



AMERICAN UNIVERSITY

W A S H I N G T O N , D C

American University Washington College of Law

2024 Inter-American Human Rights Moot Court Competition

Hypothetical Case: Protection and Guarantees of Human Rights in Digital Environments

**Luciano Benítez v. Republic of Varaná**

**THE REPUBLIC OF VARANÁ**

1. The Republic of Varaná is an island nation in the South Atlantic Ocean. It has an area of 11,101 km<sup>2</sup> and a population of approximately 3,101,010 inhabitants. Varaná gained its independence from the United States of the Atlantic on May 17, 1910, after an armed conflict that lasted about three years. The island was historically inhabited by the Indigenous Paya people, who controlled its entire territory until the European colonization of the island between 1672 and 1802. It was also defined by the enslavement of Africans and people of African descent to work in the silver mines, which were lucrative at the time, but have been closed since the mid-18th century. Thirty-five percent of the inhabitants of Varaná today identify as descendants of the Paya indigenous people, 35% as white, and 30% as Afro-descendants.

2. In 1991, after three months of a bloody armed conflict sparked by a crisis in presidential succession, and following the impeachment of President Hermano Machado, the Ocean Party assumed power and convened a National Constituent Assembly. The Constitution was adopted on November 22, 1992, and recognized the Republic of Varaná as a unitary, presidential, democratic, pluralistic, and participatory state. Since the ratification of the 10th Amendment to the Constitution in 2004, international human rights treaties ratified by Varaná have constitutional status, in both the formal and material sense.

3. Article 1 of the Constitution divides the government into three branches: executive, legislative, and judicial. The executive branch is headed by the President of the Republic. The legislative branch consists of a National Assembly. Finally, the judicial branch comprises all the judges of the Republic, which include, under Article 2 of the Constitution: administrative, criminal, and civil trial courts; administrative, criminal, and civil courts of appeal (which hear appeals of trial court judgments or interlocutory decisions); and a single Supreme Court of Justice (which adjudicates extraordinary appeals alleging constitutional violations or the inconsistent application of national laws between two or more courts of appeal). The Supreme Court also performs the typical functions of a Constitutional Court for abstract/concentrated constitutional review through specific actions such as the public action of unconstitutionality. This action may be brought by any citizen to challenge laws, both for their substantive content and for procedural defects in their



# AMERICAN UNIVERSITY

W A S H I N G T O N , D C

enactment. The Constitution authorizes the different branches of government to carry out diffuse/concrete constitutional review.

4. The Republic of Varaná is a state with a civil law tradition, in which codified law is a primary source of law.

5. Article 3 establishes a six-year term of office for the president of the Republic of Varaná. The same candidate may be reelected up to two times. Legislators also hold office for six years, and legislative elections are held every three years for half of the seats in the Assembly. Legislative representatives may be reelected indefinitely.

6. Article 13 of the Constitution provides:

“Free expression and freedom of the press are guaranteed, as are the dissemination of thought and opinion, with no prior censorship. Anonymity is prohibited. The State shall enact no law that precludes or restricts the freedoms enshrined in this article.

Everyone has the right to generate, process, or disseminate information, and to use any lawful instrument suitable for such purposes.”

7. In addition, Article 11 of the Constitution provides:

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

8. The Republic of Varaná has ratified all the human rights instruments of the inter-American human rights system, understood as those categorized as human rights texts by the [Department of International Law of the OAS](#). The Republic of Varaná ratified the ACHR on 03/02/70, the same date on which it accepted the jurisdiction of the Inter-American Court of Human Rights, under Article 62 of the ACHR.

9. In 2000, the National Assembly of Varaná passed Law 900, Article 11 of which reads:

“Net neutrality. The State shall ensure free access to the internet and shall not allow discrimination of any kind. However, internet service providers may offer free applications in their plans in order to reduce the digital divide, which shall not be understood as discrimination.”



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

10. Members of Congress Alberto Carranza and Marcela Puerro opposed the enactment of this law, arguing in debate that it allowed zero-rating<sup>1</sup> and undermined net neutrality. This argument was dismissed by the majorities in Congress and the law was passed in compliance with all legal requirements.

11. Law 900 of 2000 made no further regulatory progress. Its content was never expanded and no criteria were ever established to define the scope of its application.

12. At the same time, Article 10 of Law 22 of 2009 establishes:

“Anonymity on social networks is prohibited. Individuals may not create online profiles without linking their account to their national identity document.”

13. In 2015, a coalition of four representatives of the Root Party, the main opponent of the Ocean party, introduced a Personal Data Protection Bill. To date, this bill has not been enacted, despite the Root Party’s majority in the National Assembly.

### **THE OCEAN ERA AND VARANÁ’S ECONOMIC HEYDAY**

14. Since the adoption of the Constitution until recently, the Ocean Party had won every presidential election, starting with the November-December 1993 elections. Still, international observation missions, including the OAS-EOM, have always reported these elections to be “free and fair.” The party has governed the country since February 1, 1994, with no question as to the democratic legitimacy of the governments elected. Until 2015, the Ocean Party won the majority of legislative seats.

15. This period of Varanasian history is known as the “Ocean Era,” and it was characterized by accelerated economic development. This was due especially to the exploitation of the region’s natural resources, including an oil industry that, thanks to the discovery of new reserves in 1995, has made the country the eighth largest oil producer and exporter in the world since 2003.

16. However, a real transformation of the economic model began in 2002, when researchers from the National University of Varaná, funded by the “Open your Eyes: the Future” grant from Holding Eye S.A. (Holding Eye or Eye), explored abyssal plains on the ocean floor between the Territorial Sea and the Varanasian Exclusive Economic Zone and discovered polymetallic nodules rich in a previously unknown mineral.

---

<sup>1</sup> Contracts by which certain social networks, platforms, or messaging systems agree with telecommunications companies that their services do not count against users’ data cap in their mobile phone services.



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

17. This new metal was named varanatic. It is considered one of the most important raw materials for the world of information technology, as it has been gradually replacing silicon, thanks to its superior performance in the processor industry.
18. Although the oil industry continues to play an important role in the economy, varanatic exploration and exploitation has become the country's main economic activity, proving to be very lucrative because Varaná is one of the few places in the world where varanatic is found. This economic development has also led to a remarkable growth of start-up industries and the information technology sector on the island, especially with the creation of industries related to the hardware sector and the proliferation of transnational companies in Varaná's tech sector.
19. The exploitation of the polymetallic nodules began in 2007, through Holding Eye S.A., a large corporation that owns subsidiaries in hardware, software, and natural resource exploitation sectors key to the information technology industry. Eye became the first company to use varanatic-based internal components.
20. Eye, through its subsidiary Lulo, also owns several world-renowned digital platforms, including the social media network LuloNetwork, through which users can interact using both personal profiles and public profiles known as "blogs," as well as a mapping application called Lulocation.

### **LUCIANO BENÍTEZ AND HIS FAITH IN THE DIGITAL ENVIRONMENT**

21. Luciano Benítez, a direct descendant of the Payas, was born on August 5, 1951, in the small coastal city of Río del Este, in the eastern region of the Republic of Varaná. His father, Antonio Benítez, worked in fishing, a traditional activity in the city, and his mother, Lucía Romero, was a teacher at the local school.
22. On the first Wednesday and last Friday of every November, the city of Río del Este becomes a hub for the Sea Festival, an age-old tradition of Paya origin that pays homage to the gods of the ocean. Although the Sea Festival is celebrated on different beaches throughout the country, the celebration in Río del Este is the most famous, with over 800,000 visitors flocking to the city during the month of November.
23. In 1968, Luciano left his parents' home for the capital, Mar de Luna, in the island's western region. There he met his wife Marta Cuenca, with whom he had a son, Joaquín Benítez, in 1978. Later, in 1996, Luciano and Marta became grandparents when Joaquín had a daughter, Martina Benítez.
24. Luciano worked at the Mar de la Luna port, as a heavy machinery operator, from 1974 until his retirement in 2014.



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

25. Ever since his youth, Luciano has been interested in protecting the environment, especially the sea and coastal territories, and in preserving Paya culture. He regularly participated in meetings of Paya activists discussing the government's environmental policies and the actions of private companies. Because he was eloquent and always very well informed, Luciano quickly became an opinion leader among his neighbors and friends in the capital and among the inhabitants of his hometown in Río del Este.

26. Luciano was also a steadfast opponent of projects for the exploration and exploitation of vananatic in polymetallic nodules in marine areas rich in coral reefs and biodiversity. He participated in many marches and supported Assemblywoman Lucia Perez of the Root Party in her campaign against the expansion of vananatic exploitation activities in the Republic of Vananá.

27. Unlike many people of Luciano's generation, he always saw new technological developments as an opportunity to make his life easier. He learned to use computers in public libraries when they were introduced, familiarized himself with the internet as soon as it was accessible to the general public, and bought a cell phone as soon as he could.

28. He began to use social networks from his cell phone over Wi-Fi networks, and to engage with groups of environmentalists in his instant messaging apps. His granddaughter also showed him apps where he could listen to music, pay his household utility bills, and even track his health status. Luciano was enthusiastic about how he was benefiting from new technologies.

29. So, in 2014, when his mobile carrier P-Mobile offered him all the apps available from Lulo, a subsidiary of Holding Eye, for free on his mobile phone plan—the cheapest one on the market—Luciano didn't hesitate to download and start using them. For the first time, this free program let him use apps from anywhere, without the need for a Wi-Fi network. Legally, P-Mobile relied on Article 11 of Law 900 of 2000.

### **Lulocation**

30. Lulocation, like its competitors Yellowdirections and MovingGuide, had gained considerable popularity since 2008. These apps promised to help their users by giving them instructions on how to get around cities using different means of transportation. They provided users with recommended routes, estimated travel times, and the option of saving places to visit. The app also had a "history" which stored data on the places visited by users over the last 120 months. After that time, the collected data was permanently deleted from Lulocation's servers. Before 2014, Luciano did not use Lulocation, but occasionally—when he had Wi-Fi—he used MovingGuide, the market leader. He only downloaded the Lulocation app when P-Mobile offered it to him for free.



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

31. To begin using Lulocation, Luciano had to create an account on the app. To do so, he had to choose a user name and password, and he had to agree to the following terms and conditions:

“Art. 1. Data Use and Retention. To provide the Services, Lulocation collects and receives data from Users, including search terms, IP addresses, and latitude/longitude coordinates. The User acknowledges and agrees that Lulocation and its Affiliates may use and retain this data to provide and improve Lulocation products and services.

Art. 2. User Personal Data. Through the normal functioning of the Lulocation Core Services, Users provide personally identifiable information and Personal Data directly to Lulocation.

Art. 3. User Location Privacy Requirements. To safeguard Users’ location privacy, Lulocation will ensure tot: (i) notify Users in advance of (1) the type(s) of data it intends to collect from the Users or the Users’ devices, and (2) the combination and use of User’s location with any other data provider’s data; and (ii) will not obtain or cache any User’s location except with the User’s express, prior, revocable consent.”

32. Luciano did not read these terms and conditions very carefully. However, on February 3, 2014, he accepted them because he could not afford to access competing apps and this one offered him some interesting features. From that point forward, he became a regular user of the app, using it daily.

### **LuloNetwork**

33. Although Luciano only used Lulocation from 2014 onward, he had started using another app from the Lulo company before that. Luciano had been using the LuloNetwork app since February 7, 2010, when he got his first smartphone and bought his data plan with P-Mobile.

34. Starting in 2010, Luciano used his social media account on LuloNetwork to organize several events for the protection of the country’s rivers. He and several other people demonstrated peacefully at these events to protest the pollution of waterways by private companies. At that time, it was common for large companies to improperly dispose of toxic waste in Varaná’s water sources.

35. In 2014, Luciano was also one of the main opponents of a project by Holding Eye to build a large industrial complex for the production of hardware components on the outskirts of Río del Este, intended to shorten the logistics chain between the exploitation of varanatic and its use in the hardware industry. On March 5 of that year, more than 12 protests led by the Paya people took place simultaneously in different regions of the country. These protests enjoyed considerable



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

popular support, since, in addition to the alleged environmental impacts, the industrial complex threatened to have a permanent impact on the Sea Festival held on the region's beaches.

36. Wanting to use his social networks to boost the dissemination of information about the Holding Eye project and the subsequent protests, Luciano created a "blog" profile on his LuloNetwork account. This type of profile features mass communication between the blog administrator and the blog fans. The blog profile also allowed for live voice or video broadcasts. Using these tools, Luciano began broadcasting the protests, covering legislative activities, and conducting live interviews with Paya leaders and with opponents of the Ocean Party, particularly members of the Root Party. Luciano reported on issues he considered of interest to his neighborhood in the capital and to his hometown of Río del Este. In the months that followed, his blog on the LuloNetwork platform gained over 80,000 fans. Luciano became a well-known figure, especially in his hometown.

37. On October 3, 2014, Luciano received an envelope at his home containing a letter that read: "*Send me an email at [whistlewhistle@pato.com](mailto:whistlewhistle@pato.com), preferably using a 'pato' address. I don't trust anything on Holding Eye, LuloNetwork, or whatever. Please, it's important.*" Luciano sent the email and in response received screenshots allegedly showing illegal payments by Holding Eye to a government official, as well as confidential internal memos from the company stating the need to promote content on all its social media and search platforms favorable to the development of Eye's industrial complex in Río del Este, as the project's construction was essential to ensure cost reductions in Eye's operations, especially in the hardware and mining sectors. Luciano wrote an article with the content he had received, including the screenshots, and published it on his LuloNetwork blog.

38. Luciano noticed that the post was not getting as many comments and reactions as others on his blog, including those that dealt with issues he regarded as less popular. So, he asked his granddaughter Martina to help him check his platform. Martina told her grandfather that everything was fine, and showed him some data on the post's reach compared to previous posts, which revealed significantly less engagement. Martina, who held political positions contrary to her grandfather's, told him: "*Well, you know what I think of this initiative of yours to thwart the economic development of a city as beautiful as Río del Este. Maybe people are waking up and seeing that the company will help our city and our country a lot and they no longer want to remain traditional. In fact, this last article of yours seems to me to be a lie.*"

### EYE'S LEGAL ACTION

39. Based on this publication, Eye filed a tort action against Luciano on October 31, 2014. Holding Eye's claim sought to have Luciano compelled to reveal the source of his information and ordered to pay the company 50,000 Varanasian reals (approximately US\$30,000, or 80 times the



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

monthly minimum wage at the time) for having started what the company described as a “smear campaign” against it.

40. Luciano was represented by the NGO Blue Defense, which provides pro bono legal advice to people it considers to be human rights defenders. The NGO promptly took the case, considering that Luciano (whose income was approximately twice the minimum wage) was extremely worried about the large sum he could be ordered to pay, since he would be unable to satisfy the debt even if he sold various personal assets. The NGO’s response to Eye’s legal action, besides raising other arguments and issues, described the action as a “strategic lawsuit against public participation” (SLAPP), alleged that this type of lawsuit had a “chilling effect” on journalistic and human rights advocacy work, and asked for Luciano’s journalistic source to be protected under the principle of source confidentiality.

41. In an interlocutory order, the Civil Trial Court of the Capital found that Luciano was not a journalist, as he only had a blog on LuloNetwork. Therefore, he could not claim the right to protect the confidentiality of his source. On November 4, 2014, the judge ordered Luciano to appear at an initial hearing scheduled for December 5, 2014, at which he could be examined by the opposing party and present evidence in his defense. The NGO Blue Defense appealed the interlocutory order. However, Luciano appeared at the hearing on December 5, 2014. At the hearing, Holding Eye’s attorney asked him “Who gave you the information about the company?” Faced with this question, Luciano asked the judge, “Do I have to answer?” to which the judge replied, “The decision is up to you, but if you answer, this case may be over faster.” With this clarification, Luciano answered and revealed the email account he had contacted to obtain the information he published.

42. Holding Eye asserted at the hearing that this information was sufficient to identify the source and to protect its rights in the future. The judge adjourned the hearing in accordance with the requisite protocols. On December 8, 2014, Holding Eye withdrew all of its claims and moved to dismiss the case. The judge concluded the proceedings on January 21, 2015. On February 12, 2015, the appellate court dismissed the appeal filed by the NGO Blue Defense on behalf of Luciano, since the source had already been revealed and the case was moot. The NGO filed a request for clarification, stating that one objective of the appeal was precisely for the court to find that Luciano was indeed a journalist, and that even though the case had been closed, it was in the party’s interest. On May 6, 2016, the Court denied this motion, on the grounds that there was no procedural need to continue with the case, since the origin of the controversy had been resolved. This was an adversarial proceeding in which one of the parties waived all claims. Therefore, to continue to process the case would undermine procedural economy and create a needless backlog in the courts.



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

43. A few weeks after the December 2014 hearing, on February 4, 2015, Luciano was approached at the entrance of a National Assembly session he was covering by a man who identified himself as the user of the email address “[whistlewhistle@pato.com](mailto:whistlewhistle@pato.com).” The man told Luciano he was a junior lawyer in Holding Eye’s legal department and said that unfortunately he had been found out, fired from the company, and held liable for the breach of his confidentiality agreement with Eye. On this basis, he was being sued in a confidential legal action, which could result in a fine of R\$400,000 (approximately US\$240,000). He also feared that he would be charged criminally. The man asked Luciano to keep this information confidential to avoid trouble, but urged Luciano to continue his work. He also thanked Luciano for his trust in publishing the information. He then left and Luciano did not see him again. Luciano did not share this information with anyone and never had contact with the man again, but he was very upset and, in addition to other factors (to be discussed below), he stopped posting on his blog for several days. The next time he posted was on February 28, 2015.

### THE PROFILE

44. On December 7, 2014, a week before Election Day of that year, Federica Palacios, journalist and blogger for the state-owned digital media outlet *VaranáHoy*, published an article entitled “Luciano Benítez: Environmental Fraud and Partner of Extractivists?” on her personal LuloNetwork blog, “Inconsistencias Revealed,” and in the online newspaper *VaranáHoy*.

45. Federica based her article on information given to her by an anonymous source. Still, she met all the requirements of truthfulness and impartiality. She took the information to a systems engineer who assured her that the information was accurate and unmodified. Federica also confirmed the information with other sources. Lastly, she contacted Luciano to give him the opportunity to dispute the content of the article, but he refused to read or be part of the article, claiming that he had been greatly harmed by the previous incidents.

46. The following are excerpts from the published article:

#### **Luciano Benítez: Environmental Fraud and Partner of Extractivists?**

Luciano, the supposed protector of the environment may be a fraud. His actions are far from what he preaches. In this new installment of “Inconsistencias Revealed,” we present information on the places Luciano has frequented so you can draw your own conclusions:



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

a. On August 16, 2014, Luciano attended the massive march in support of Holding Eye's varanatic operations. In fact, according to our source, Benítez's route began on 11th Street, right where the march was convened, and ended at the Presidential Green House, exactly where it ended.

b. On the Wednesdays of August 8, 15, 22, and 29, 2014 Benítez was at the Carrera 90 Building from 8:30 a.m. to 11:30 a.m. Dear readers, do you know whose campaign headquarters is in that building? David Murcia's—the National Assembly candidate known for his association with Holding Eye and the extractive sector.

c. On September 1 and 7, 2014, Luciano met for lunch with David Murcia's legislative aide, Roberto Parra. Their meetings took place at Cecilia pizzeria and the restaurant Origen. My sources tell me that an unnamed woman was also present.

d. Luciano has engaged with all 257 of Holding Eye's 257 posts on LuloNetwork. Even if it's through the "angry" reaction, we all know that engaging with the content on the internet only boosts that particular account.

I tried to contact Luciano, but he refused to provide any additional information about what I am reporting here.

47. This article quickly went viral on different internet platforms and was also being discussed on the radio and on television in less than 24 hours. Varanasiens began to draw their own conclusions.

48. On December 8, on the program "The Varanasian Academy," journalists Claudia Pinzon and Diego Martin interviewed several environmental activists who criticized Luciano and described him as an "environmental Judas." One activist, Beatriz Martinez, even said that Luciano was "cancelled" in progressive circles while also having zero credibility among conservatives. According to data from the Varaná Press Association, in 2014, the Academy was the prime time show with the largest television audience—close to one million viewers a day.

49. On December 9, 2014, Luciano was removed from all the groups he belonged to on his instant messaging apps and his prominence among environmental advocates and Payas faded away.

50. Luciano felt very depressed because all the reported facts had an explanation:



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

- a. On August 16, 2014, his granddaughter Martina, who was on the opposite side of the political spectrum from Luciano, had decided to join the protest supporting Holding Eye. The day before the protests, Martina's phone had been malfunctioning so it was being serviced at a repair shop. Concerned for her safety and familiar with protest dynamics, Luciano had given his cell phone to Martina before she left, telling her *“Martinita, please make sure to take my cell phone with enough battery charge, and contact us if anything happens.”*
  - b. On the Wednesdays of August 8, 15, 22, and 29, Luciano had indeed been in the Carrera 90 Building. However, he had been in the small basement where children’s reading classes were held every Wednesday morning.
  - c. The lunches with Roberto Parra had also taken place. However, the reason for these meetings was that Parra had begun a romantic relationship with his granddaughter Martina, and she had asked her grandfather to spend time with her.
  - d. As for his constant “angry” reactions to LuloNetwork posts by the Holding Eye company, Luciano simply thought the implication was absurd. He did not know what the “algorithm” was, nor how it could benefit the company. That was not his intent.
51. On December 10, 2014, and with a greater awareness of the repercussions that the article was having on his life, Luciano published a statement on LuloNetwork denying the assumptions that arose from the publication of the article “Luciano Benítez: Environmental Fraud and Partner of Extractivists?” In the statement, Luciano said:

“True to my democratic spirit, I want to explain everything to you. The assumptions people have made based on the article by journalist Federica Palacios are wrong. I never imagined that the dissemination of such an article could come to this, and I did not make much of it at first—but I have been deeply affected by its repercussions for days now. The truth is that, although my cell phone was in the specified places, that does not mean that it was me. The device and I are not the same thing. My granddaughter uses my cell phone from time to time, and the march I am accused of attending was no exception. And I have indeed been to the Carrera 90 Building, but only because that is where my reading group regularly meets. As for the meetings with Parra, they happened, but the explanation is that Martina and Roberto have begun dating. I was not wrong not to reply to Palacios when she contacted me, and this is all just more of the same: meaningless and malicious publications.”



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

52. After this statement was published, on December 11, 2014, journalist Federica Palacios added the following sentence to the story:

“As I had informed my readers before this publication, I tried to contact Luciano, but he refused to provide any additional information about what I reported. However, on December 10, 2014, Luciano presented his version of the story on social media, which is available at [www.lulonetwork.com/Luciano.Acalaración](http://www.lulonetwork.com/Luciano.Acalaración).”

53. This, however, was not enough. Luciano’s credibility was undermined and public opinion was not ready to forgive him. The publications against him did not stop, memes went viral almost daily, and his social networks remained under attack.

### **ATTEMPT TO CREATE AN ACCOUNT ON NUEVA**

54. The fact of the matter was that LuloNetwork had been losing popularity in recent years, as an app with similar functions had entered the market, but with a different interface that made it much more attractive to younger users: Nueva. This app was created by the Varaná-based startup Alternativa, and was geared toward sharing photos and videos, including a feature that let users share temporary audiovisual content in a single format for a 24-hour period, after which the post would disappear. This new platform, Nueva, had been gaining popularity and public debates were rapidly migrating to it.

55. Luciano thought about creating an anonymous account on Nueva as a second measure to protect his honor, which he considered to have been harmed by Palacios’s article. He wanted to publish the actual facts, but from the point of view of a third party—under a pseudonym—to see if he could rehabilitate his life, his name, and his reputation.

56. However, when he tried to create an account on January 15, 2015, Luciano found that Nueva required him to attach a photo of his national ID card. Along with this requirement, the application cited the judgment in public action of unconstitutionality 1010/13, in which the Supreme Court of Justice, in the exercise of abstract constitutional review, construed Law 900 as prohibiting anonymity on social media. The Court held that online social networking platforms must have accurate and sufficient information to identify all active users, whether persons or entities, or risk exposure to penalty proceedings under Law 900. Nueva’s notice also stated that it was possible to create a public user name and an “@” that did not match the name on the national ID card. However, the account would still be associated with the “identity stated on the person’s document,” even if not publicly. Luciano, worried about what this might entail, and not quite



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

understanding the distinction between account name, “@,” and user, decided against creating a profile.

57. The next day, Luciano contacted the NGO Blue Defense. They explained to him the difference between the terms and confirmed that this was indeed standard procedure for social networks after the Supreme Court’s decision. The NGO also told him that it had been involved in the litigation of public action of unconstitutionality 1010/13, which sought to interpret the scope of the prohibition of anonymity in Article 13 of the Constitution. Blue Defense was part of a coalition of civil society organizations that filed an amicus curiae brief with the Court supporting the protection of anonymity on social media as part of the right to freedom of expression enshrined in international human rights treaties, including the ACHR. However, the NGO clarified that the Court rejected the constitutional interpretation proposed in the amicus brief, affirming that Article 13 of the Constitution explicitly prohibited anonymity. However, Blue Defense also informed Luciano that it had recently succeeded at trial in a petition for the protection of constitutional rights to allow a user to create a pseudonymous profile on LuloNetwork without providing identity documents, but that it was awaiting the appellate court’s decision. According to Blue Defense’s research of the case law, most of the trial and appellate court decisions in the country would not support this type of claim because of public action of unconstitutionality 1010/13.

58. Bearing in mind this legal landscape, representatives of the NGO told Luciano that since they had already developed novel legal arguments in the petition for the protection of constitutional rights they had told him about, they could bring a legal action on his behalf. Luciano agreed, and the NGO was able to quickly file a new petition for the protection of constitutional rights on January 19, 2015. Meanwhile, he continued using the social networks of which he was already a user, including LuloNetwork, despite continued harassment. However, he resolved to “keep a low profile,” using social media only to publicize events and facts that he believed would not expose him too much, such as the calendar of cultural events in the capital city and in his homeland.

59. However, because public action of unconstitutionality 1010/13 was considered binding precedent and *res judicata* under the procedural laws of Varaná, the petition for the protection of constitutional rights filed by Blue Defense to allow for the creation of the profile requested by Luciano was denied on August 23, 2015, precisely because it was contrary to a binding precedent. The NGO appealed this decision, but on February 10, 2016, the appellate court declined to grant the appeal. Blue Defense then filed an extraordinary appeal with the Supreme Court. The Court denied this appeal on May 20, 2016, finding that, under the procedural law, cases that constitute *res interpretata* cannot be reexamined in the terms proposed by the plaintiff, as this would undermine legal certainty.



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

60. After months of continuous harassment on social media and not being able to rehabilitate his image with what he considered to be the truth, Luciano decided to disconnect from the online world. On Aug. 25, 2015, he took his old cell phone and burned it in a bonfire to symbolize the end of an era. He refused to buy a new one, despite constant requests from his children and friends so they could stay in touch. He went into a deep depression and isolated himself in his home. He began to undergo psychological treatment, but still did not feel much of a change.

61. This created a lot of problems for Luciano, as he not only lost any semblance of a social life but also began to have trouble accessing his pension and paying for some public services. Monthly access to his pension was digitized and, despite insisting on going to the relevant offices, there was no way to complete the process in person. In addition, the water utility only received payments online. Being disconnected, Luciano could not find efficient alternatives.

62. On August 8, 2015, months after the publication of the article “Luciano Benítez: Environmental Fraud and Partner of Extractivists?”, the Office of the Prosecutor General of the Nation announced that it had been investigating Pablo Méndez and Paulina Gonzáles, two IT experts working in the intelligence service of the Ministry of the Interior, since October 2014. These individuals were suspected of having used the software Andromeda to obtain the personal data of human rights activists from social media accounts, such as LuloNetwork, and mapping applications, such as Lulocation. This software, which the Prosecutor’s Office claims was acquired to support the investigation of serious crimes and threats to national security, is installed on selected devices through “phishing,”<sup>2</sup> and is easily self-destructed to avoid suspicion of its presence. The person operating it can use it to access social networks connected to the device. Andromeda was developed by a Varanasian company, Vigila S.A., whose website states that its clients are government agencies only.

63. In its announcement, the Prosecutor’s Office stated that the police “were very efficient in the criminal case” and by May 8, 2015, both individuals were in prison for computer crimes and abuse of authority through the improper use of government software. In its investigation, the Prosecutor’s Office found that Pablo Méndez and Paulina González had acted out of a personal desire to counteract the public engagement of profiles they believed could hinder the Ocean Party’s victory in the 2014 National Assembly elections. Their efforts were in vain, as the Root Party won the election with a majority and Lucía Pérez was presiding over the Assembly. The Prosecutor’s Office also found that these two individuals had unlawfully accessed Luciano’s data and shared this information anonymously with numerous journalists, who were not the subject of any particular investigation.

---

<sup>2</sup> Computer fraud by identity theft.



AMERICAN UNIVERSITY

W A S H I N G T O N , D C

## LUCIANO'S FINAL LEGAL ACTIONS AT THE DOMESTIC LEVEL

64. Seeing how his father was so isolated from the world, and considering the information released by the Office of the Prosecutor General of the Nation on August 8, 2015, Joaquín suggested that he take legal action. Initially, they contacted journalist Federica Palacios directly and presented her with evidence that Luciano had indeed been attending the reading club, that his granddaughter—Martina—and Roberto Parra were in a relationship, and that Martina sometimes used her grandfather's phone. The evidence consisted of photographs, affidavits, and other documents.

65. After learning more about Luciano's version of events, on August 28, 2015, Federica published a second installment of her article "Luciano Benítez: Environmental Fraud and Partner of Extractivists?" on her blog "Inconsistencies Revealed" and in the online newspaper *VaranáHoy*. She included Luciano's statement, the evidence he had given her, and the following text:

"Citizens of Varaná, while I stand by the information I published in the first installment, because it is true and technologically verifiable, I am publishing additional information provided to me by Luciano Benítez. Once again, my intention is for you to draw your own conclusions."

66. Even though this new article was published in the same media in which the main article had been published, it did not have a similar reach. While the first installment garnered 400,000 visits in the same period, in addition to being widely circulated on other platforms and in other media outlets, the second installment had only 100,000 visits. Also, this second time around, not even a fifth of the other platforms and media outlets disseminated the content.

67. Feeling dissatisfied with this new installment and with what he considered to be the negligible circulation of the corrected article, Luciano filed a tort action on September 14, 2015, advised by the NGO Blue Defense, against Federica Palacios and against the company Lulo/Eye, which, in addition to operating LuloNetwork and Lulocation, also owned LuLook, the main internet search engine where both the journalist's blog and the newspaper *VaranáHoy* can be found. In his lawsuit, Luciano not only sought to recover damages from the defendants jointly and severally, but also requested the de-indexing of the information related to his name.

68. In her answer to the complaint, Federica denied responsibility for any harm caused, as she never made false assertions about Luciano. She further argued that she merely provided her readers with truthful information that was technologically verifiable. The journalist insisted that she had complied with her journalistic duties by giving Luciano the opportunity to comment on her article and that it was Luciano who chose to remain silent. In addition, Lulo/Eye contended that it could not be held liable for Federica's content, as it was merely an intermediary.



## AMERICAN UNIVERSITY

W A S H I N G T O N , D C

69. On November 4, 2015, the trial court judge denied Luciano's claims on the grounds that Federica had published a second installment with the information he had provided and that this was sufficient to protect his honor and good name. In addition, the court accepted LuLook's defense and dismissed it as a defendant in the action. The appellate judge affirmed the lower court's decision on April 22, 2016. On August 17, 2016, the Supreme Court denied Luciano's extraordinary appeal.

70. The NGO Blue Defense also contacted Luciano on February 27, 2015, saying that they believed they could file a public action of unconstitutionality to challenge Article 11 of Law 900 of 2000, arguing that this provision violated his right to freedom of expression, information pluralism, and the principle of net neutrality. They also expressed their belief that, as a matter of impact litigation, it would be interesting to file the action on Luciano's behalf because of his historic cases against Eye and Lulo. Advised by Blue Defense, Luciano filed a public action of unconstitutionality on March 29, 2015, challenging Article 11 of Law 900 of 2000.

71. The filing of this action garnered national attention. The startup Alternativa promoted content on Nueva highlighting the case and alleging harm from zero-rating practices in the country. On the web, the production of short videos with the subtitle "POV: when your grandma pays nothing to post pictures of flowers for her friends, but they charge you a fortune to see what matters" also became popular. This is in reference to the zero-rating of LuloNetwork, a social network that is less popular among younger people than Nueva. Civil society organizations critical of zero-rating organized a signature drive, which in three days collected 830,000 signatures calling for an end to this practice. On June 21, 2016, after all procedural steps in the case had been properly completed, the Court denied the action, ruling that 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.

72. In what was considered a reaction against the Supreme Court's decision, Alternativa dropped the national ID card requirement for the creation of profiles on Nueva. To date, no penalties have been imposed on Nueva.

73. Despite this practical opportunity to create a profile under a pseudonym, Luciano has not created any new profiles on social media. He was particularly troubled by "*constant defeats and fears in the virtual world, which held so much promise for me.*"

74. On December 10, 2023, the Ocean Party lost the presidential election for the first time since 1993. The president-elect was Octavio Bay, from the newly created Other Party, which holds a majority in the Assembly. Octavio ran his campaign on a platform of creating a "*new politics*" against "*globalism,*" serving "*the interests of citizens rather than big tech like the Ocean administrations.*"



AMERICAN UNIVERSITY

W A S H I N G T O N , D C

## PROCEEDINGS BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

75. Having exhausted all domestic remedies, Luciano, with the support of the NGO Blue Defense, filed a petition with the IACHR on November 2, 2016, alleging violations of the rights enshrined in Articles 5, 8, 11, 13, 14, 15, 16, 22, 23, and 25 of the ACHR, in conjunction with Articles 1.1 and 2 thereof.

76. On March 9, 2017, the IACHR processed the petition and forwarded it to the State for its response under Article 30.3 of its Rules of Procedure, reminding it of the possibility of a friendly settlement. Within the three-month statutory deadline, the State denied any breach of the Convention and raised no objection to the admissibility of the case. It also reported that on June 2, 2017, the criminal convictions and sentencing of Pablo Méndez and Paulina Gonzáles to 32 months in prison was upheld in a final decision, and they were ordered to pay R\$20,600 (about US\$15,000) in civil damages to each of the 10 hacking victims, including Luciano.

77. The State did not file preliminary objections, so the IACHR decided to defer treatment of admissibility until the debate and decision on the merits, based on IACHR Resolution 1/16. The parties were properly notified of this decision, which was dated January 5, 2018. The decision reiterated the possibility of a friendly settlement, to no avail. On April 13, 2022, the IACHR notified the parties that it had adopted a Report on Admissibility and Merits under Article 50 of the ACHR, in which it declared the case admissible and found 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.

78. The Republic of Varaná failed to take any action to comply with the Commission's recommendations, and the case was submitted to the Inter-American Court of Human Rights on June 2, 2022, alleging the violation of the same articles cited in the admissibility and merits report of the IACHR. In its filing, and noting that the case had been admitted without any preliminary objection by the State, the IACHR asserted that the human rights violations resulted from: (i) the fact that Luciano had been sued by Holding Eye for approximately US\$30,000 for disseminating content that the company regarded as a "smear campaign"; (ii) the fact that Luciano had revealed the source of one of his LuloNetwork posts in a civil lawsuit; (iii) the fact that Luciano had been hacked or his personal data had been disclosed to third parties; (iv) the impacts, if any, of the State allowing cell phone carriers to offer zero-rating apps within the jurisdiction of Varaná; (v) the refusal of the State's courts to order the de-indexing of the news article "Luciano Benítez: Environmental Fraud and Partner of Extractivists?"; (iv) the State's refusal to acknowledge that LuLook was also responsible for the violation of Luciano Benítez's human rights; and (vi) Luciano's inability to create anonymous social media profiles.



# AMERICAN UNIVERSITY

W A S H I N G T O N , D C

79. The Inter-American Court summoned the parties in the case of *Luciano Benítez v. Republic of Varaná* to a hearing on the **merits**, including possible reparations and costs, noting that up to that point the State had not filed any preliminary objections. The hearing, at which the parties will present their oral arguments and closing statements, will take place during a regular session of the Inter-American Court of Human Rights, to be held in Washington, D.C. on May 20 to 24, 2024, at the American University Washington College of Law.

## **Authors**

*Pedro Vaca*  
*Vanessa López Ochoa*  
*Giovanny Padovam Ferreira*

## **Editors**

*Claudia Martin*  
*Diego Rodríguez-Pinzón*  
*Gabriel J. Ortiz Crespo*  
*Viktor Vilt*

## **Translation**

*Aimee Sullivan*