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 a[illegible] Republic of Varan a6(s)-5a u(o)-4(n) fnn(pr)ndi2(2) Vo1.06(.)]TJ EMC /Spar

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, varáon, 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, Lucian Benítez.[20]

Mr. Benítez, 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.

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 he developed 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. Mr. Benítez attempted to care 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,

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[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 Varanásfw (Nn)-2(l)-2(54V(ed)-3.9( )]b-11(edt)-6)-4(ci)t

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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-

IV. LEGAL ANALYSIS

i. Preliminary Admissibility

A. THIS COURT SHOULD FIND THAT THE PETITIONER HAS EXHAUSTED

"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 LuLook.[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

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's Eye 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's Eye 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]

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, whistleblower 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

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

environmental impacts on Varas 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 Varan about Petitioner.[132] To salvage his reputation, i3iBDC 0e,-ep

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 Varanás'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 hi

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 inte he s a evenit44i p8(e-1(aig)12 0 Tc2 Tw liuea)4(s) 24 >>BDC 0.008 Tc -0.0086Tw 8.04 -0 0 8.04

intentionally wrote and subsequently published multiple articles that undermined Petitioner's reputation as an informed and credible environmentalist. As an employee of Varanáhoy, state-owned newspaper, Federica is a state actor.[149] While acting on behalf of Varanáhoy, 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 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 act or 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 S(bl)-2Be be-3(e)4(s)-(d)-4( )]TJ 0 Tc4(i)J 0 Tc Sdiurepuhts

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This court in the Case of Fontevecchia y D'Amico v. Argentina found that "the State must

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 ("ISPs"), 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 user's data cap in their phone services.[177] The petitioner, a Pi-Mobile user, obtained serval applications through zero-rating offerings. Through his Pi-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 under her actual identity."[180] Online anonymity creates a zone of privacy to protect opinion 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]

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 it is a grant-funder to the National University of Varaná, the exploitation of varanática 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 subsidiarie1(id-2(hos)o [(c)4(on5</MCID 13 >>BDC 0.008 T

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 f