CASE OF LUCIANO BENÍTEZ V. REPUBLIC OF VARANÁ

MEMORIAL FOR THE PETITIONER

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III. STATEMENT OF FACTS

Luciano Benítez ("Mr. Benítez") is a lifelong citizen of the Republic of Varaná ("Varaná") and a descendant of the Indigenous Paya people.[1] The Indigenous Paya people controlled the Republic of Varaná before its colonization by European nations between 1672 and 1802, however, by 2023, the Indigenous Paya people represented only 35% of Varaná's population.[2]

Colonization and violence preceded Varaná's establishment as an independent republic.[3] In 1991, an armed conflict resulted in the Ocean Party assuming power of the region and recognizing the Republic of Varaná as a unitary, presidential nation.[4] Under Varaná's Constitution, which was adopted in 1992,[5] the people of Varaná are guaranteed "free expression and freedom of the press" and "the right to a good name and privacy."[6] Home to coral reefs and rich biodiversity, Varaná also recognized constitutional protections for its environment, such as its marine areas.[7]

Varaná, a founding member of the United Nations, guarantees its citizens protection from human rights violations.[8] For example, Varaná has ratified, and thus is bound to, all the human rights instruments of the inter-American human rights system.[9] These same protections are codified through Varanásian law.[10] Further, Varaná codified net neutrality within Article 11 of Law 900 of 2000, which guarantees "free access to the Internet and shall not allow discrimination of any kind."[11]

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[1] Problem, para. 21.
[2] Problem, para. 1.
[3] *Id.*
[4] Problem, para. 2.
[5] *Id.*
[6] Problem, para. 6-7,
[7] Problem Clarifications, 3.
[8] Problem Clarifications, 11
[9] Problem, para. 8.
[10] Problem Clarifications, 4 & 7.
[11] Problem, para. 9.

After gaining democratic legitimacy in 1992, Varaná experienced vast economic development.[12] This economic growth is attributed to Holding Eye S.A.'s investment in Varaná.[13] Holding Eye is a limited liability company located in North America that controls a group of smaller corporations, including LuloNetwork.[14] This partnership is also referred to as "Lulo/Eye."[15] Holding Eye's subsidiaries operate in hardware, software, and natural resource exploitation.[16]

Holding Eye has a long and deep history of business ties with Varaná. In its early exploration of Varaná, Holding Eye discovered a new raw material, varánatic, a metal essential to the computer processor industry.[17] Because of this very lucrative discovery, Varanátic exploitation has been extremely beneficial for both Varaná and Holding Eye.[18] In fact, in 2023, Varaná's Gross Domestic Product ("GDP") for 2023 was US$70 billion and Holding Eye's Varanátic mining accounts for 12% of that figure.[19] In 2014, the duo developed an industrial complex that manufactured hardware components, drawing scrutiny from the Paya people including respected environmentalist, Luciano Benítez. [20]

Mr. Benítz, a 72-year-old retiree, is a proud Indigenous Paya person and a lifelong resident of Varaná.[21] As a retiree, Mr. Benítez receives a pension which he manages online.[22] As a long-time environmentalist – and to fill his free time during retirement – Mr. Benítez actively worked

[12] Problem, para. 16.
[13] *Id.*
[14] Problem, paras. 19 & 20.
[15] Problem, para. 67.
[16] Problem, para 19.
[17] Problem, para. 17.
[18] Problem, para. 18.
[19] Problem Clarifications, para. 8.
[20] Problem, para. 35.
[21] Problem, para. 21.
[22] Problem. para. 61.

to protect Varaná's sea and coastal territories, including attending meetings to discuss the planned policies and actions of government and private companies, earning him immense respect from other Paya activists.[23] In addition to his love for the environment, Mr. Benítez was an avid technology user and welcomed technological advances.[24] Despite welcoming technological advances, Mr. Benítez opposed the development of Holding Eye's industrial complex because of its potential environmental impact. [25] The environment holds great significance to the Paya people, like Mr. Benítez, evidenced in their annual Sea Festival celebration, wherein the Paya pay homage to the ocean gods.[26] Holding Eye's proposed industrial complex jeopardized not only the Sea Festival, but the Paya culture and tradition in general.[27] Further, considering Varaná's inability to determine the extent of harm to its sea floor after the release of heavy metals into the ocean in 2010, environmentalists did not support the 2014 project.[28]

In support of the protests led by the Paya people, Mr. Benítez combined his love of technology and environmentalism and used social media to disseminate information about the protests.[29] Using his LuloNetwork account, Mr. Benítez created a blog profile to quickly and easily disseminate information that was valuable to the public's knowledge about Holding Eye's project.[30] On his blog, Mr. Benítez conducted live interviews with Paya leaders and politicians and posted videos from protests.[31] Mr. Benítez and his community both believed that sharing this

[23] Problem, para. 25.
[24] Problem, para. 28
[25] Problem, para. 35.
[26] Problem, para. 22.
[27] Problem, para. 36.
[28] Problem Clarifications, para., 1. *See also*, Problem, para., 34.
[29] Problem, para. 36.
[30] *Id.*
[31] *Id.*

information was pertinent to the community. [32] Benítez amassed more than 80,000 fans, becoming a popular and respected social commentator.[33]

While reporting on the development of Holding Eye's industrial complex, Mr. Benítez received damning information regarding Holding Eye's and Varaná's relationship. On October 3, 2014, an unidentified informant instructed Mr. Benítez to email *whistlewhistle@pato.com*, and upon doing so, Mr. Benítez received evidence of illegal activity.[34] He received screenshots of illegal payments from Holding Eye to a Varanásian government official and memos from Holding Eye that emphasized the need to promote favorable content on its platforms in support of its industrial complex construction.[35] Mr. Benítez felt obligated to keep his community informed, and utilizing his LuloNetwork blog, wrote and published an article that included the content he received.[36] For reasons unknown to him at the time, Mr. Benítez 's article underperformed on LuloNetwork and received less online traffic than his previous blog posts.[37]

Following the publication of his article, Holding Eye sued Mr. Benítez, demanding Mr. Benítez reveal his journalistic sources.[38] Mr. Benítez, a retiree living off his pension, was ordered by the Civil Trial Court to either reveal his source or pay $US30,000 to Holding Eye.[39] Mr. Benítez's source, a junior lawyer in Holding Eye's legal department, feared retaliation from the company if he were to publish the accusations himself, and therefore provided the information to Mr. Benítez anonymously.[40] His fears were well-founded. Following Holding Eye's suit, the

[32] *Id.*
[33] *Id.*
[34] Problem, para. 37.
[35] *Id.*
[36] *Id.*
[37] Problem, para. 38.
[38] Problem, para. 39.
[39] Problem, para. 41-43.
[40] Problem, para. 43.

whistleblower was fired from Holding Eye and then sued, facing a potential US$240,000 judgment.[41]

Mr. Benítez 's blog post continued to attract attention beyond the LuloNetwork fan base. That December, a state-owned newspaper *VaranáHoy*, permitted blogger Federica Palacios ("Palacios") to publish an article about Mr. Benítez and his environmental activism.[42] Although Palacios claimed to vet the information, she published in *VaranáHoy,* the extent of her verification was only "technologically verifiable."[43]

Within twenty-four hours, Palacios's posts went viral on social media, the radio, and television.[44] This coverage led to Mr. Benítez being removed from his social media groups and losing respect and prominence among environmental advocates and the Paya community.[45] The damage to Mr. Benítez's reputation caused him great distress and led to severe depression.[46] Mr. Benítez made valiant efforts to salvage his reputation, nevertheless, these attempts were largely unsuccessful.[47] Following one of Mr. Benítez 's posts, Palacios linked his post to her original *VaranáHoy* story.[48] Including the link to Mr. Benítez 's posts did little to soften the blow to his reputation. attempted Mr. Benítez cared deeply about his community and the environment and wanted to continue sharing posts.[49] With a new app, Nueva, on the rise, and LuloNetwork's decreasing popularity, Mr. Benítez considered creating an anonymous account and utilizing Nueva's platform to restore his honor.[50] In his attempt to create a Nueva account on January 15,

[41] *Id.*
[42] Problem, para. 44.
[43] Problem, paras. 45 & 68.
[44] Problem, para. 47.
[45] Problem, para. 49.
[46] Problem, para. 50.
[47] Problem, para. 51.
[48] Problem, para. 52.
[49] Problem, para. 55.
[50] Problem, para. 54.

2015, Mr. Benítez learned that Nueva required him to upload a copy of his national ID card but allowed the user's "@" to differ from the user's name on their national ID card.[51] Mr. Benítez decided not to join Nueva, instead, opting to keep a low profile on his existing platforms, including LuloNetwork.[52] But, by August 2015, Mr. Benítez could no longer safely use the internet or social media.[53] He decided to disconnect completely by no longer using a cell phone or accessing the internet.[54]

Sometime after Mr. Benítez "signed off," the Office of the Prosecutor General discovered that two Varanásian government officials who worked in the intelligence service of the Ministry of the Interior used Andromeda, a phishing software, to obtain the personal data of human rights activists.[55] "Phishing" is a form of identity theft, committed through computer fraud.[56] Andromeda was developed by the Varanásian company, Vigila S.A. [57] These officials used Andromeda to unlawfully access Mr. Benítez's LuloNetwork and Lulocation data and then shared that data anonymously with journalists, including Palacios.[58] Both Pablo Mendez and Paulina Gonzales were convicted criminally and ordered to pay US$15,000 in civil damages to Mr. Benítez .[59]

Mr. Benítez decided to pursue legal action against Palacios and Lulo/Eye, jointly and severally.[60] In his tort action, Mr. Benítez attempted to recover damages from the defendants and requested the de-indexing of the information related to his name.[61] The trial court denied Mr.

[51] Problem, para. 56.
[52] Problem, para. 57.
[53] Problem, para. 60.
[54] Problem, para. 61.
[55] Problem, para. 62.
[56] Problem, para. 62(2).
[57] *Id.*
[58] Problem, para. 63.
[59] Problem, para. 76.
[60] Problem, para. 67.
[61] *Id.*

Benítez ’s claim, which he promptly appealed, and both the Court of Appeals and the Supreme Court denied Mr. Benítez ’s appeal and affirmed the lower court’s decision.[62]

After exhausting his civil claims, Mr. Benítez’s legal team, NGO Blue Defense, filed a public action of unconstitutionality against Varaná.[63] NGO Blue Defense argued that Article 11 of Law 900 of 2000 violated Mr. Benítez ’s right to freedom of expression, information pluralism, and the principle of net neutrality.[64] Similarly, Congressmen Alberto Carranza and Marcela Puerro opposed the enactment of Article 11 of Law 900 of 2000.[65] NGO Blue Defense’s argument garnered national attention.[66] Alternativa, a start-up company, promoted content on Nueva alleging harm from zero-rating practices in Varaná.[67]

Mr. Benítez ’s action was denied by the Court.[68] In its ruling, the Court stated the purpose of the law was to pursue the legitimate aim of narrowing the digital divide, and that the freedom of private initiative and enterprise was protected in the country.”

With the support of the NGO Blue Defense, Mr. Benítez filed a petition with the Inter-American Commission of Human Rights.[69] In the petition, Mr. Benítez alleged a violation of his freedom of expression and opinion, along with the violation of other human rights.[70] In all, Mr. Benítez alleged violations of Articles 5, 8, 11, 13, 14, 15, 16, 22, 23, and 25 of the American Convention of Human Rights, in conjunction with Articles 1.1 and 2 thereof.[71]

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[62] Problem, para. 69.
[63] *Id.*
[64] *Id.*
[65] Problem, para. 10.
[66] Problem, para. 71.
[67] *Id.*
[68] *Id.*
[69] Problem, para. 75.
[70] *Id.*
[71] *Id.*

In response to Mr. Benítez 's petition, Varaná denied any breach of the Convention and failed to raise any objections to the admissibility of the case.[72] The IACHR adopted a Report on Admissibility, declaring the case admissible and finding violations of Articles 5, 8, 11, 13, 14, 15, 16, 22, 23, and 25 of the ACHR, in conjunction with Articles 1.1 and 2 thereof.[73] The IACHR recommended (1) Varaná pay full reparations for the human rights violations; (2) bring the domestic legal framework in line with inter-American standards; and (3) design education on the inter-American human rights system, related to the human rights violations.[74] Varaná failed to comply with the IACHR's recommendations.[75]

Accordingly, Mr. Benítez intends to attend a hearing on merits before the Inter-American Court on May 20, 2024.[76]

[72] Problem, para. 76.
[73] Problem, para. 76.
[74] Problem Clarifications, para. 20.
[75] Problem, para. 77.
[76] Problem, para. 79.

IV. LEGAL ANALYSIS

i. Preliminary Admissibility

A. THIS COURT SHOULD FIND THAT THE PETITIONER HAS EXHAUSTED DOMESTIC REMEDIES, OR ALTERNATIVELY, IS EXEMPT FROM EXHAUSTING DOMESTIC REMEDIES.

Petitioner pursued and exhausted domestic remedies in accordance with Article 46 of the American Convention.[77] Petitioner brought legal action against Holding Eye for violating his constitutional rights to privacy and free speech. This legal action proceeded in domestic courts to the Supreme Court.

As a member of the Organization of American States ("OAS"), the Respondent has ratified all the human rights instruments of the inter-American human rights system, including the American Convention on Human Rights ("ACHR"), and is therefore subject to the jurisdiction of the Inter-American Court of Human Rights ("IACHR").[78]

The court should find that the Petitioner has exhausted domestic remedies for three reasons. First, the Petitioner filed a public action of unconstitutionality in March of 2015 challenging Article 11 of Law 900 of 2000 alleging harm from zero-rating practices in the country.[79] Second, the Petitioner contacted journalist and state actor Federica Palacios directly in an attempt to repair his reputation and good name in accordance with Article 11 of the Varaná Constitution, to which her attempt to remedy his harm was ineffective. Third, in September of 2015, the Petitioner filed a tort claim against Federica and the company Lulo/Eye for negligible circulation of an article and failure to de-index which violated Luciano's human rights.[80]

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[77] American Convention, art. 46.
[78] Problem, para. 8.
[79] Problem, para. 70 & 71.
[80] Problem, para. 67.

"The exhaustion requirement refers only to remedies that are adequate and effective,"[81] and in this case, the Petitioner made efforts to obtain an adequate and effective remedy through the filing of a tort claim against Federica Palacio and the company Lulo/Eye.[82] The court's failure to recognize LuLook as an intermediary, and therefore responsible for the "de-indexing" of the information related to Petitioner's personal and private information demonstrates the lack of effective remedy by the State.

In the alternative, if the Court finds that Petitioner has not exhausted all domestic remedies, it should find that Petitioner is exempt from doing so because inadequate and/or ineffective remedies do not need to be exhausted.[83] Article 46(2) of the ACHR outlines the exceptions to the exhaustion of domestic remedies, which include a State not affording due process of law for the protection of the rights that have been violated;" the victim has been "denied access to the remedies under the domestic law of has been exhausted from exhausting them;" or "unwarranted delay in rendering a final judgment under the aforementioned remedies."[84] Additional exceptions to the exhaustion of domestic remedies include cases involving an indigent petitioner who cannot afford representation or court filing fees.[85]

[81] Exhaustion of Domestic Remedies in the Inter-American Human Rights System, II.
[82] Problem, para., 67.
[83] Exhaustion of Domestic Remedies in the Inter-American Human Rights System, International Justice Resource Center, p. 2
[84] American Convention, art. 46(2)
[85] Exhaustion of Domestic Remedies in the Inter-American Human Rights System, International Justice Resource Center, p. 9

As a descendant of the Paya people, Petitioner falls within the additional exceptions to domestic remedies based on his economic status as an indigent person. Because of this status, Petitioner is excepted from exhausting domestic remedies.[86]

The Inter-American Commission on Human Rights ("IACommHR") made recommendations with which the Respondent failed to comply, and this case was rightfully submitted to the Inter-American Court of Human Rights on June 2, 2022.[87] Additionally, the Respondent filed no preliminary objections in this matter and did not object to the admissibility of the case.[88]

In the light of the foregoing, this Court has jurisdiction to hear this case and render judgment.

ii. Analysis of Issues of Law

A. RESPONDENT IS IN BREACH OF ITS INTERNATIONAL OBLIGATIONS OWED TO THE PETITIONER UNDER ARTICLES 13 AND 14 OF THE CONVENTION, BY SUPPRESSING THE PETITIONER'S ONLINE PRESENCE IN RETALIATION FOR WHISTLEBLOWING.

The American Convention of Human Rights ("ACHR" or "Convention") is clear: "[e]veryone has the right to freedom of thought and expression."[89] Freedom of expression is universally recognized by members of the Organization of American States including the

[86] Exceptions to the Exhaustion of Domestic Remedies (Articles. 46(1), 46(2)(a) and 46(2)(b) American convention on human rights) Advisory Opinion OC-11/90 of august 10, 1990.
[87] Problem, para. 78.
[88] Problem, para. 76.
[89] American Convention, art. 13(1).

Respondent, through their ratification of the Convention.[90] Moreover, freedom of expression is a universally recognized human right.[91]

Expression is protected "in all its forms and manifestations" in both the physical and digital world.[92] The acceptance of the right to freedom of expression is underscored in Articles 13 and 14 of the Convention and prohibits a state from unlawfully interfering with a citizen's expression. To do so is a violation of the Convention and international law.[93] Varaná, a member of the OAS and a founding member of the United Nations ("UN"), is intimately knowledgeable of the requirement to adhere to international law.[94]

The Convention does not prevent a state from regulating expression. However, expression may only be subject to limited restrictions which are prescribed by law and are necessary.[95] Interference with a citizen's expression that is unlawful and unnecessary violates the Convention. This Court, in *Ríos et al. v. Venezuela*, emphasized that "states have the obligation to minimize restrictions to freedom of expression and to try to balance the diverse political voices and views that participate in the public debate."[96]

Here, the Respondent's interference was unlawful and unnecessary because Petitioner's expression was in an attempt to inform the public of Holding Eye's actions that directly affected the citizens of Varaná.

i. Petitioner, a citizen journalist, exercised his right to freedom of expression to provide the public of Varaná with vital environmental information and is entitled to the protections afforded under Articles 13 and 14 of the Convention.

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[90] Problem, para. 6.
[91] *See*, Universal Declaration of Human Rights art. 19; & International Convention on the Elimination of Racial Discrimination, art. 4 (1965).
[92] The Declaration of Principles on Freedom of Expression, Principle 8 (36).
[93] American Convention, art 13, 14; Universal Declaration of Human Rights art. 19.
[94] Problem Clarifications, para. 11.
[95] Human Rights Council, The promotion, protection, and enjoyment of human rights on the Internet (2012).
[96] Inter-American Court of Human Rights *Case of Ríos et al. v. Venezuela* Judgment of January 28, 2009.

Members of the OAS are prohibited from interfering with citizens, activists, and journalists, and their dissemination of information to the public. Petitioner, through his social media accounts, reported on illegal payments made by Holding Eye to a Varanásian government official.[97] In his reporting, Petitioner amassed over 80,000 fans and immense respect in his community.[98] The protections afforded to citizens who disseminate information publicly are not limited to those within the specific profession of "journalist."[99] The petitioner is protected under Principle 8 of the Inter-American Commission on Human Rights ("Commission") Declaration of Freedom and Expression ("Declaration") as a social communicator.[100]

While this Court has not decided on this issue, in *Cornec v. Morrice*,[101] the Irish High Court found that "social communicators," constitute an "organ of public opinion" and to protect public opinion, social communicators are entitled to maintain the confidentiality of their sources.[102] As a citizen journalist/social communicator, Petitioner created a "blog" profile on his LuloNetwork account and conducted journalistic activity including broadcasting protests and interviewing Paya leaders.[103] Revealing one's sources is only acceptable under circumstances of serious crimes or protection of life.[104]

Article 13 of the Convention codifies Luciano's "freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the

[97] Problem, para. 36-37.
[98] *Id.*
[99] United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pg. 8
[100] Inter-American Commission on Human Rights Declaration of Principles on Freedom of Expression, Principle 8.
[101] *Cornec v Morrice & Ors*, Case No. IEHC 376, IN the Matter of the Foreign Tribunals Evidence Act, September 18, 2012).
[102] SR Report 2015 (A/70/361), p. 10.
[103] Problem, para. 36.
[104] SR 2015, p. 10, para. 21.

form of art, or through any other medium of one's choice."[105] His ability to freely express his thoughts and opinions on the internet has been infiltrated by Holding Eye's subsidiary, LuloNetwork, which operates as an internet search engine intermediary.[106] LuloNetwork is required to "rout[e] internet traffic . . . [and] provid[e] access to material posted by others."[107] The responsibilities of an intermediary, as a state actor, include "promoting and maintaining informational pluralism."[108] Information pluralism includes "maximizing the number and diversity of voices" that are shared on the internet.[109] Pluralism should not be restricted by "indirect methods or means, such as the abuse of government or private controls."[110] The petitioner used his LuloNetwork blog profile to disseminate information related to his opposition to Holding Eye's exploitation of varanátic on the coast of Rio del Este.[111] It was then that Petitioner's posts attracted significantly fewer viewers than those of Federica. LuloNetwork's connection to Holding Eye allowed it to intervene as an intermediary and affect the reach of Petitioner's posts because of his opposition towards Holding Eye's plans.[112] However, the State has the authority to "identify and coerce intermediaries" for their role in inhibiting control over posts due to the effectiveness of imposing liability on an intermediary rather than on an individual user."[113]

ii. Petitioner's disclosure of Holding Eye's alleged payments to government officials entitles him to protection as a whistleblower under the Convention.

[105] American Convention, art. 13.
[106] Problem, para. 67
[107]IACHR Special Rapporteur Report 2015 para. 91.
[108] Special Rapporteur Report 2015 para. 19.
[109] Special Rapporteur 2015 para. 18.
[110] American Convention, art. 13(3).
[111] Problem, para. 36.
[112] Problem, para. 66.
[113] Special Rapporteur 2015 para. 93.

Speech is essential for the public's right to know and for the public's participation in political affairs, democratic governance, and accountability.[114] Under international human rights law, including Article 13 of the Convention, whistle-blower protections derive from the right to freedom of expression and the public's right to know.[115] A whistleblower exposes information that they reasonably believe, (1) at the time of disclosure, (2) to be true and (3) constitute a threat or harm to public interest.[116] In the case of *Ivcher Bronstein* this Court clarified that a whistleblower is any person who in any way promotes or seeks to realizations human rights and fundamental freedoms recognized at the national or international level.[117] Including justice operators and environmental defenders.[118] The Court continued its explanation of whistleblower protections by adding "this freedom should not only be guaranteed about the dissemination of information and ideas that are received favorably or considered inoffensive or indifferent, but also about those that offend, are unwelcome or shock the State or any sector of the population."[119]

Here, after vetting his source, Petitioner published an article that included screenshots and information about Holding Eye's payment to a government official.[120] In this disclosure, Petitioner believed the information to be true, and reasonably believed that the people of Varaná had a right to know about Holding Eye's and the Varanásian government's private dealings. In disclosing this information, Luciano is required to be protected from the threat of retaliation against his expression.

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[114] Organization of American States Model Inter-American Law on Access to Information (2015).
[115] Thematic Report to the General Assembly of the Special Rapporteur on Freedom of Opinion and Expression (2015).
[116] *Id*.
[117] I/ACourt H.R., *Case of Ivcher Bronstein v. Peru*, Merits, Reparations and Costs. Judgment of February 6, 2001.
[118] A/RES/53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
[119] I/ACourt H.R., *Case of Ivcher Bronstein v. Peru*, Merits, Reparations and Costs. Judgment of February 6, 2001, Series C, No. 74, § 148.
[120] Problem, para. 37.

Petitioner, as a citizen journalist, is entitled "to refuse to disclose sources of information and research findings to private entities, third parties, or government or legal authorities."[121] This right to confidentiality is further supported in international customary law advocating for the protection of whistleblowers who "report alleged wrongdoing [and] are still subjected to harassment, intimidation, investigation, prosecution and other forms of retaliation."[122] This protection is particularly invoked in situations where the information being exposed supports public interest, as in Petitioner's situation.

iii. Indigenous people are entitled to the freedom of expression and suppression of that right discriminates against their right to participate in all forms of media, and this Respondent discriminated against the Petitioner based on his political opinion and indigenous status.

Respondent has an obligation to take appropriate measures to ensure that all persons, "especially those belonging to vulnerable groups"[123] are able to adequately express criticism, without discriminatory treatment based on content. Petitioner, as an environmental activist and member of the indigenous Paya people is entitled to such protection. Further, Petitioner, as an Indigenous Paya person, used social networks to discuss and disseminate vital information regarding Varaná's environmental policies.[124] After surviving the colonization of Varaná, the Indigenous Paya people held onto the remnants of their culture by protecting the environment, specifically the sea and coastal territories.[125] The petitioner reported on issues of importance to the preservation of Paya culture and on Paya activists.[126] Specifically, Petitioner reported on the

[121] Declaration of Principles, 8(36)
[122] Special Rapporteur 2015 para. 26.
[123] Special Rapporteur Report 2015. Freedom of Expression and the Internet.
[124] Problem, para. 25.
[125] Problem, para. 22-25.
[126] *Id.*

environmental impacts on Varaná's water sources, and in preserving Paya culture.[127] This entitled Petitioner's expression to additional protections because "indigenous peoples have the right to have access to all forms of non-indigenous media without discrimination".[128] Because Petitioner disseminated vital to the preservation of indigenous culture and acted as a "social communicator" he is entitled to the protections prescribed in the Convention and other customary law.[129]

iv. Petitioner was effectively denied the right to reply under Article 14 of the Convention.

Article 14(1) of the Convention guarantees the right to reply for anyone injured by inaccurate statements disseminated to the public in general by a legally regulated medium of communication.[130] This Court reasoned that this right is "closely related to Article 13(2) on freedom of thought and expression, which subjects that freedom to the "respect of the rights and reputations of others."[131] This right to reply serves to impose liability for "inaccurate or offensive statements." Here, Federica Palacios published multiple inaccurate articles in *VaranáHoy* about Petitioner.[132] To salvage his reputation, Petitioner published a statement on LuloNetwork denying the assumptions associated with the article.[133] However, because Petitioner's data was compromised his reply was suppressed because the hacking led to his removal from environmental groups in which his reply could be shared.[134]

v. Petitioner's speech is protected from government interference because his speech concerns the public's right to know.

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[127] Problem, para. 25.
[128] United Nations Declaration on the Rights of Indigenous Peoples, Article 16.
[129] *Id*.
[130] American Convention, 14(1).
[131] Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-7/86, August 29, 1986, Inter-Am. Ct. H.R. (Ser. A) No. 7 (1986).
[132] Problem para. 44 & 52.
[133] Problem para. 51.
[134] Problem para. 49.

The inter-American system identifies three types of protected speech.[135] These include political speech, speech regarding public officials, and speech related to a person's identity and self-expression.[136] In deciding the *Last Temptation of Christ*, the Court held that "freedom of expression is a way of exchanging ideas and information between persons; it includes the right to try and communicate one's point of view to others, but it also implies everyone's right to know opinions, reports, and news."[137] In this case, Luciano used his social media platform to disseminate information about the environment, which through Varaná's "Environmental Code" guarantees access to environmental information.[138] Accordingly, the Inter-American system considers this political speech because it is an area of public interest.[139] Petitioner also disseminated information about payments between the Varanásian government and Holding Eye, because this speech concerns public officials, it is protected under the Convention.[140] Finally, Petitioner's online environmental advocacy is derivative of his indigenous Paya heritage and is related to his identity, and thus is protected.[141]

For the foregoing reasons, Petitioner's online speech is protected by Articles 13 and 14 of the Convention, and thus any interference with said speech is unlawful and violates his human rights. Both the Commission and the Court have affirmed that in the inter-American system, there is a strong connection between the right to freedom of expression and democracy.[142] In *Martorell*,

[135] Office of the Special Rapporteur for the Freedom of Expression, Inter-American Legal Framework Regarding the Right to Freedom of Expression, Inter-Am. Comm'n H.R., OEA/Ser.LN//IICIDH/RELE/INF. 2/09, 32 (2010).
[136] *Id*.
[137] Olmedo-Bustos et al. v. Chile, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 73, 166 (5 Feb. 2001).
[138] Problem Clarifications, 3.
[139] Office of the Special Rapporteur for the Freedom of Expression, Inter-American Legal Framework Regarding the Right to Freedom of Expression, Inter-Am. Comm'n H.R., OEA/Ser.LN//IICIDH/RELE/INF. 2/09, 32 (2010).
[140] *Id*.
[141] *Id*.
[142] See also, *Martorell v. Chile*, Case 11.230, Inter-Am. Comm'n H.R., Report No. 11/96, OEA/ Ser.L/V/11.95, doc. 7 rev., 53 (1996).

the Court concluded, "arbitrary interference that infringes the right [of] … the individual right to express information and ideas but also the right of the community as a whole to receive information and ideas of all kinds."[143] Here, Respondent repeatedly violated Petitioner's right to freedom of expression through its targeted blocking of his posts.[144]

B. RESPONDENT VIOLATED ARTICLE 11 OF THE CONVENTION BY SANCTIONING THE ABUSIVE INTERFERENCE OF LUCIANO'S DATA IN RETALIATION FOR EXERCISING HIS FREEDOM OF EXPRESSION.

Article 11 of the Convention entitles Petitioner to a good name and reputation.[145] Article 11(2) of the American Convention further explains that no person may be subject to abusive interference with their private life.[146] In an advisory opinion requested by the Republic of Costa Rica, this Court wrote that undesired publicity may make an applicant "vulnerable to diverse acts of discrimination against his or her person, honor or reputation and, ultimately, may represent a major obstacle to the exercise of other human rights."[147] The inter-American system underscored this right to a good name and reputation in the American Declaration of the Rights and Duties of Man.[148] Article 5 plainly states that "every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life."

i. Petitioner's credibility was intentionally undermined when Federica Palacios, a state actor, published false information in the media contrary to Petitioner's right to freedom of expression.

Federica Palacios, a journalist and blogger, intentionally published false information about Petitioner. After receiving unverified information from an anonymous source, Palacios

[143] *Martorell v. Chile*, Case 11.230, Inter-Am. Comm'n H.R., Report No. 11/96, OEA/ Ser.L/V/11.95, doc. 7 rev., 53 (1996).
[144] See, *From privacy to data protection: the road ahead for the Inter-American System of human rights* (2021).
[145] American Convention, art. 11.
[146] American Convention, art. 11(2).
[147] Advisory Opinion OC-24/17 Gender Identity, And Equality and Non-Discrimination of Same-Sex Couples (November 24, 2017).
[148] American Declaration of the Rights and Duties of Man, art. 5 (1948).

intentionally wrote and subsequently published multiple articles that undermined Petitioner's reputation as an informed and credible environmentalist. As an employee of *VaranáHoy,* a state-owned newspaper, Federica is a state actor.[149] While acting on behalf of *Varaná,* Palacios, intentionally and inaccurately called Petitioner a "fraud", and "extractivist."[150] Palacios' words caused members of Petitioner's community to question his reputability, which led to his extradition from both the Paya people community and environmental circles.

Repeatedly, the IACHR has emphasized, "independently of whether those responsible for the violations of these rights are agents of the public sector, individuals or groups of individuals, because, according to the rules of international human rights law, the act or omission of any public authority constitutes an action that may be attributed to the State and involve its responsibility, in the terms set out in the Convention."[151] Accordingly, Palacios' intentional misrepresentation of Petitioner in *VaranáHoy* is attributable to the Respondent.

Further, Palacios' actions are attributable to the Respondent because the Respondent failed in its duty to prevent and punish those responsible for the attack on the Petitioner's name and reputation. Here, the Varaná trial courts failed to find Federica's publications harmed the Petitioner.[152] Under Article 1(1) of the Convention Varaná is obligated to respect the Petitioner's rights and freedoms, including the right to a good name.[153] Through the Varanásian trial court's decision, Varaná failed in its obligation to guarantee the Petitioner's rights under Article 1(1) of the Convention.

[149] Problem, para. 44.
[150] Problem, para. 46.
[151] I/A Court H.R., Case of *Bámaca Velásquez v. Guatemala.* Merits. Judgment of November 25, 2000. Series C No. 70, para., 210.
[152] Problem, para. 68-69.
[153] American Convention, art. 1(1).

In the case *of Godínez Cruz v. Honduras*, this Court emphasized that "a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible."[154] Here, Respondent's support of Palacios' intentionally inaccurate articles in *VaranáHoy,* followed by the Respondent's failure to guarantee Petitioner's rights under Article 1(1) of the Convention and deliver a remedy for the harm to Petitioner's name and reputation, the Respondent has allowed the act to take place and thus are responsible for the acts.

In the event that Palacios is not a state actor, Respondent is responsible for the damage Palacios caused to the Petitioner's name and reputation. In *Godínez Cruz v. Honduras,* this Court found that the State may be liable even in acts involving private parties.[155] This Court had repeatedly held that when the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government.[156] Mere acquiescence is insufficient to establish State responsibility for a breach of its duty of respect with the actions of third parties.[157] State responsibility must be determined through clear evidence of State corroboration.[158]

Here, Respondent failed in its duty to investigate Palacios' violation of Article 11 of the Convention. In addition to the Respondent's failure to investigate, the information used by Palacios was illegally phished from Petitioner's computer, by two Varanásian government workers. In fact,

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[154] I/A Court H.R., Case of Godínez Cruz v. Honduras. Merits. Judgment of January 20, 1989. Series C No. 5, para., 182
[155] *Id.* at 188.
[156] *Id.* See also, I/A Court H.R., Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs.
[157] I/A Court H.R., Case of *Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017.
[158] Id.

the information obtained by the two officials was obtained through the improper use of Varanásian government software. This overt evidence of Varanásian government corroboration coupled with the Respondent's failure to investigate Palacios' violation of Petitioner's rights demonstrates clear collaboration between Respondent and Palacios.[159]

In 2021, the Inter-American Juridical Committee ("CJI") published its Updated Principles of the Inter-American Juridical Committee on Privacy and Personal Data Protection ("Principles"), with which every Member State of the OAS is to comply. The purpose of these principles is to "support Member States' efforts to protect individuals from wrongful or unnecessary collection, use, retention and disclosure of Personal Data."[160] This supports the argument that Member States must protect individuals like the Petitioner from the wrongful collection of his data and imposition of his private and family life according to Article 11 of the ACHR and Article V of the American Declaration of the Rights and Duties of Man.[161] Principle Five of the Principles (Confidentiality) states:" Personal data should not be disclosed, made available to third parties, or used for purposes other than those for which it was collected except with the consent of the concerned individual or under the authority of law."[162] Additionally, the State is required to establish an effective method for securely safeguarding against the "unauthorized or unlawful . . . disclosure," per Principle Six (Security of Data).[163] Here, the State failed to implement a method of securing Petitioner's personal data from state actors with malicious intentions.

ii. Petitioner's data was intentionally breached in violation of his Right to Privacy.

[159] I/A Court H.R., Case of *Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. See also, Case of the *Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs.
[160] OEA/Ser. Q. CJI/doc. 638/21. April 8, 2021
[161] American Convention, art. 11; American Declaration of the Rights and Duties of Man, Article V.
[162] *Id.*
[163] *Id.*

Petitioner was hacked, and his data was improperly disclosed to third parties negatively impacting his right to a good name and privacy in violation of the Varaná Constitution Article 11 and the ACHR Article 11. Respondent wrongfully allowed state actors to use the state-owned software, Andromeda, to illegally access the profiles of its users, including Petitioner. The software, operated by the Ministry of the Interior – a state agency – was the tool used by hackers Pablo Mendez and Paulina Gonzalez in their capacity as state actors, to inappropriately access and disseminate Petitioner's personal location information, violating his right to privacy.[164]

States have the obligation to establish systems for the protection of personal data and to "regulate their storage, processing, use and transfer."[165] These systems of protection include the right to access one's information, have that information corrected, and/or have that information deleted, when necessary. Here, the State's failure to implement a regulation for the safety of its citizens' data left Petitioner vulnerable to hacking, while also exposing to the "disclosure or circulation of information captured, without the consent of their owner."[166]

The hackers removed Petitioner from his social media groups and organizations through phishing, violating his human right to disseminate information to the public, therefore limiting internet pluralism.[167] This interference in Petitioner's ability to communicate via social media platforms forced him to disconnect from the online world and discard his cell phone. This in turn restricted him from accessing his accounts, including his utility bill and pension, while also isolating him from the outside world, and eventually leading him into a destructive path of depression, which impacted his dignity in violation of Article 5.[168]

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[164] Problem, para. 62.
[165] IACHR, Freedom of Expression and the Internet, para., 138.
[166] Special Rapporteur Report 2013, Freedom of Expression, and the Internet.
[167] *Id*.
[168] Problem, para. 60.

This court in the *Case of Fontevecchia y D'Amico v. Argentina* found that "the State must not only minimize restrictions on the dissemination of information but also extend equilibrium, to the greatest possible extent, to the participation in the public debate of different types of information, fostering informative pluralism."[169] This hack also directly violated Petitioner's right to privacy because it constituted an "arbitrary and abusive interference with his private life"[170] per Article 11. This case demonstrates that the right to privacy includes protection from interference of such attacks by the State or third parties.[171]

This intentional data breach at the hands of state actors Mendez and Gonzalez further undermines the Petitioner's human rights as it reflects political corruption on the private scale for the sole purpose of counteracting the social media engagement of those individuals directly opposed to the Ocean Party, as Petitioner was.[172] Corruption is defined by the inter-American system as the "use of power by public officials regardless of their position . . . for private, political and non-political purposes, which has negative consequences for individuals."[173] The IAComHR characterized corruption as the abuse of power that displaces the public interest for private benefit and undermines the rule of law and human rights, which the hackers did.[174]

[169] I/A Court H.R. Case of *Fontevecchia y D'Amico v. Argentina*. Merits, Reparations, and Costs. Judgment of November 29, 2011. Series C No. 238.
[170] ACHR Article 11.
[171] I/A Court H.R. Case of *Fontevecchia y D'Amico v. Argentina*. Merits, Reparations, and Costs. Judgment of November 29, 2011. Series C No. 238.
[172] Problem, para. 63.
[173] The IAComHR characterized corruption as the abuse of power that displaces the public interest for private benefit and undermines the rule of law and human rights. Notably the Corruption and Human Rights in the Case Law of Inter-American Human Rights Treaty Bodies.
[174] *Corruption and Human Rights in the Case Law of Inter-American Human Rights Treaty Bodies*, Vol. 51, No. 4, 149–180 https://doi.org/10.31743/recl.14465

Here, the Respondent is responsible for the actions of its state actors acting in the capacity of the government agency, the Ministry of the Interior, as IT experts, as well as the use of the Andromeda software, developed by Varanásian company, Vigila S.A.

***iii.* Petitioner's internet laws violate the principles of net neutrality in contravention of Article 13 of the Convention and allow third parties to violate the rights of others.**

Article 11 of Law 900 of 2000 ensures "free access to the internet and shall not allow discrimination of any kind." [175] The law allows internet service providers ("ISP"), to offer free applications in their plans.[176] This allowance by Respondent is called "zero-rating" and allows social networks to contract with ISPs and subsequently determine that their services do not count against users' data cap in their phone services.[177] The petitioner, a P-Mobile user, obtained serval applications through zero-rating offerings. Through his P-Mobile plan, Petitioner downloaded several free applications affiliated with Holding Eye including Lulocation and LuloNetwork.[178]

Anonymity is the condition of avoiding identification and holds many benefits in online spaces.[179] One benefit is the liberty to "impart ideas and opinions more than she would use her actual identity."[180] Online anonymity creates a zone of privacy to protect opinions and beliefs, codified in Articles 11, 13, and 14 of the Convention.[181]

Nueva violated Petitioner's right to privacy under Article 11 of the Convention, by requiring accounts to be associated with the "identity stated on the person's document".[182] This

[175] Problem, para. 9.
[176] *Id.*
[177] Problem, para. 10.
[178] Problem, para. 29.
[179] Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, p. 4.
[180] *Id.*
[181] American Convention, art. 11, 13 and 14.
[182] Problem, para. 56.

requirement encourages censorship. Corporations, like Nueva, are required to respect human rights through their global operations. The European Court of Human Rights found, "any restriction imposed on the means [through which information is transmitted] necessarily interferes with the right to receive and impart information."[183] Nueva's policy to attach users' full name to their account's username violates their right to privacy.

***iv.* The Respondent is responsible for the acts of Holding Eye.**

Liability for the acts of others may be attributed to the State in certain instances. This court in *Valasquez Rodriguez v. Honduras* found that a state can be held accountable for the acts of others, notwithstanding the actor's government status, under specific circumstances.[184] When an individual has committed an illegal act that violates a human right, the state can be liable for its "lack of due diligence to prevent the violation or to respond to it as required by the Convention."[185]

The State failed to prevent Holding Eye, and its subsidiaries, from utilizing Petitioner's personal data to manipulate social media and affect internet pluralism. Holding Eye's ability to directly benefit from the exploration and exploitation of varánatic in Varaná is a blatant conflict of interest and suggests that Holding Eye is in bed with the Varanátic government. Here, the parties responsible for the breach are Varanásian government officials, and the Respondent is liable for their actions.

In 2014, Petitioner's active involvement with environmentalist groups through his social media accounts increased his exposure to the Varaná online community and allowed him to amass over 80,000 fans online.[186] The account postings that garnered the most attention predominantly

[183] European Court of Human Rights, Case of Autronic AG v. Switzerland. (1990).
[184] The Practice and Procedure of the Inter-American Court of Human Rights, p. 224
[185] *Id.*
[186] Problem, para. 36.

focused on Holding Eye and its plans “to build a large industrial complex” which would help reduce the time required to exploit Varanátic in and around Rio del Este.[187] Many Varanásians, particularly those of Paya descent, vehemently opposed Holding Eye’s endeavors, evidenced in the 12 protests held on March 5, led by the Paya people.

Holding Eye represents a state actor in that, as a grant-funder to the National University of Varaná, the exploitation of varanátic to increase the economic stability of the Republic of Varaná became a high priority. Further, the Respondent has an established relationship with the parties involved in the violation of the Petitioner’s human rights. Specifically, the Respondent holds contracts with Holding Eye and its subsidiaries.[188] Through their contractual relationships, Holding Eye operates as a state actor.

Holding Eye represents a state actor in that, as a grant-funder to the National University of Varaná, the exploitation of varanátic to increase the economic stability of the Republic of Varaná became a high priority. LuloNetwork, as a subsidiary of Holding Eye and an online intermediary, is responsible for violating Petitioner’s right to net neutrality and protection from zero-rating, which undermines net neutrality.[189]

Considering, the Respondent has an established relationship with the parties involved in the violation of the Petitioner’s human rights. Specifically, the Respondent holds contracts with Holding Eye and its subsidiaries.[190] Through their contractual relationships, Holding Eye operates as a state actor. Holding Eye and its subsidiaries operate as ISPs to Varaná under Article 11 Law 900. Through these actions, Holding Eye and its subsidiaries moderate content and enforce

[187] Problem, para. 35.
[188] Problem, para. 16.
[189] Problem, para. 10.
[190] Problem, para, 16.

freedom of expression, a right prescribed in the American Convention.[191] In doing so, Holding Eye and its subsidiaries perform a function attributed to the Respondent. As such, the Respondent is liable for the actions of its state actors.

Petitioner could in no way single-handedly convince an entire country to protest Holding Eye and their plans to exploit varanátic metal on the coast of Varaná. Therefore, the actions of Holding Eye impacted the majority of the Paya people based on its effects on the environment and the Paya people's connection to land preservation.

The IACHR has emphasized that "independently of whether those responsible for the violations of these rights are agents of the public sector, individuals or groups of individuals, because, according to the rules of international human rights law, the act or omission of any public authority constitutes an action that may be attributed to the State and involve its responsibility, in the terms set out in the Convention."[192] Applying this Court's *Rodriguez* holding to the Petitioner's case, the actions taken by Holding Eye, its subsidiaries, Federica Palacios, and the two government officials are attributable to the Respondent. Here, the Respondent failed in its duty to investigate and prevent the human rights violations against the Petitioner, and in this failure to act, the Respondent acquiesced to the violations thus the Respondent is liable to the Petitioner.

Finally, this Court should reject any argument that the human rights violations are not attributable to the Respondent. In 2006, this Court echoed its previous decisions and held that "although the negligence was committed by private individuals and institutions, the State has an obligation to set appropriate standards thereby preserving the [person's] physical, moral, and

[191] American Convention, art 13.
[192] I/A Court H.R., Case of *Bámaca Velásquez v. Guatemala.* Merits. Judgment of November 25, 2000. Series C No. 70, para., 210.

psychological integrity.[193] Here, Respondent was negligent, thus the actions of Holding Eye and its affiliates are attributable to the Respondent.

[193] I/A Court H.R., *Case of Alban Cornejo et al. v. Ecuador*. (Judgement of July 5, 2006).

V. REQUEST FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests this Court to:

(1) **AGREE** to adjudge on Petitioner's claims under the American Convention of Human Rights.

(2) **DECLARE** the petition admissible based on the conclusions in IV.

(3) **DECLARE** the Respondent is liable for the acts of Holding Eye and its affiliates.

(4) **DECLARE** the Respondent violated its obligations under Articles 5, 11, 13, 14, 16, and 25 of the ACHR, in conjunction with Articles 1.1 and 2 thereof.

(5) **ORDER** the Respondent to replace Article 11 of Law 900 of 2000 with internet laws consistent with the Declaration of Principles on Freedom of Expression and international law.

(6) **ORDER** the Respondent to pay full reparations to Luciano including U.S. $22.5 million in compensation for the damage to Petitioner's reputation, loss of privacy, and future privacy.

Respectfully,

The Victim/Petitioner Luciano Benítez