 23.899, Relator: Min. Rosa Weber, 10.02.2023 (Braz.).

Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, 2014 E.C.J. C-131/12 (May 13, 2014).

IV. UN & Other Regional Human Rights Instruments & Documents

African Declaration on Internet Rights and Freedoms, Introduction (2014).

Budapest Convention on Cybercrime, Council of Eur., Jul. 1, 2004. T.I.A.S. No. 13174, C.E.T.S. No. 185.

Child and Youth Safety Online, UN, <https://www.un.org/en/global-issues/child-and-youth-safety-online>.

Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples’ Rights, 32nd Session (17 - 23 Oct. 2002), art. XII, *Protecting Reputations*.

European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221 (1953).

Information Warfare, Disinformation, and Electoral Fraud, UN Off. on Drugs & Crime, <https://www.unodc.org/e4j/en/cybercrime/module-14/key-issues/information-warfare--disinformation-and-electoral-fraud.html>.

International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

Joint Guidelines on Freedom of Association, European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) (2014), ¶150.

Obstacles to Cybercrime Investigations, U.N. Off. on Drugs & Crime, <https://sherloc.unodc.org/cld/en/education/tertiary/cybercrime/module-5/key-issues/obstacles-to-cybercrime-investigations.html>.

Office of Special Rep. of Sec.-Gen. On Violence Against Children, Ending the Torment: Tackling Bullying From the Schoolyard to Cyberspace, U.N. Sales No. E.16.I.14 (2016).

Right to Privacy in the Digital Age, G.A. Res. 75/176 (Dec. 16, 2020).

UN Development Programme, Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights (2023).

UN Environment Programme, Environmental Rule of Law and Human Rights in Asia Pacific: Strategic Litigation Against Public Participation (SLAPPs) (2023).

UNESCO, *Fostering Freedom Online: The Role of Internet Intermediaries*. UNESCO Series on Internet Freedom. Internet Society, 23 (2014).

UN Special Rapporteur on Freedom of Opinion and Expression, Frank LaRue et al., *Joint Declaration on Freedom of Expression and the Internet* (Jun. 1, 2011).

Universal Declaration of Human Rights, art. 12, Dec. 8, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

V. Books, Journal Articles and Other Authorities

Cláudia Toledo, *Tragic Cases: No correct answer? An Approach According to the Legal Philosophy of Robert Alexy*, 105(3) ARCHIVES FOR PHIL. L. & SOC. PHIL. 392 (2019).

JAMES L. CAVALLARO et. al, DOCTRINE, PRACTICE, AND ADVOCACY IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM (2019).

Juan Cianciardo, *The Principle of Proportionality: The Challenges of Human Rights*, 3 J. CIV. L. STUD. 177 (2010).

LUDOVIC HENNEBEL & HÉLÈNE TIGROUDJA, THE AMERICAN CONVENTION ON HUMAN RIGHTS: A COMMENTARY (2022).

Robert Alexy, *Constitutional Rights, Balancing, and Rationality*, 16 RATIO JURIS 131 (2003).

Yohannes Eneyew Ayalew, *Untrodden Paths Towards the Right to Privacy in the Digital Era Under African Human Rights Law*, 12(1) INT'L DATA PRIVACY L. 16 (2022).

STATEMENT OF FACTS

The Republic of Varaná and its legal instruments for a free and democratic society

The Republic of Varaná (hereinafter “Varaná” or the “Republic”) became a democratic, pluralistic, and participatory state that highly values the rights of all citizens. The Republic grants constitutional status to the international human rights treaties it ratifies.¹ Varaná also ratified the Budapest Convention of Cybercrime, and criminalizes domestic computer-related offenses under a 2006 Cybercrime Law.² Article 13 of the constitution protects freedom of expression while prohibiting prior censorship and anonymity.³ Law 900 guarantees free access to the internet, and allows internet service providers to offer free applications, addressing the need to reduce the digital divide.⁴ Law 22 further prohibits anonymity in social media and mandates that individuals link their profiles with their national identity documents.⁵ Article 11 of the constitution protects the right to privacy, reputation, and reply, and creates a positive duty for the Republic to prevent their infringement.⁶

Petitioner’s efforts against Holding Eye and the company’s tort action against him

The Petitioner, Luciano Benítez, is a well-known indigenous environmental activist who once enjoyed over 80,000 social media fans⁷ and who opposed the company Holding Eye,⁸ attending and broadcasting protests and legislative activities, and conducting live interviews on

¹ *Id.*, ¶2.

² Questions, ¶25.

³ Hypothetical, ¶6.

⁴ *Id.* ¶9.

⁵ *Id.* ¶12.

⁶ *Id.* ¶7.

⁷ Hypothetical, ¶36.

⁸ *Id.*, ¶35.

his blog.⁹ Mr. Benítez used the map app Lulocation.¹⁰ In October 2014, Mr. Benítez received screenshots from an anonymous source allegedly showing illegal payments from Holding Eye to a government official.¹¹ Conducting no verification, he published the screenshots on his blog.¹² Holding Eye filed a tort action against him for intentionally harming the company, requesting the source of the screenshots and damages.¹³ The trial judge made Mr. Benítez aware that the case would likely resolve more quickly if he revealed the source, so Mr. Benítez shared the source.¹⁴ Holding Eye withdrew all claims, and the case was dismissed.¹⁵

Published article about the Petitioner's activities

Blogger and journalist Federica Palacios anonymously received information about Mr. Benítez.¹⁶ After verifying the facts, she informed Mr. Benítez of her intent to publish, and provided him an opportunity to respond, which he refused.¹⁷ Ms. Palacios published the article titled, “Luciano Benítez: Environmental Fraud and Partner of Extractivists?” on both her personal blog and the state-owned *VaranáHoy*.¹⁸ Equipped with credible evidence that Mr. Benítez spent time in locations associated with Holding Eye—and frequently engaged with Holding Eye social media—the article encouraged readers to draw their own conclusions.¹⁹ Following its publication, Mr. Benítez suffered backlash from the environmentalist community.²⁰ As soon as Mr. Benítez posted

⁹ *Id.*, ¶36.

¹⁰ *Id.*, ¶30-31.

¹¹ *Id.*, ¶37.

¹² *Id.*

¹³ *Id.*, ¶39; Questions, ¶4.

¹⁴ *Id.*

¹⁵ *Id.*, ¶42.

¹⁶ *Id.*, ¶45.

¹⁷ *Id.*

¹⁸ *Id.*, ¶44.

¹⁹ *Id.*, ¶46.

²⁰ *Id.*, ¶¶47-49.

an explanation, Ms. Palacios linked to it, and later published a second explanatory installment, on her blog and *VaranáHoy*.²¹

Petitioner chooses to withdraw from public life and file a tort action

Deciding to withdraw and isolate himself, Mr. Benítez burned his phone and became depressed.²² While he abandoned efficient access to manage his finances from personal devices, he retained access to the public libraries where he first learned to use computers.²³ Though he did not seek to remedy any alleged online harassment through criminal procedure, in September 2015, Mr. Benítez filed a tort action against Ms. Palacios and Lulo, seeking damages and the de-indexing of information related to his name.²⁴ The court denied the action, holding that Ms. Palacios' second installment was sufficient to protect Mr. Benítez's honor and reputation and that as an intermediary, LuLook cannot be held liable.²⁵ The appellate court affirmed, and the Supreme Court denied the extraordinary appeal.²⁶

Proceedings before the Inter-American Commission on Human Rights

Blue Defense, representing Mr. Benítez, filed a petition with the IACHR on November 2, 2016, alleging violations under Articles 5, 8, 11, 13, 14, 15, 16, 22, 23, and 25 of the ACHR, in conjunction with Articles 1.1 and 2 thereof. On April 13, 2022, the IACHR notified the parties that it declared the case admissible and found violations under each Article alleged. Varaná did not file any preliminary objections. The Commission submitted the case to the IACtHR on June 2, 2022, alleging violations of the previously mentioned Articles.

²¹ *Id.*, ¶¶52, 64-66.

²² *Id.*

²³ *Id.*, ¶¶61, 27.

²⁴ *Id.*, ¶67.

²⁵ *Id.*, ¶¶68-69.

²⁶ *Id.*, ¶69.

LEGAL ANALYSIS

I. INTERNAL PROCEEDINGS

The Varanasian Supreme Court's judgment in public action of unconstitutionality 1010/13 made clear that social media accounts must have identifying information.²⁷ Public interest legal NGO Blue Defense filed a petition in January 2015 for Mr. Benítez, who desired a new anonymous social media account.²⁸ The first instance court rejected the claim and all subsequent appeals were denied in accordance with the due process of law.²⁹ In March 2015, Mr. Benítez filed another public action of unconstitutionality challenging Law 900 on grounds of free expression, information pluralism, and net neutrality.³⁰ The Court also denied this action, highlighting the importance of narrowing the digital divide and protecting private enterprise, and the Petitioner did not appeal or further exhaust remedies.³¹ Start-up Alternativa has since stopped requiring identification—without state repercussions—but Mr. Benítez has not made a new profile.³²

II. STATEMENT OF JURISDICTION

Varaná accepted the jurisdiction of the Inter-American Court of Human Rights (IACtHR) per Article 62 of the American Convention on Human Rights (ACHR) on February 3, 1970.³³ This Court has subject matter jurisdiction in this case because the Petitioner alleges violations falling

²⁷ *Id.*

²⁸ *Id.*, ¶58.

²⁹ *Id.*, ¶59.

³⁰ *Id.*, ¶70.

³¹ *Id.*

³² *Id.*

³³ Hypothetical, ¶8.

under articles 5, 8, 11, 13, 14, 15, 16, 22, 23, and 25 of the ACHR in conjunction with Articles 1.1 and 2. Furthermore, because the alleged violations occurred after the Republic ratified the ACHR, this Court has temporal jurisdiction over these proceedings. This Court may also exercise personal jurisdiction here, as the Petitioner is a national of Varaná, a member state of the Organization of American States (OAS), which ratified the ACHR. Yet, in honor of the sovereignty of each state party, the jurisdiction of the IACtHR is still limited. Although Varaná understands that the *ratione personae*, *ratione temporis* and *ratione loci* elements were fulfilled for the Court to exercise its jurisdiction over the case, it also would like to highlight that article 47(b) mandates that cases that do not tend to establish alleged violations under the ACHR are inadmissible; the IACtHR cannot act as a fourth instance court of appeal that considers the guilt of individual actors³⁴ or errors of internal law or fact the domestic courts may have committed while acting within their jurisdiction.³⁵ It can only consider a state party's compliance with the Convention while respecting the legitimate decisions of the domestic process.³⁶

II. MERITS

The Republic of Varaná respected Article 13 (Freedom of Thought and Expression) in conjunction with Article 1(1) of the ACHR

The ACHR places “an extremely high value [. . .] on freedom of expression.”³⁷ Article 13 is broadly understood and protects the individual and collective right to “seek, receive, and impart

³⁴ Casa Nina v. Peru, IACtHR (ser. C) No. 419, ¶20.

³⁵ Marzoni v. Argentina, Case 11.673, IACHR Report No. 76/96, OEA/Ser.L/V/II.95, Doc. 7 Rev. (1997).

³⁶ OAS, American Convention on Human Rights [ACHR], Nov. 22, 1969, O.A.S.T.S. No 36 1144 U.N.T.S. 123., art. 47(b).

³⁷ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-05/85, Inter-Am. Ct. H.R. (ser. A) No. 5 (1985), ¶50.

information and ideas of all kinds, and to receive and have access to the information and ideas disclosed by others.”³⁸ It is vital to the functioning of a democratic society, as affirmed in the 2001 Inter-American Democratic Charter,³⁹ and States must actively ensure the flow of information from a “plurality of means of communication.”⁴⁰ The ACHR uniquely expressly defines rights holders as human beings; however, subsequent liability may be imposed, as needed and established by law, to ensure “respect for the rights and reputations of others.”⁴¹

Thus, the right to free expression is not absolute. States may restrict expression when established by law and necessary to protect the rights of others.⁴² Such restrictions may be inevitable in “hard” or “tragic” cases of colliding rights.⁴³ This Court has articulated that limitations on expression must be sparingly exercised “only to the extent that is strictly necessary in order to safeguard essential legally protected interests from the more serious attacks which may impair or endanger them.”⁴⁴ As with any state limitations on human rights within democratic societies, these limits must be specifically drafted in a proportional manner, used only when necessary, ultimately aligned with the framework put in place by the Inter-American human rights

³⁸ Tristán Donoso v. Panamá, IACtHR (ser. C) No. 193, ¶109 (2009); Advisory Opinion 05/85, ¶ 30-31.

³⁹ OAS, Inter-American Democratic Charter (Sept. 11, 2001), art. 4.

⁴⁰ Advisory Opinion 05/85 ¶34, and Tristán Donoso v. Panamá, ¶113.

⁴¹ ACHR, *supra* note 36, art. 13(2)(a).

⁴² ACHR, *supra* note 36, art. 13(2)(a), art. 13(2)(b); IACtHR Annual Report 1994. The Inter-American Legal Framework regarding the Right to Freedom of Expression. OEA/Ser.L/V.88. Doc. 9, Rev. 1. (1995), Chapter V.

⁴³ Cláudia Toledo, *Tragic Cases: No Correct Answer? An Approach According to the Legal Philosophy of Robert Alexy*, 105(3) ARCHIVES FOR PHIL. L. & SOC. PHIL. 392 (2019).

⁴⁴ Tristán Donoso v. Panamá, ¶119.

system—and motivated by a “compelling government interest.”⁴⁵ Proportionality requires that the limitations established by law be reasonable: adequate, necessary, and applied narrowly.⁴⁶

The right to free expression is also understood to encompass the right to engage in anonymous speech free from State limitation.⁴⁷ However, as argued below, such anonymity is not iron-clad; States must ensure it does not protect, for example, those who engage in, e.g., hate speech or the abuse of children.⁴⁸ When the risk of such criminal behavior is high—as is especially true for digital environments, and of grave concern when it comes to the vulnerability of children—the collection of user identity information is warranted.⁴⁹

Mr. Benítez was not subject to impermissible subsequent liability under Article 13(2)(a)

That Mr. Benítez was sued in a civil action brought by Holding Eye for publishing defamatory content about the company is not in dispute. This (ultimately unrealized) subsequent liability, however, must not be understood as impermissibly imposed. The case arose under established Varansian law, and was potentially necessary to protect the rights and reputation of Holding Eye (though the case was, in fact, withdrawn and dismissed) and the liability Mr. Benítez faced was proportional to the harm he may have caused. Varaná’s actions throughout this matter are in alignment with the *Principles on Freedom of Expression* established by the IACHR in 2000:

⁴⁵ See LUDOVIC HENNEBEL & HÉLÈNE TIGROUDJA, THE AMERICAN CONVENTION ON HUMAN RIGHTS: A COMMENTARY (2022), 461, citing Ricardo Canese v. Paraguay, IACtHR (ser. C) No. 111, ¶96 (2004); Herrera Ulloa v. Costa Rica, IACtHR (ser. C) No. 107, ¶¶121-23 (J2004); and see Fontevecchia & D’Amico v. Argentina, IACtHR (ser. C) No. 238 (2011).

⁴⁶ Juan Cianciardo, *The Principle of Proportionality: The Challenges of Human Rights*, 3 J. CIV. L. STUD. 177, 179 (2010).

⁴⁷ Catalina Botero Marino, Special Rapporteur for Freedom of Expression, IACHR *Freedom of Expression and the Internet*, OEA/Ser.L/V/II (2013), ¶134.

⁴⁸ *Id.*, ¶135.

⁴⁹ Botero, *supra* note 47, ¶137. *Child and Youth Safety Online*, UN, <https://www.un.org/en/global-issues/child-and-youth-safety-online>.

the only sanctions entertained in this case were civil in nature.⁵⁰ Lastly, this civil action was withdrawn and dismissed within a matter of weeks and was properly resolved according to the rule of law.⁵¹

Furthermore, the law creating the cause for Holding Eye's suit against Mr. Benítez complies with the ACHR. Mr. Benítez claimed the suit was a *Strategic Lawsuit Against Public Participation* (SLAPP) and chilled journalistic expression. However, the law itself is neutral and merely allows harmed entities to seek remedies. A SLAPP suit is distinguished from a legitimate one when it is filed with the intent to threaten or muzzle their target rather than to seek justice.⁵² Here, Holding Eye asserted that knowing the source of Mr. Benítez's information was enough to protect its rights in the future and withdrew its claims showing a lack of intent to harm Mr. Benítez.⁵³ A second difference between this suit and a SLAPP is Holding Eye's desire to quickly resolve the matter rather than prolonging it to further harm Mr. Benítez.⁵⁴ Finally, SLAPP cases tend to involve plaintiffs that frequently file suits against defendants as to overwhelm them. For example, in a clear Brazilian SLAPP case, *Gazeta do Povo v. Baptista et. al.*, a group of judges made concerted efforts to file identical lawsuits throughout the state against journalists to overwhelm them with the defense of the lawsuits and to preoccupy them from their work as journalists.⁵⁵ Holding Eye has no such a pattern of using lawsuits as unlawful deterrents.

Varaná properly limited the intermediary liability of Holding Eye

⁵⁰ IACHR Declaration of Principles of Freedom of Expression, approved Oct. 2000, 108th session, ¶10.

⁵¹ Hypothetical, ¶42.

⁵² UNDP, *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights* 9 (2023); UNEP, *Environmental Rule of Law and Human Rights in Asia Pacific: Strategic Litigation Against Public Participation (SLAPPs)* 5 (2023).

⁵³ Hypothetical, ¶42.

⁵⁴ UNDP, *supra* note 52, 9.

⁵⁵ S.T.F. Reclamação 23.899, Relato: Min. Rosa Weber, 10.02.2023.

Varanasian courts decided to limit the liability of Holding Eye and its subsidiaries (as intermediaries which hosted an article based on Mr. Benítez’s private data) and also decided against forcing the company to de-index material connected to Mr. Benítez. Holding such Internet service providers, “mere conduits,” liable for “provid[ing] technical Internet services such as providing access, or searching for, or transmission or caching of information,” is expressly disfavored in the global consensus established by special rapporteurs on the freedom of expression.⁵⁶ Intermediaries are vital protectors of free expression and privacy.⁵⁷ Where subsequent liability is appropriate to impose, it should be limited to only the authors of the content in question, unless the intermediaries specifically intervene or refuse court orders with which they have the capacity to comply.⁵⁸ Here, there are no established facts to prove that Holding Eye intervened with content, and no court orders with which they refused to comply.

The context of any right to be forgotten, which such de-indexing must be considered within, must be very narrowly and carefully considered alongside extraterritoriality concerns as well as (especially important in the Inter-American region) potential impacts on the right to truth and memory.⁵⁹ Holding Eye is headquartered in Cupertino, a country over which Varaná does not hold competent jurisdiction.⁶⁰ The IACHR specifically recommended rejecting the right to be forgotten as constructed by the Court of Justice of the European Union (CJEU) in *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González* (Google

⁵⁶ UN Special Rapporteur on Freedom of Expression, Frank LaRue et. al., *Joint Declaration on Freedom of Expression and the Internet* (2011), art 2(a).

⁵⁷ Edison Lianza, IACHR Special Rapporteur for Freedom of Expression, *Standards for a Free, Open and Inclusive Internet* (2017), ¶103, citing UNESCO. *Fostering Freedom Online: The Role of Internet Intermediaries*. UNESCO Series on Internet Freedom. Internet Society, 23 (2014).

⁵⁸ Lianza, *supra* note 57, ¶105.

⁵⁹ *Id.*, ¶¶120, 132-34.

⁶⁰ Questions, ¶8.

Spain).⁶¹ In *Google Spain*, the CJEU held Google subject to European privacy regulations because its subsidiary Google Spain was established and profited in Spain.⁶² While the CJEU also acknowledged that in some cases the general public's collective right to access information may prevail, in *Google Spain*, the court prioritized the petitioner's right to privacy and the protection of personal data.⁶³

De-indexing, according to Special Rapporteur Edison Lianza, like removal of content, "has a limiting effect on the right to freedom of expression, because [it] restrict[s] the possibility to seek, receive, and impart information and ideas regardless of national frontiers."⁶⁴ Furthermore, in his 2016 report, Lianza specifically highlighted the importance of online media content hosts: "Media digital platforms [. . .] are public sources of information and platforms for the dissemination of opinions and ideas on matters of public interest, and therefore cannot be subject to a de-indexing order nor the suppression of online content regarding matters of public interest."⁶⁵ Citing IACtHR jurisprudence in *Herrera Ulloa v. Costa Rica*, Lianza argued that content removal could amount to prior censorship, a clear violation of both the individual and collective aspects of the right to free expression under Article 13.⁶⁶

Finally, this Court may consider how the African system wrestles with the need to balance privacy concerns against other rights in the digital environment. There is no express right to privacy enshrined in the African Charter on Human and Peoples' Rights, perhaps due to historical

⁶¹ *Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González*, 2014 E.C.J. C-131/12 (2014); Lianza, *supra* note 62, ¶132.

⁶² *Google Spain*, *supra* note 61, ¶55.

⁶³ *Id.*

⁶⁴ Lianza, *supra* note 57, ¶133.

⁶⁵ *Id.*, ¶138.

⁶⁶ *Id.*, ¶138, n. 215; *Herrera Ulloa v. Costa Rica*, IACtHR (ser. C) No. 107 (2004).

cultural norms of prioritizing collectivism.⁶⁷ But where it can be read in, or applied in sub-regional or national contexts, it must be properly balanced, as detailed by the African Commission on Human and Peoples' Rights (ACHPR) in Article XII of the Declaration of Principles on Freedom of Expression in Africa.⁶⁸ In 2014, the African Declaration on Internet Rights and Freedoms was released at the UN Internet Governance Forum, and while the declaration welcomes internet regulation inspiration from around the world, it cautions against applying problematic laws from other regions without considering the contexts and local conditions in African countries.⁶⁹ Here in Varaná, 35% of our population identifies as indigenous and 30% Afro-descendant;⁷⁰ collective rights such as the collective aspect of the right to free expression must therefore be weighed especially heavily.

Zero-rating apps in Varaná do not infringe upon free expression

Varaná is committed to increasing the public's access to the internet, and by allowing private companies to offer apps for free along with the internet service they provide, more Varanasian citizens can access the digital environments they need. In keeping with IACHR interpretation of *Principles on Freedom of Expression*,⁷¹ Varaná has adopted measures of positive differentiation to bring greater internet access to both low-income and rural communities, both of whom face marginalization in the digital age. These measures include statutory permission for private enterprises to provide free access to some internet apps.

⁶⁷ Yohannes Eneyew Ayalew, *Untrodden Paths Towards the Right to Privacy in the Digital Era Under African Human Rights Law*, 12(1) INT'L DATA PRIVACY L. 16 (2022).

⁶⁸ *Id.*; Declaration of Principles on Freedom of Expression in Africa, ACHPR, 32nd Session (2002), art. XII, *Protecting Reputations*.

⁶⁹ African Declaration on Internet Rights and Freedoms, Introduction, at 4 (2014).

⁷⁰ Hypothetical, ¶1.

⁷¹ IACHR Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013 Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. (2013), ¶15.

The Petitioner may allege that privileging access to certain apps over others limits the potential reach of alternatives, violating the collective right to receive (more) information, as well as the individual right for users to impart information (more broadly) in whatever fora they wish. These concerns, however, are outweighed by the Republic’s legitimate interest in expanding access to the internet for greater numbers of people in Varaná. Understandably, a greater portion of the population will be more likely to access online resources if they are free. Even the Petitioner specifically signed up for Lulo specifically because it was free on his mobile phone plan.⁷² The National Assembly democratically passed Law 900 in 2000, deliberately allowing “internet service providers [to] offer free applications in their plans in order to reduce the digital divide, which shall not be understood as discrimination.”⁷³ The Supreme Court specifically upheld the national priority of narrowing the digital divide in 2016.⁷⁴ These policies adhere to recent calls from the IACHR and the Special Rapporteur for Freedom of Expression for states to enact policies to increase affordable access to information and communication technologies,⁷⁵ as well as principles highlighted during the OAS General Assembly in June 2023, marking the need to improve internet coverage and bridge the digital divide.⁷⁶

The Republic of Varaná respected Article 11 (Right to Privacy) in conjunction with Article 1(1) of the ACHR

⁷² Hypothetical, ¶29.

⁷³ *Id.*, ¶9.

⁷⁴ *Id.*, ¶71.

⁷⁵ IACHR Press Release, *IACHR and RFOE Call on States to Adopt Measures to Reduce Digital Divide for Older People* (2021).

⁷⁶ OAS, *The Key Role of the Inter-American Telecommunication Commission in Advancing Telecommunications/Information and Communication Technologies*, AG/Res. 3000, LIII-O/23 (2023), at 26.

Modeled after Article 12 of the UDHR,⁷⁷ Article 17 of the ICCPR⁷⁸ and Article 8 of the ECHR,⁷⁹ Article 11 of the ACHR guarantees that all human beings have the right to have their honor respected and dignity recognized⁸⁰ through protection against unlawful attacks on one's honor and reputation.⁸¹ Honor and reputation are distinct in that honor relates to self-esteem and self-worth whereas reputation deals with the perceptions others hold.⁸² An attack against reputation and honor can include promulgation of false information that distorts or restricts the public opinion or status of an individual or entity.⁸³ A state may limit the rights of individuals to protect the reputation of corporations.⁸⁴

The primary purpose of this right is to protect against arbitrary interferences to private life: family, home, and correspondence.⁸⁵ The right also protects the “freedom to make decisions related to various areas of a person’s life, a peaceful personal space, the option of reserving certain aspects of private life, and control of the dissemination of personal information to the public.”⁸⁶

In addition to a state duty to refrain from interfering with rights unlawfully, there is a positive duty to affirmatively guarantee the right to privacy.⁸⁷ However, private or public interference with these rights is permissible if not arbitrary or abusive.⁸⁸ This means that a lawful

⁷⁷ UDHR, art. 12, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

⁷⁸ ICCPR, art. 17, 999 U.N.T.S. 171 (1966).

⁷⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221 (1953).

⁸⁰ ACHR, *supra* note 36, art. 11(1).

⁸¹ *Id.*, art. 11(2)-(3).

⁸² *Escher v. Brazil*, IACtHR (ser. C) No. 208, ¶117 (2009).

⁸³ *Flor Feire v. Ecuador*, IACtHR (ser. C) No. 315, ¶155 (2016).

⁸⁴ *Entitlement of Legal Entities to Hold Rights under the Inter-American Human Rights System*, Advisory Opinion OC-22/16, IACtHR (ser. A) No. 22 (2016) ¶279.

⁸⁵ ACHR, *supra* note 36, art. 11(2); *Kroon & Others v. Netherlands*, No. 18535/91, ¶31 (1994).

⁸⁶ *Fontevicchia & D’Amico v. Argentina*, ¶48.

⁸⁷ ACHR, *supra* note 36; *Fontevicchia & D’Amico v. Argentina*, ¶49.

⁸⁸ ACHR, *supra* note 36, art. 11(2); *Fontevicchia & D’Amico v. Argentina*, ¶48.

interference is one that is (a) clearly established in law;⁸⁹ (b) serves a legitimate purpose; (c) and is suitable, necessary, and proportionate in a democratic society.⁹⁰ In a democratic society, the rights in Article 11 apply to public figures under a lower threshold because of the figure's voluntary exposure to scrutiny and the increased risk of damages to their privacy.⁹¹ Therefore, in cases involving a public figure, the Court must consider the (a) lower threshold in addition to the (b) public's interest in the action or information sought to be protected.⁹²

Varaná complied with its duty to prevent and punish third-party infringements of privacy.

Varaná did not violate its obligations under the ACHR when it purchased Andromedia, a software used to access location data from mobile phones to investigate serious crime. While this Court previously ruled to include telephone calls and origins of calls in the sphere of privacy,⁹³ it has not contemplated location tracking unrelated to communication. Such sharing should not fall into the sphere of privacy in communication because physical location alone is not communication and is often public knowledge because the public is witness to one's location.

However, assuming location data taken from social media and map applications is included in the sphere of protected privacy, Varaná still acted in accordance with the ACHR; all the elements for a lawful interference with the right to privacy are met. First, Varaná's Cybercrime Law⁹⁴ implemented the Budapest Convention on Cybercrime (BCC), which compels states to adopt legislative and other measures to empower authorities to seize and secure electronic data

⁸⁹ Tristán Donoso v. Panamá, ¶¶130-31.

⁹⁰ *Id.*, ¶56; Libert v. France, App. No. 588/13 (2018).

⁹¹ Fontevecchia & D'Amico v. Argentina, ¶¶49, 59-61.

⁹² *Id.*, ¶¶59, 61-62, 66.

⁹³ Escher . v. Brazil, IACtHR (ser. C) No. 208 (2009).

⁹⁴ Questions, ¶25.

from computers to fight cybercrime.⁹⁵ A mobile phone is a form of a computer as defined in the BCC because it is a device that performs automatic processing⁹⁶ and Andromedia is the measure that empowers authorities to fight cybercrime. Thus, the interference is clearly established in law. Second, combatting serious crime can form the legitimate basis for restricting several rights under the ACHR, and privacy rights under Article 11 may also be limited to achieve such aims, insofar as the limitations are executed lawfully.⁹⁷ Varaná's purpose in obtaining Andromedia was precisely to combat serious crime.⁹⁸ Third, allowing authorities to access this data is suitable, necessary, and proportionate because without this power, cybercriminals could interfere with the tools that maintain a democratic society such as the exchange of accurate information and free and fair elections, among other things.⁹⁹

Andromedia facilitates lawful interference with the right to privacy, but admittedly when state employees misused their authority to access Mr. Benítez's data for personal gain, an unlawful interference occurred. However, Varaná investigated and tried them accordingly, complying with the duty to remedy an unlawful interference under the ACHR. Varaná acted within a reasonable time and thus adhered to due process requirements. The Prosecutor General began the investigation in October 2014 when suspicions arose of the employees' misdeeds—and they were convicted of computer crimes and abuse of authority on April 8, 2015, less than a year after the investigation began. The appeals court affirmed the conviction two years later and ordered 26,000 Varanasian

⁹⁵ Budapest Convention on Cybercrime (BCC), Council of Eur. (2004) T.I.A.S. No. 13174, C.E.T.S. No. 185, art. 19.

⁹⁶ *Id.*, art 1.

⁹⁷ ACHR, *supra* note 36, arts. 13, 15, 16, 22; *Escher v. Brazil*, ¶116-46.

⁹⁸ Hypothetical, ¶62.

⁹⁹ *Information Warfare, Disinformation, and Electoral Fraud*, UN Off. on Drugs & Crime, <https://www.unodc.org/e4j/en/cybercrime/module-14/key-issues/information-warfare--disinformation-and-electoral-fraud.html>.

reais each in reparations to Mr. Benítez and other victims.¹⁰⁰ This Court previously decided that an appeals process lasting over 5.5 years was not reasonable and thus violated due process in a highly sensitive case involving the rape of a child.¹⁰¹ This case was finalized in less than half that time despite its less urgent matter. Additionally, this conviction serves as an example to other government employees that Varan will not tolerate abuse of authority, thus deterring future violations.

Varan's prohibition of anonymity satisfies the demands of the ACHR

Anonymity and privacy are not synonymous. Regulating anonymity online does not prevent user privacy and Varan can prohibit anonymity online while adhering to the right to privacy the ACHR demands. The IACtHR has not ruled on the propriety of anonymity online but other international instruments have addressed the topic. One tool is the UN Resolution on the Right to Privacy in the Digital Age which encourages online enterprises to create tools for confidential digital communication which may include encryption, pseudonymization, or anonymity.¹⁰² It also encourages states to ensure any restrictions of such tools comply with international human rights law and to enact policies that ensure digital privacy.¹⁰³ Varan is complying with the UN Resolution and the right to privacy when banning anonymity.

Specifically, Varan's laws allow for pseudonymization which maintains privacy. Article 13 of the Constitution prohibits anonymity and Article 11 of Law 900 mandates that users link online profiles to their national identification card. Public action of unconstitutionality 1010/13 clarified that these laws merely required that platforms must have accurate and sufficient

¹⁰⁰ Hypothetical, ¶¶62-63, 76.

¹⁰¹ V.R.P, V.P.C. v. Nicaragua, IACtHR (ser. C) No. 350, ¶¶277, 285 (2018).

¹⁰² G.A. Res. 75/176, ¶9 (2020).

¹⁰³ *Id.*

information to identify active users. It did not state that other users must have sufficient information to identify each other or that all posts must be attributed to an identifiable individual. For this reason, it is common practice for sites to require identification to create an account while allowing usernames to differ from the user's legal name, or pseudonymization. Pseudonyms allow users to interact and communicate anonymously with others on the platform. Mr. Benítez had the opportunity to create such a profile and anonymously post in online groups to rehabilitate his reputation as he desired.

If requiring national identification to create online profiles infringes on the right to privacy, Varaná still complied with its obligations under the ACHR. Article 11 guaranteeing privacy is not absolute and can be restricted when guaranteeing other rights such as the Right to Humane Treatment in Article 5 or the rights of children as detailed in the Convention on the Rights of the Child.¹⁰⁴ When two important goals compete, such as here, it is important to find a balance.¹⁰⁵ The internet, while a tool for expression, is known to have increased dangers to the life and dignity of children by increasing bullying, exploitation, and abuse.¹⁰⁶ Anonymity can empower cyberbullies to act in ways they would not dare in person.¹⁰⁷ It also protects cyberabusers, extortioners, and scammers, creating an obstacle for law enforcement to identify the criminals.¹⁰⁸ When competent authorities can identify each pseudonymous user it deters misuse of online profiles and facilitates

¹⁰⁴ ACHR, *supra* note 36, art. 29.

¹⁰⁵ Robert Alexy, *Constitutional Rights, Balancing, and Rationality*, 16 *RATIO JURIS* 131, 135-36 (2003).

¹⁰⁶ Edizon Lianza, Special Rapporteur Freedom of Expression, Childhood, Freedom of Expression, and the Media, OEA/SER.L/V/II, ¶212 (2019).

¹⁰⁷ Office of Special Rep. of Sec.-Gen. On Violence Against Children, Ending the Torment: Tackling Bullying From the Schoolyard to Cyberspace, at ii, 116, U.N. Sales No. E.16.I.14 (2016).

¹⁰⁸ *Obstacles to Cybercrime Investigations*, U.N. Off. on Drugs & Crime, <https://sherloc.unodc.org/cld/en/education/tertiary/cybercrime/module-5/key-issues/obstacles-to-cybercrime-investigations.html>.

crime investigation. Therefore, Varaná held a legitimate government interest in partially curtailing any potential right to anonymity under Article 11 of the ACHR.

Varaná acted in compliance with the ACHR when its courts denied the request to de-index Ms. Palacios' article.

The ACHR does not guarantee any explicit right to be de-indexed. Therefore, a state must grant a request for de-indexing only if failing to do so would violate the right to privacy as balanced against the freedom for others to seek information in Article 13. As explained previously, an interference violates the right to privacy when it is arbitrary or abusive, a standard defined by a three-part test requiring an established law, a legitimate purpose, and proportionality. Applying that test in the present case shows all the elements are met. First, Article 13 of the Varanasian Constitution clearly establishes the freedom of the press and the dissemination of information. If Varaná forced LuLook to de-index Ms. Palacios' article, it would directly limit her freedom under Article 13 of the Constitution.

Second, this constitutional provision serves the legitimate purpose of promoting an open society where diverse ideas are freely expressed—essential for the development of democracy. In an exemplary case, Brazil recognized that a general right to de-indexing would excessively restrict the freedom of expression in the case of *Curi et al v. Globo Comunicação*.¹⁰⁹ Instead, each case requires balancing the individual right to privacy against the public interest in the information.¹¹⁰ Even if a right to be de-indexed existed, a key element of the proposed right is not present in this case: significant lapse of time. In cases like *Curi* and even *Hurbin v. Belgium* before the ECtHR, where the Courts have valued privacy over expression, the matters in dispute involved published

¹⁰⁹ S.T.F., RE 1.010.606, Relator: Min. Dias Toffoli, 11.02.2021 (Braz.).

¹¹⁰ *Id.*

information that was decades old.¹¹¹ With time, valid information can become less transparent, complete, and valuable in relation to its expression. In contrast, recent news is more valuable.¹¹²

Third, denying the request to de-index was proportionate to the needs of a democratic society. Public figures who willingly expose themselves to scrutiny enjoy a reduced right to privacy when the information in controversy is in the public interest. For example, this Court decided that it was unnecessary for the Argentinian Supreme Court to sanction the director and editor of the magazine *Noticias* for publishing embarrassing information about the illegitimate son of the then Argentinian President,¹¹³ reasoning that the information was public, but in any case, the integrity of a public figure is in the public's interest.¹¹⁴

The present case is similar. Mr. Benítez is a well-known figure and opinion leader.¹¹⁵ He gained over 80,000 followers on social media through his active political and environmental discourse. When his following declined, he desired to regain his public status. He willingly exposed his life to public comment and the lesser privacy threshold applies to him. Mr. Benítez's integrity is relevant and in the public interest, considering he acted as a source of information on Holding Eye's activities by broadcasting interviews and protests on topics which influence Varaná's economy and politics and subsequently the lives of citizens. It would not be a free and democratic society if states were forced to remove any potentially critical information about a well-known figure, especially when the information was largely verified.

¹¹¹ *Id.*; *Hurbain v. Belgium*, App. No. 57292/16, Eur. Ct. H.R. (2021); [C.S.J.] 21 enero 2016, "Grazinai v. El Mercurio," Rol de la cause: 22243-2015 (Chile).

¹¹² *Axel Springer AG v. Germany*, App. No. 39954/08, Eur. Ct. H.R. (2012).

¹¹³ *Fontevicchia & D'Amico v. Argentina*, ¶¶53-75 (2011).

¹¹⁴ *Id.*

¹¹⁵ Hypothetical, ¶25.

The Republic of Varaná respected Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in conjunction with Article 1(1) of the ACHR

The judge in Holding Eye's tort action against Mr. Benítez did not violate Mr. Benítez's rights.

Through Article 8 of the ACHR, everyone is guaranteed a right to a fair trial, adjudicated in a timely manner by a “competent, independent, and impartial tribunal.”¹¹⁶ Specifically, a court must be both subjectively and objectively impartial. In terms of subjectivity, an impartial court means that the judge must not have any direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and must not be involved in the controversy.¹¹⁷ Subjective impartiality is presumed unless there is evidence to the contrary¹¹⁸ that is sufficiently specific and concrete to indicate aspects outside the legal provisions influenced the judge.¹¹⁹ An example of a partial court is a military court in which the naval prosecutors are subordinate to the judges who supervise their performance or one in which the judge took part in the facts which gave rise to the indictment.¹²⁰

Objective impartiality deals with the appearance of objectivity through safeguards and reasoning.¹²¹ The question is whether the judge “offered sufficient elements of conviction to exclude any legitimate misgivings or well-grounded suspicion of partiality.”¹²² This Court has highlighted that “the obligation to provide grounds for a decision is a guarantee related to the proper administration of justice.”¹²³ Procedural safeguards that allow defendants to question the

¹¹⁶ ACHR, *supra* note 36, art. 8(1).

¹¹⁷ Palamara Iribarne v. Chile, IACtHR. (ser. C) No. 350, ¶146 (2005).

¹¹⁸ Apitz Barbera v. Venezuela, IACtHR (ser. C) No. 182, ¶56 (2008).

¹¹⁹ Duque v. Colombia, IACtHR (ser. C) No 310, ¶165 (2016).

¹²⁰ Palamara Iribarne v. Chile, ¶¶157-58.

¹²¹ Pabla KY v. Finland, App No. 47221/99, ¶27 (2004).

¹²² Apitz Barbera v. Venezuela, IACtHR (ser. C) No. 182, ¶56 (2008).

¹²³ Escher v. Brazil, ¶208.

competency of the judge also work to exclude legitimate doubt and protect the objective appearance of impartiality.¹²⁴

In this case, the judge had no known connection with Holding Eye or Mr. Benítez. There are no alleged facts concerning any potential grudges, pre-existing notions, or pressures from authorities, nor did the judge assist in investigating Mr. Benítez. The judge advising Mr. Benítez that if he revealed the source of his information, the trial may end more quickly, alone is not sufficiently specific or concrete to demonstrate non-legal external influence, so the presumption of impartiality remains. As for objective impartiality, the judge's statement did not promote the interests of one party over the other. Coercion could lead to a due process violation and inhibit access to justice; however, coercion is not observed in any of the facts. In terms of compliance with the interpretation of Articles 8 and 25 of the American Convention, Varaná demonstrated its commitment to providing a fair trial. In either case, a plaintiff's withdrawal of the claims is a reasonable and neutral motive for closing a case.

The legal proceedings for Mr. Benítez's tort claim were fair.

Conversely to Article 8, Article 25 guarantees judicial protection for a plaintiff or victim and recourse for violations of their established rights, even if officials acting in the course of their duties caused the violation.¹²⁵ Judicial protection entails a remedy that is simple, prompt, and effective,¹²⁶ not only formally established in law but appropriately and effectively able to combat the violation.¹²⁷ To determine a violation of Article 25, the Court may need to examine the

¹²⁴ López Lone et al v. Honduras, IACtHR (ser. C) No. 302, ¶226 (2015).

¹²⁵ ACHR, *supra* note 36, art. 25(1).

¹²⁶ Acevedo Buendía et. al. v. Peru, IACtHR (Ser. C) No. 198, ¶77 (2009).

¹²⁷ Escher v. Brazil, ¶196.

respective domestic proceedings and merits.¹²⁸ For example, an *amparo* is typically a suitable remedy to collect pension due but this Court has determined that four and a half years to adjudicate an *amparo* is too long to address the harms, rendering the remedy ineffective.¹²⁹ Violations of Article 8 can lead to a violation of Article 25. For example, an incompetent court might be unable to render an effective remedy as when a biased military court tries a civilian for slander for criticizing the military.¹³⁰

That Mr. Benítez lost his case against LuLook does not signify a violation of the right to judicial protection. A plaintiff is not entitled to win, but to a remedy if it is so just. The proceedings were fair and adjudicated based on properly stated and legally legitimate grounds. The court ruled that LuLook, as an intermediary, is not liable for third-party content, in line with the IACHR Standards for a Free, Open, and Inclusive Internet.¹³¹ Like in other matters, this Court finds inspiration regarding Article 25 in precedent from the ECtHR.¹³² Recently, the ECtHR seemingly ruled the opposite of IACHR standards in *Sanchez v. France*. However, the facts of that case were starkly different. There, a politician was convicted for failing to remove islamophobic and illegal third-party comments on his personal Facebook page and the ECtHR ruled that this conviction did not violate his right to freedom of expression.¹³³ The case here does not involve an individual's control of hateful and illegal content on his page, but rather it involves a large internet service provider that hosts multiple websites and posts containing verified neutral facts. These differences make the judge's determination of no liability reasonable. Notably, the proceedings were timely:

¹²⁸ Perrone & Preckel v. Argentina, IACtHR (ser. C) No. 385, ¶121 (2019).

¹²⁹ Acevedo Buendía et. al. v. Peru, ¶¶74, 88.

¹³⁰ Uzón Ramírez v. Venezuela, IACtHR (ser. C) No. 207, ¶130 (2009).

¹³¹ Lianza, *supra* note 57, ¶105.

¹³² Palamara Iribarne v. Chile, IACtHR (ser. C) No. 350, ¶219 (2005); Castaneda Gutman v. Mexico, IACtHR (ser. C) No. 184, ¶110 (2008).

¹³³ Sanchez v. France, App. No. 45581/15 (2023).

Mr. Benítez filed the appeal just less than a year before the Supreme Court denied the extraordinary appeal.

Mr. Benítez chose to reveal the source of his information and the disclosure led Holding Eye to withdraw its claims, but had he pursued the case further and proven the veracity of the screenshots or his lack of intent to harm Holding Eye (and instead an intent to expose the truth thus successfully defending his statements), the effectiveness of the judgment could have been demonstrated. Varaná gave a similar opportunity to Mr. Benítez when he filed his defamation claim against a Holding Eye subsidiary.

Varaná delivered justice to the Petitioner for the breach of his data

Against Varaná’s digital data laws which comply strictly with the BCC,¹³⁴ two state employees misused software intended for investigating crimes to obtain Mr. Benítez’s location data and leak it to the press.¹³⁵ The Republic acted swiftly, and just five months after Ms. Palacios published the article about Mr. Benítez, remedied the harm in alignment with human rights standards by performing due diligence in investigating, prosecuting, sentencing the offenders, and subsequently delivering reparations (26,000 Varanasian reais each) to their victims.¹³⁶

The Republic of Varaná respected Article 14 (Right of Reply) in conjunction with Article 1(1) of the ACHR

The ACHR protects “anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication,” by

¹³⁴ Questions, ¶25.

¹³⁵ Hypothetical, ¶62.

¹³⁶ *Id.*, ¶76.

ensuring the right to correct that harmful misinformation “using the same communications outlet.”¹³⁷ This right is inextricably related to the freedom of expression protected by Article 13—not only enumerated one following the next, but the right to reply must also be balanced alongside free expression.¹³⁸ In its consideration of *Elías Santana v. Venezuela*, the Commission noted this very tension, exploring whether the enforcement of Article 14 necessarily limits the [individual] freedom of expression guaranteed in Article 13, by “oblig[ing] the media to provide free coverage for information that is not necessarily consistent with their editorial line,” or in fact expands the [collective] enjoyment of free expression, by “fostering a greater flow of information.”¹³⁹ In *Elías*, the Commission found that Venezuela had not violated Article 14, in part because although it was not during the same radio program, the state did grant him a reply.¹⁴⁰ The time frame, language, and space requirements of replies are not codified by the ACHR and may vary from State to State, so long as they adhere to the Court’s conceptual framework.¹⁴¹

Under Article 11 of the Varanasian Constitution, “all persons also have the right to know and update the information collected about them, and to request its rectification.”¹⁴² In the case of Mr. Benítez, with regard to the article published about him on December 7, 2014, “Luciano Benítez: Environmental Fraud and Partner of Extractivists?”, he at first refused the opportunity of rebuttal.¹⁴³ When he did write his own accounting of the events described, Ms. Palacios edited her

¹³⁷ ACHR, art. 14.

¹³⁸ Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-7/86, IACtHR (ser. A) No. 7 (1986), ¶25.

¹³⁹ Report No. 92/03 Petition 453/01 Inadmissibility *Elías Santana et al v. Venezuela*, IACHR (2003), ¶66.

¹⁴⁰ *Id.*, ¶¶70, 84.

¹⁴¹ *Id.*, ¶27.

¹⁴² Hypothetical, ¶7.

¹⁴³ *Id.*, ¶¶44-45.

story to include a link to his explanation within one day of his posting.¹⁴⁴ Furthermore, upon receiving more extensive evidence supporting Mr. Benítez’s version of events the following August, Ms. Palacios published a second installment of the article including this evidence, on both mediums (her personal blog and the newspaper *VaranáHoy*) in which the original article had appeared.¹⁴⁵ As in *Santana*, the state of Varaná respected Benítez’s right of reply—and here, even more strongly, since the corrections desired were published in the exact same newspaper and blog as the original article.¹⁴⁶

The Petitioner may argue that the reply undertaken by Mr. Benítez was insufficient because of the limited reach of both his explanatory post and the second installment of the article written by Ms. Palacios containing further evidence of his explanation. They may accuse Varaná of failing to hold the company Holding Eye accountable for this alleged violation of Mr. Benítez’s rights. However, as argued above, the Republic properly recognized Holding Eye under the mere conduit principle established by the Joint Declaration Concerning the Internet.¹⁴⁷ There are no established facts to prove that Holding Eye specifically intervened in the distribution or promotion of the replies afforded Mr. Benítez, and therefore, no way for Varaná to somehow mandate an increase in the popularity of his content.

First, the Right of Reply is intended to safeguard rights holders from inaccurate or offensive information about them—and in this case, the information published about Mr. Benítez was largely neither. While the conclusions that Ms. Palacios’ readers drew of their own accord may have been mistaken, the underlying data (which she had no way of knowing the provenance of, and which

¹⁴⁴ *Id.*, ¶52.

¹⁴⁵ *Id.*, ¶¶64-65.

¹⁴⁶ *Id.*, ¶¶52, 65.

¹⁴⁷ UN Special Rapporteur on Freedom of Opinion and Expression, Frank LaRue et. al., *Joint Declaration on Freedom of Expression and the Internet* (2011), art 2(a).

she diligently verified with other sources) was not factually inaccurate. Therefore, it may be that Mr. Benítez was not owed any right of reply. Still, if the Court determines that he was, the replies he was afforded exceeded the standards set forth in the Inter-American system. Costa Rica requested an Advisory Opinion from this Court to help determine the sufficiency of legal protections for the right of reply in Costa Rican law.¹⁴⁸ Interestingly, while the Court explained therein how states may give effect to the right (ways in which Varanasian laws are in complete alignment, as the right of reply is firmly established in Article 11 of the Constitution),¹⁴⁹ in one of several concurrences, Judge Espiell considered also the collective, social dimension of the right of reply, the idea that the general public has the right to be correctly informed about matters of public interest.¹⁵⁰ Here, that goal was clearly met, as both Mr. Benítez’s own explanatory post and another published by Ms. Palacios detailed the context of the facts exposed in her first article. While this Court has been clear that equal or greater space must be given to replies, there is neither jurisprudence nor guidance mandating equal or greater readership.

The Republic of Varaná respected Article 15 (Right of Assembly) and Article 16(1) (Freedom of Association) and 22(1) Freedom of Movement in conjunction with Article 1(1) of the ACHR

Besides the freedom of expression protected in Article 13, the Right of Assembly and Freedom of Association form cornerstones upon which robust democracies rely. Peaceable assembly contributes meaningfully to the exercise of free expression—and also strengthens vital

¹⁴⁸ Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-7/86, IACtHR (ser. A) No. 7 (1986).

¹⁴⁹ Hypothetical, ¶7.

¹⁵⁰ Judge Gros Espiell, Separate Opinion in Advisory Opinion OC-7/85, ¶5.

democratic values as well as protections for other rights including association and the right to take part in public affairs.¹⁵¹ As for Article 16, this Court has ardently defended their abilities “to create or take part in entities or organizations in order to act collectively to achieve very diverse purposes.”¹⁵² Free association must also entail a responsibility on the part of the State to refrain from any arbitrary, unnecessary, unlawful intervention, restraint, or impediment to the exercise of this freedom.¹⁵³ States must similarly uphold the right of assembly, whether private, public, static, or involving movement.¹⁵⁴ Lastly, the right of all individuals to move freely is protected under ACHR Article 22. States must protect any individual’s right to move in a state in which they are legally present and only limit that right when it is necessary to prevent criminal offenses, to protect public safety and order, or to protect national security.”¹⁵⁵ In *Moiwana Community v. Suriname* this Court addressed the reality that states may create conditions which amount to *de facto* restrictions on the right to the freedom of movement under Article 22-1 in a situation arising from the state forces’ massacre and village razing of an Afro-descendant tribal community—crimes which the state failed to adequately investigate, punish, or remedy.¹⁵⁶ Here, explained below, Varaná created no such *de facto* restrictions on the Petitioner’s right to move about freely.

Varaná correctly held the hackers who accessed Mr. Benítez’s personal data criminally liable, thereby upholding his right to assemble, associate, and move under Articles 15, 16(1), and 22(1).

¹⁵¹ LUDOVIC HENNEBEL & HÉLÈNE TIGROUDJA, *THE AMERICAN CONVENTION ON HUMAN RIGHTS: A COMMENTARY* (2022), 477, citing *Castañeda Gutman v. México*, IACtHR (ser. C) No. 184, ¶¶140-42 (2008); and *López Lone et al v. Honduras*, ¶167.

¹⁵² *Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to Other Rights, with a Gender Perspective*, Advisory Opinion OC-27/21, IACtHR (ser. A) No. 27, ¶121 (2021), citing *Escher v. Brazil*, and *Lagos del Campo v. Peru*, IACtHR (ser. C) No. 340 ¶155 (2017).

¹⁵³ *Advisory Opinion OC-27/21*, ¶121.

¹⁵⁴ *López Lone v Honduras*, ¶167.

¹⁵⁵ *Andrade Salmón v. Bolivia*, IACtHR (ser. C) No. 330, ¶140 (2016).

¹⁵⁶ *Moiwana Community v. Suriname*, IACtHR (ser. C) No. 124, ¶119 (2005).

As it did in *Baena Ricardo v. Panamá*, this Court must find that there was no violation of the right to (peaceable) assembly.¹⁵⁷ In *Baena*, workers participated in a march for labor rights and their employment was subsequently terminated; however, there lacked sufficient evidence to show the State infringed on the right to peaceably assemble because state law enforcement agents protected the event, the employment terminations took place after the workers engaged in a work stoppage, and their dismissals included no mention of the march.¹⁵⁸ Here, Mr. Benítez spent many years practicing his right to peaceable assembly. In the aftermath of his “cancelation” from social and environmental communities he decided to withdraw from public life and public assembly. There are no established facts to show sufficient linkage to the Republic’s acts or omissions to hold Varaná responsible. When his personal data was hacked and shared with journalists, Mr. Benítez was the victim of a crime that caused reverberations throughout his life. Varaná swiftly investigated and held those responsible to account by securing criminal convictions and important monetary reparations paid to Mr. Benítez.

In *Escher v. Brazil*, this Court rightfully held the State responsible for violating Petitioners’ right to association, because of the State’s illegal wiretapping, dissemination of recordings, and refusal to order the destruction of the recordings.¹⁵⁹ The present case could not be more different from *Escher*. Varaná did not undertake to hack into Mr. Benítez’s data unlawfully: that was a criminal act perpetrated by two individuals who are now in prison. While these criminals were state employees, their actions were not undertaken as part of their official duties or on behalf of Varaná. They misused the tools to which they had access for personal, criminal, gain.

¹⁵⁷ *Baena Ricardo v. Panamá*, IACtHR (ser. C) No. 72 (2001).

¹⁵⁸ *Id.*, ¶¶148-49.

¹⁵⁹ *Escher v. Brazil*.

Furthermore, the Republic of Varaná did not deliberately disseminate Mr. Benítez's location history data in any way like the events in *Escher*. Here, a journalist received anonymous information she judged to be newsworthy regarding a well-known person in matters of public interest, verified this data with others, then shared it. The information she shared was public in nature: rather than including intimate, private information regarding Mr. Benítez's home and private life, the locations she shared were all those in which he (and/or his phone) were verifiably witnessed in public in person, or at a large public gathering where it would have been reasonable to assume that he had been present along with his phone. Whereas in *Escher*, the State deliberately leaked illegal recordings of human rights activists' private phone calls to media outlets, she Ms. Palacios acted within the law.

To the limited extent that Mr. Benítez's right to move about freely in the territory of Varaná may have been infringed by the unlawful access of his cell phone location data, that harm has already been remedied: Varaná quickly punished those responsible for the hacking. The regrettable conditions in which criminals illegally accessed this data cannot be considered to rise to the level of the *de facto* restrictions on freedom of movement and residence as those in *Moiwana*. The Republic does not dispute that following the events at issue in this case, Mr. Benítez largely withdrew from public life and stopped moving about as much. But that decision was his alone, and if in fact it ties directly to his experience as a victim of hacking, those reparations have been appropriately made.

Varanasian anonymity prohibitions did not infringe upon Mr. Benítez's right to association

The Petitioner may argue that Mr. Benítez's inability to create a new social media profile not linked to his identity card unlawfully limited his right to associate freely with others of his choosing. Yet while understandable and regrettable, Mr. Benítez's ultimate decision to withdraw

from public and online life cannot be understood as a failure of the Republic to respect his right to free association. Mr. Benítez clearly had the right to continue using his existing social media account, or create a new one on the app more popular with the younger generation, Nueva—which currently allows users to create profiles not linked to their identity cards. He even had the opportunity to create an account username of anything he could imagine, not just, e.g., @lucianobenítez. He chose not to do so. It stretches the imagination to hold the Republic responsible for his personal choices in this regard.

In the European human rights system, which can be considered for persuasive authority in this emerging area of law, online spaces are recognized as important locations of association that should be protected by legislation ensuring internet access.¹⁶⁰ There, restrictions “relating to the online activities of associations are subject to the same principles of proportionality, legality, and necessity in a democratic society as any other limitations.”¹⁶¹ Here in Varaná, it is clear that inasmuch as Varansian anonymity prohibitions are considered restrictions on the right to free association, they are expressly provided for under subsection 2 of Article 16: “established by law [. . .] to protect [. . .] the rights and freedoms of others” as already argued above.¹⁶² Furthermore, they adhere to the standards recommended in the European system: proportional in that they are the least restrictive way of ensuring the state's ability to investigate cybercrime; established under laws repeatedly upheld by the judicial branch; and necessary to protect our citizens and especially our children from harm.

¹⁶⁰ Joint Guidelines on Freedom of Association, European Commission for Democracy through Law and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) (2014), ¶150.

¹⁶¹ *Id.*, ¶263.

¹⁶² ACHR, *supra* note 36, art. 16(2).

The Republic of Varaná respected Article 23 (Right to Participate in Government) in conjunction with Article 1(1) and (2) of the ACHR.

Every citizen has the right to participate in public affairs and to access the public service of his country.¹⁶³ Participation in public affairs includes a multitude of individual or collective actions meant to influence the designation of those who will govern a State or manage public affairs as well as direct participation mechanisms¹⁶⁴ like running for office.¹⁶⁵ Accessing public service means that the state must provide objective, reasonable, and non-discriminatory “processes for appointment, promotion, suspension, and dismissal” to public office.¹⁶⁶

The state must negatively and positively protect these rights.¹⁶⁷ For example, the state must not unjustly deprive the liberty of,¹⁶⁸ disappear or kill¹⁶⁹ a citizen to restrict their political rights and it must take active measures to prevent such violations. Notably, Article 23 is intimately intertwined with Articles 13, 14, 15, and 16 which protect specific methods of public engagement in government. When citizens can express their ideas freely, reply to those ideas or false statements, assemble around causes, and associate with groups that share their ideals without harm, then Article 23 is also protected.

Here, State complied with these obligations. No facts show that elections were unfair. Mr. Benítez did not attempt to run for public office nor was he prohibited from doing so in a

¹⁶³ *Id.*, art. 23(1)(a).

¹⁶⁴ *Yatama v. Nicaragua*, IACtHR (ser. C) No. 127, ¶196 (2005).

¹⁶⁵ *Id.*, ¶199.

¹⁶⁶ *Apitz Barbera v. Venezuela*, IACtHR (ser. C) No. 182, ¶206 (2008).

¹⁶⁷ *Manuel Cepeda Vargas v. Colombia*, IACtHR (ser. C) No. 213, ¶172 (2010).

¹⁶⁸ *Norín Catrیمان et. al. v. Chile*, IACtHR (ser. C) No. 279, ¶¶379-86 (2014).

¹⁶⁹ *Manuel Cepeda Vargas v. Colombia*, ¶¶176, 179.

discriminatory manner as occurred in *Yamata v. Nicaragua*.¹⁷⁰ As a leader of indigenous community, he regularly participated in meetings with Paya activists regarding the government's environmental practices;¹⁷¹ he participated in marches and supported political candidates that aligned with his views;¹⁷² he expressed his opinions to the public and broadcast legislative activities.¹⁷³ This activity occurred without government intrusion and with the protection of freedom of expression.

Mr. Benítez, defending Holding Eye's tort action, described the lawsuit as a SLAPP.¹⁷⁴ However, as explained previously, this situation is different from a SLAPP. Although, every human has a right to expression, the right is limited to ensure the reputation of a legal entity.¹⁷⁵ Just as Mr. Benítez could sue Ms. Palacios and LuLook for potentially harmful statements, Holding Eye was entitled to its day in court. Mr. Benítez refrained from continuing his political activities after public opinion turned, but a state cannot control the words and minds of its people to make one citizen feel comfortable being in the public eye and engaging in political discourse. The people must choose for themselves its leaders and the people can hold those leaders accountable for their integrity. Should Mr. Benítez ever choose to return to his activities, the same protections mentioned above that the state upholds under Articles 13, 14, 15, and 16, which allow the protests and political discourse to occur, will continue to protect him.

¹⁷⁰ Compare *Yatama v. Nicaragua*, ¶¶181-229.

¹⁷¹ Hypothetical, ¶25.

¹⁷² *Id.*, ¶26.

¹⁷³ *Id.*, ¶36.

¹⁷⁴ Hypothetical, ¶40

¹⁷⁵ Entitlement of Legal Entities to Hold Rights under the Inter-American Human Rights System. Advisory Opinion OC-22/16, IACtHR (ser. A) No. 22, ¶279 (2016).

The Republic of Varaná respected Article 5 (Right to Humane Treatment) in conjunction with Article 1(1) of the ACHR

Every person has the right to have his physical, mental, and moral integrity respected.¹⁷⁶ Disrespect to integrity varies in intensity from torture to cruel, inhuman, or degrading punishment or treatment.¹⁷⁷ This court has deemed disrespect to integrity to include expulsion of a family,¹⁷⁸ unlawful deprivation of liberty,¹⁷⁹ failure to care for displaced people,¹⁸⁰ environmental damages,¹⁸¹ prolonged detention,¹⁸² and failure to provide medical care,¹⁸³ among other atrocities. Here no such atrocities occurred. Instead, Mr. Benítez claims to have suffered psychological harm in response to public critique and his removal from activist messaging groups.

To determine whether these facts amount to cruel, inhuman, or degrading treatment, it is proper to consider the personal characteristics of the alleged victim including age, context, and vulnerability because these characteristics affect harm from the victim's perspective.¹⁸⁴ Mr. Benítez is an intelligent community leader who kept himself informed of technological, political, and economical advances. He is articulate and competent as he interviewed figures and advocated for the environment. He was born in 1951, making him an elderly citizen. His age is significant because it triggers protections under the Inter-American Convention on Protecting the Human Rights of Older Persons (CHRP)¹⁸⁵ which Varaná ratified.¹⁸⁶ In Article 9, CHRP defines violence

¹⁷⁶ ACHR, *supra* note 36, art. 5(1).

¹⁷⁷ *Id.*, art. 5(2); J. v. Peru, IACtHR (ser. C) No. 275, ¶362 (2013).

¹⁷⁸ Pacheco Tineo Family v. Bolivia, IACtHR (ser. C) No. 272, ¶¶207-08 (2013).

¹⁷⁹ Landaeta Mejias Brothers v. Venezuela, IACtHR (ser. C) No. 281, ¶203 (2014).

¹⁸⁰ Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, IACtHR (ser. C) No. 270, ¶¶323-24 (2013).

¹⁸¹ Environment and Human Rights. Advisory Opinion OC-23/17, IACtHR (ser. A) No. 23 (2017).

¹⁸² Carranza Alarcón v. Ecuador Merits, IACtHR (ser. C) No. 399 (2020).

¹⁸³ Manuela v. El Salvador, IACtHR (ser. C) No. 441 (2021).

¹⁸⁴ J. v. Peru. Merits, IACtHR (ser. C) No. 275, ¶362 (2013).

¹⁸⁵ OAS, Inter-American Convention on Protecting the Human Rights of Older Persons (2017), U.N.T.S. 3175.

¹⁸⁶ Hypothetical, ¶8.

as any act that causes “psychological harm or suffering, either in the public or the private sphere” including “psychological abuse and mistreatment, expulsion from the community, and any form of abandonment or negligence that takes place within the family or household unit or that is perpetrated or tolerated by the State or its agents, regardless of where it occurs.”¹⁸⁷

Despite this definition, the State upheld its responsibilities under the ACHR for four reasons. First, there are no facts demonstrating that he suffered abuse or harassment. Critique of a public figure based on verifiable facts is not abuse or harassment. There are no facts to show that because of his loss of popularity that he was stalked, doxed, heckled, or abused. Therefore, no abuse occurred from which Varaná needed to protect Mr. Benítez. Second, the obligations and rights under CHRP must be balanced with the obligations and rights under the ACHR. Public critique and removal from advocate forums are a form of expression that other citizens exercise. The ability to exclude in a non-discriminatory manner is warranted in a democratic society. The state cannot force its people to think positively about a particular citizen, even if it would mean preventing that citizen’s expulsion from a particular community. Varaná properly balanced its duties and complied with its obligations to investigate and prosecute any violations when it convicted the two state employees.

Third, Varaná complied with its obligations to provide access to care. When he became depressed, Mr. Benítez sought the assistance of a mental health professional and underwent psychological treatments.¹⁸⁸ The state did not interfere with his right to access such assistance. Fourth, it is not evident that “violence” under the Convention on Older Persons is “torture or cruel, inhuman, or degrading treatment or punishment” under Article 5 of the ACHR. The Convention

¹⁸⁷ Inter-American Convention on Protecting the Human Rights of Older Persons, *supra* note 185, art. 9.

¹⁸⁸ Hypothetical, ¶60.

on Older Persons separates into two distinct articles the definition of and duty to prevent violence from the duties regarding “torture or cruel, inhuman, or degrading treatment or punishment.” If they were the same or if one included the other, they would have been addressed concurrently in the same article.

III. REQUEST FOR RELIEF

Considering the arguments explained above, the Republic of Varaná respectfully requests this Honorable Inter-American Court of Human Rights to conclude and declare that:

(1) Varaná respected all the rights and freedoms established in Articles 13, 11, 8, 25, 14, 15, 16, 22, 23, and 5; or in the alternative;

(2) that if any of the rights enumerated above were violated, that they were subsequently satisfactorily ensured, remedied, and compensated in accordance with Article 63(1) of the ACHR.