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**ORGANIZATION OF AMERICAN STATES**  
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**Application to the Inter-American Court of Human  
Rights**

***Luisiana Ríos et al.***  
**Case 12.441**

**versus the Republic of Venezuela**

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APPLICATION  
OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
VERSUS THE REPUBLIC OF VENEZUELA

**CASE 12.441**  
**LUISIANA RÍOS *ET AL.***

**I. INTRODUCTION**

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR"), submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court", or "the Tribunal") an application in Case 12.441, Luisiana Ríos *et al.*, versus the Republic of Venezuela (hereinafter "the State", "the Venezuelan State", or "Venezuela") alleging its international responsibility in connection with restrictions on freedom of expression through intimidation, acts of harassment, and physical and verbal abuse of Luisiana Ríos, Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares (hereinafter "the victims" or "the injured parties"); as well as its responsibility in connection with the subsequent lack of diligence in the investigation of those incidents and the omission of the State to adopt preventive measures.

2. All of the victims are journalists or employees of the media who are or have been connected with Radio Caracas Televisión network (hereinafter "RCTV") and who in the performance of their work of seeking, receiving and imparting information, were the object of several acts of aggression, including wounding by gunfire and vandalism of RCTV facilities, between 2001 and 2004. The State, for its part, did not take the necessary measures to prevent the acts of harassment, and it failed to investigate and punish them with due diligence.

3. The Commission requests that the Court find that the Venezuelan State breached its international obligations by violating Articles 5 (right to humane treatment), 13 (freedom of thought and expression), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in connection with the general obligation to respect and ensure human rights set forth in Article 1(1) of the Convention.

4. The Commission believes that the referral of the case to the Court is justified by the need to obtain justice and reparation for the injured parties. The facts in the case show that the RCTV journalists and related

workers were unable to seek, receive, and impart information freely, and had to work under the intimidating effects of attacks designed to obstruct their exercise of freedom of thought and expression. In that sense, the Commission considers that the case represents an opportunity to develop the case law of the inter-American system with respect to limitations on the restrictions that state agents and private individuals may place on the exercise of freedom of expression through direct or indirect acts of obstruction and intimidation targeting media workers and related workers. In addition, it presents an opportunity to develop case law dealing with the guarantees that accompany the jobs performed by media workers, bearing in mind the contribution that their profession makes to healthy and informed public debate, an essential condition for democratic societies.

## II. PURPOSE

5. The instant case has been processed pursuant to the provisions of the American Convention and is submitted to the Court in accordance with Article 33 of its Rules of Procedure. A copy of report 119/06, prepared under Article 50 of the Convention is attached as an appendix to this application.<sup>1</sup> The purpose of the instant application is respectfully to request the Court to find and declare that the Venezuelan State is responsible for violations:

- a. of the right to freedom of expression recognized in Article 13 of the American Convention, in connection with the general obligation to respect and ensure the human rights enshrined in Article 1(1) of this instrument, to the detriment of the victims;
- b. of the rights to a fair trial and judicial protection, recognized in Articles 8(1) and 25 of the American Convention, in connection with the general obligation to respect and ensure the human rights enshrined in Article 1(1) of this instrument, to the detriment of the victims; and
- c. of the right to humane treatment recognized in Article 5 of the American Convention, in connection with the general obligation to respect and ensure the human rights enshrined in Article 1(1) of this instrument, to the detriment of Messrs. José Antonio Monroy, Armando Amaya, and Carlos Colmenares.

6. Based on the foregoing, the Inter-American Commission requests the Court to order that the State:

- a. Adopt all the measures necessary to prevent any acts, whether by state agents or by private individuals, that might obstruct media workers and related workers from seeking, receiving and imparting information;

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<sup>1</sup> In <sup>1</sup> IACHR, Report 119/06 (Merits), Case 12.441, *Luisiana Ríos et al.*, Venezuela, October 26, 2006. Appendix 1.

- b. Adopt all the measures necessary to respond with due diligence to any acts, whether by state agents or by private individuals, that obstruct media and related workers from seeking, receiving and imparting information;
- c. Carry out an impartial, thorough investigation with a view to prosecuting and punishing all those responsible for the facts in the instant case and to making the findings of those investigations public;
- d. Ensure to Messrs. Luisiana Ríos, Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares the exercise of the right to freedom of thought and expression, and in particular the exercise of their work activities;
- e. Provide reparation for the pecuniary and non-pecuniary damages occasioned by the conduct of the State organs to Messrs. Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares; and
- f. Pay the court costs and legal expenses incurred by the victims and their representatives in bringing this case, both at the domestic level and in the inter-American jurisdiction.

### **III. REPRESENTATION**

7. In conformity with Articles 22 and 33 of the Rules of Procedure of the Court, the Commission has designated Commissioner Paulo Sergio Pinheiro; Executive Secretary Santiago A. Canton; and the Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, as its delegates in this case. Attorneys Ariel E. Dulitzky, Elizabeth Abi-Mershed, Lilly Ching, Débora Benchoam, Alejandra Gonza, and Silvia Serrano, specialists of the Executive Secretariat of the IACHR, have been designated to act as legal advisers.

### **IV. JURISDICTION OF THE INTER-AMERICAN COURT**

8. According to Article 62(3), the jurisdiction of the Inter-American Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it,

provided that the State Party to the case recognizes or has recognized such jurisdiction.

9. The Inter-American Court is competent to hear the instant case. The Venezuelan State ratified the American Convention on August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981.

## **V. PROCESSING BY THE INTER-AMERICAN COMMISSION**

### **A. Contentious proceedings<sup>2</sup>**

10. On July 23, 2002, the Commission received a petition lodged against the Bolivarian Republic of Venezuela by the media employees, Luisiana Ríos, Luis Augusto Contreras Alvarado, and Eduardo Sapene Granier of the Radio Caracas Televisión network, acting on their own behalf and on behalf of Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Wiston Gutiérrez, and Isabel Mavárez.

11. In a communication of September 26, 2002, the Commission transmitted the pertinent portions of the petition to the State and requested it to reply within two months, in accordance with Article 30(3) of its Rules of Procedure. The deadline passed with no such reply being presented to the IACHR.

12. On July 10, 2003, the Commission requested the petitioners to present information on certain aspects of the petition, in order to have all the necessary facts to adopt a decision in respect thereof.

13. On August 8, 2003, Mr. Eduardo Sapene, "on behalf of the reporters, camera operators, their assistants, and other media workers at RCTV television station, in their capacity as co-petitioners and victims named in the petition lodged with the honorable Inter-American Commission," transmitted the replies to the request for information made by the Commission, together with additional information concerning supervening incidents and other alleged victims. The following August 15, the Commission transmitted the petitioners' brief to the State and granted it a month to present its comments.

14. In a communication of September 15, 2003, the State requested an extension of three months to submit its reply to the requests for information of September 26, 2002 and August 15, 2003, due "to the complexity of the individual petition [...] and the additional information supplied by the petitioners, combined with the need [...] to collect the necessary information." On September 24, 2003, the Commission granted the State an extension of 15 days to present its reply.

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<sup>2</sup> The proceedings mentioned in this section are to be found in the Record of the Case before the Commission, Appendix 3 of the application. With regard to this Appendix, the Commission forwards to the Court the annexes that it considers relevant by reason of the fact that they were taken into account in the preparation of its report on merits and because they refer to the victims in the instant case. The documents appended by the parties that do not concern the victims in the case directly were omitted from the record but are available to be forwarded to the Court should it consider it necessary.

15. On October 8, 2003, the State presented its comments and, via a communication of the following October 10, the Commission transmitted those comments to the petitioners.

16. On October 15, 2003, the IACHR requested information from the State in addition to that presented on October 8, 2003, specifically regarding the measures adopted by the Office of the Attorney General with respect to the allegations contained in the petition. The Commission also requested the State to describe the domestic remedies available to the petitioners and the effectiveness of those remedies. The IACHR granted the State 15 days to send the information requested; however, the term elapsed without a reply.

17. On November 5, 2003, the petitioners presented a brief in response to the State's brief of October 8, 2003. This brief was forwarded to the State in a communication of the same date.

18. On February 27, 2004, the Commission adopted Admissibility Report 06/04.<sup>3</sup> In it the Commission declared admissible the petitions concerning the alleged violations of the rights of Luisiana Ríos, Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, and Isabel Mavarez, all of whom are specifically named in the initial petition. However, due to the characteristics of the instant case, the Commission decided to defer a pronouncement on merits for the time being because of the possibility of the inclusion of new and similar events that occurred after the petition was lodged, in the framework of the precautionary measures ordered by the Commission and provisional measures ordered by the Court (*infra*, Sections V.B and V.C), to the detriment of the 11 individuals, namely, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares. It was determined that a decision would be taken after both parties had had the opportunity to present their arguments in accordance with Article 38 and related articles of the Rules of Procedure of the IACHR.

19. By means of a communication of March 11, 2004, the Commission notified the parties of its decision on admissibility and placed itself at their disposal with a view to seeking a friendly settlement in accordance with the provisions of the American Convention and its Rules of Procedure.

20. On March 25, 2004, the petitioners presented a brief in which they said "that they [were] not interested in initiating a friendly settlement procedure at [that] time, while the opposing party in the case [...] continue[d] to violate the human rights mentioned in the Petition," and they reiterated their allegations regarding the responsibility of the Venezuela State for the acts of aggression and intimidation to which the alleged

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<sup>3</sup> IACHR, Report 06/04 (Admissibility), Case 12.441, *Luisiana Ríos et al.*, Venezuela, February 27, 2004. Appendix 2.

victims were subjected. In their brief, the petitioners also requested the Commission to issue a report on merits in the case and that "the case be referred to the Court [...] assuming the matter [was] not settled within the period provided in Article 51 of the Convention."

21. By a communication of March 26, 2004, the Commission drew the petitioners' communication to the attention of the State and requested it to present any observations that it might have on merits in the case within 30 days. On April 23, 2004, the State requested an extension of the deadline to present its observations. The following April 27, the IACHR granted the State an additional 30 days; however, the period elapsed and no observations were presented.

22. In July 2006, the IACHR received additional information from the petitioners which was forwarded to the State by communication of August 8 of that year. Furthermore, the Commission requested the State to submit observations within one month. The given period expired, however, and no observations were presented.

23. On August 14, 2006, the petitioners presented a brief in which they reiterated the request made in their petition to the effect that the Commission order "the joinder of the [...] petition with the record [...] on precautionary measures" and also asked that "all of the evidence adduced by the parties on the occasion of the proceeding on provisional measures" in the instant case "be included and appraised." The Commission forwarded the aforementioned brief to the State.

24. On August 21, 2006, the Commission sent a letter to the petitioners requesting that they present evidence and updated information and that they convey to the Commission their observations on the current situation of the alleged victims and on their interest in proceeding with the matter. On August 25, 2006, the petitioners sent the Commission a number of videos. They also informed that it was materially impossible for them to provide a copy of the record of the proceeding on the complaint filed on January 31, 2002, by Mr. Eduardo Sapene.

25. On September 1, 2006, the Commission requested that the petitioners provide additional information. On September 5, 2006, the petitioners forwarded a brief in which they again described the facts detailed in the course of the proceeding before the Commission, as well as including an account of the events connected with Messrs. Carlos Colmenares, Pedro Nikken and Noé Pernía. They also added information about the status of the judicial investigations into the alleged facts. The Commission transmitted to the State the pertinent portions of the additional information furnished by the petitioners and gave it one month to submit observations.

26. On September 8, 2006, the petitioners sent communications of August 30 in which they reiterated their "condition as victims" and requested that the Commission "adopt its report on merits as soon as possible; and, consequently, decide [...] to submit the application and refer



the case to the Honorable Court.” The Commission subsequently transmitted the aforementioned information to the State

27. In the framework of its 126th Regular Session on October 26, 2006, the Commission adopted Report on Merits 119/06, prepared under Article 50 of the Convention. In that report it concluded that

the Venezuelan state is responsible for violation of the rights to freedom of thought and expression (Article 13), to a fair trial (Article 8), to judicial protection (Article 25), and to humane treatment (Article 5), in connection with the obligations to observe and ensure rights enshrined in Article 1(1) of the American Convention, to the detriment of the victims in the terms described in the [...] report on merits.

28. In the aforementioned Report on Merits, the Commission recommended that the Venezuelan state:

1. Publicly acknowledge international responsibility for all the human rights violations ascertained by the Inter-American Commission in the instant report.
2. Refrain from acts that might unlawfully restrict or directly or indirectly obstruct exercise of the right to freedom of thought and expression, such as those ascertained in the instant report.
3. Adopt all necessary measures to prevent any acts by agents of the State and private individuals that might obstruct persons from seeking, receiving and imparting information, and to ensure that incidents such as those ascertained in this report do not recur.
4. Conduct a proper and diligent investigation of the facts in the instant case and make public the findings of that investigation.
5. Ensure for Messrs. Messrs. Luisiana Ríos, Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares the exercise of the right to freedom of thought and expression, particularly in the course of their work activities.
6. Provide reparation for the material and moral injuries caused by the conduct of organs of the State to Messrs. Luisiana Ríos, Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares.
7. Provide full compensation to the victims for the litigation costs incurred in this case both at the domestic level and before the Commission, and pay reasonable representation fees to their representatives.

29. The Commission notified the State of the report on merits on December 20, 2006, and gave it two months to report on the measures adopted in compliance with the recommendations contained therein, in accordance with Article 43 (2) of the Rules of Procedure of the IACHR.

30. On December 20, 2006, in keeping with Article 43(3) of its Rules of Procedure, the Commission notified the petitioners of the adoption of the report on merits and its transmittal to the State. Furthermore, it

gave them one month to present their petition as to whether the case should be submitted to the Court.

31. In a communication of January 19, 2007, the petitioners expressed to the Commission the desire of the victims that the case be submitted to the Court. They also presented additional documents.

32. On February 12, 2007, the State submitted a request for an extension, which it reiterated on February 13 and 15, 2007. On that occasion, the State mentioned that it recognized that should the requested extension be granted, the period provided in Article 51(1) of the American Convention would be suspended. Consequently, in the event that the matter were submitted to the Inter-American Court of Human Rights, the Venezuelan state expressly waived the right to invoke preliminary objections with respect to compliance with the period provided in the aforesaid article. By decision adopted on March 3, 2007, the Commission granted an extension of one month, counted from the transmittal of the note dated March 8, 2007.

33. On March 23, 2007, the State presented its observations on the contents of the Report on Merits, and rejected "unreservedly the recommendations contained in Report 119/06 on Case 12.441, Luisiana Ríos *et al.*"

34. After considering the communication of the State on the recommendations contained in the report on merits, as well as the lack of substantive progress in their effective implementation, the Commission decided to submit the case to the Inter-American Court on April 8, 2007.

## **B. Processing of Precautionary Measures**

35. On January 29, 2002, the petitioners requested that the Commission adopt precautionary measures to protect the physical integrity and freedom of expression of a number of employees of *Globovisión* television network, as well as of Luisiana Ríos, Luis Augusto Contreras Alvarado, Armando Amaya, and Eduardo Sapene Granier, employees of RCTV.<sup>4</sup> On January 30, 2002, the Inter-American Commission requested the State to take precautionary measures to protect the lives and physical integrity of the RCTV employees, Luisiana Ríos, Luis Augusto Contreras Alvarado, Armando Amaya, and Eduardo Sapene Granier, and of the *Globovisión* employees, Mayela León Rodríguez, Jorge Manuel Paz, and María Fernanda Flores. In adopting these measures, the IACHR requested that the State abstain from any action that could have the effect of intimidating reporters and other media workers employed by *Globovisión*

<sup>4</sup> On January 20, 2002, the reporters Luisiana Ríos of RCTV and Mayela León of *Globovisión*, accompanied by their respective technical teams went to cover the program "*Aló Presidente*" at Cajigal Observatory, west of Caracas. The reporters and their technical teams reached the area in vehicles that bore the logos of their respective networks. After the reporters got out of the vehicles, a group of approximately 50 persons who were outside Cajigal Observatory surrounded the cars and attacked them, striking them and shouting abuse at the cameramen and their assistants who were inside with the doors and windows locked. Members of the *Casa Militar* (Presidential Guard) escorted the reporters Luisiana Ríos and Mayela León to the cars where their colleagues were waiting so that they might leave the area. See Annex 50.

and RCTV in the exercise of their profession, and to adopt the measures necessary to protect the safety of all the employees and the property of the aforementioned networks.<sup>5</sup>

36. On March 11, 2002, the State informed the Commission that it had ordered the appropriate investigations.<sup>6</sup>

37. On May 30, 2002, the beneficiaries reported an increase in attacks on journalists after the adoption of the precautionary measures. In light of the risk to journalists and the absence of effective measures taken by the State to protect them, the representatives of the beneficiaries said that they had been compelled to take steps for the protection of their workers, and provided them with bullet-proof vests, helmets, and gas masks.

38. On the same date, the State sent a communication in which they informed that the case of the RCTV and *Globovisión* journalists was at the investigation stage and that the appropriate protection measures had been put into effect. Said communication was transmitted to the beneficiaries on June 19, 2002.

39. On July 17, 2002, the beneficiaries requested that the Commission extend the precautionary measures and expand them to encompass all of the workers and facilities of both networks. On July 29, 2002, the Commission agreed to extend the precautionary measures for another six months with the aim of protecting the personal safety and freedom of expression of the beneficiaries. The foregoing was based on the persistence of the same type of acts of aggression and harassment against the media workers who were being protected and which had given rise to the original request for precautionary measures. In the aforementioned decision, the Commission resolved, furthermore, to expand the protective measures to include all the employees of the networks and to give the State 15 days to report on the measures adopted. On September 16 and 17, 2002, the Commission reiterated to the State the terms of its decision of July 29, 2002.

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<sup>5</sup> The Commission requested the Venezuelan State to adopt the following precautionary measures (See Annex 50):

1) Adopt all necessary measures to protect the life and the right to humane treatment of Luisiana Ríos, Luis Augusto Contreras Alvarado, Armando Amaya, Eduardo Sapene Granler of *Radio Caracas Televisión* and Mayela León Rodríguez, Jorge Manuel Paz Paz and María Fernanda Flores of *Globovisión* as well as the protection required by representatives of *Globovisión* and *Radio Caracas Televisión* so as to ensure safety of the journalists, the property and facilities of said media;

2) To abstain from any actions that might have an intimidating effect on the professional work of journalists and other employees of media companies *Globovisión* and *Radio Caracas Televisión*; and

3) To conduct an extensive investigation of the facts occurred on January 20, 2002 against journalists Luisiana Ríos and Mayela León Rodríguez, of *Radio Caracas Televisión* and *Globovisión*, respectively, and the technical teams who were with them at the time.

<sup>6</sup> In its brief, the State mentioned that it had commissioned the Second and Seventy-Fourth Public Prosecutors' Offices of the Metropolitan Area of Caracas to initiate "the corresponding investigations, for the purpose of elucidating events and establishing responsibility, as appropriate." See Annex 65.

40. On March 17, 2003, the Commission granted another six-month extension for the precautionary measures that had been extended on July 29, 2002, in order to

protect the right to life, humane treatment, and freedom of expression of Eduardo Sapene, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Luis Augusto Contreras Alvarado, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez and media workers of the RCTV network in Venezuela.

41. The expansion on that occasion excluded the RCTV employees Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, and Argenis Uribe, who, by then, were under the protection of provisional measures. Furthermore, in the aforesaid decision, the Commission mentioned that "having considered the comments of the parties, it is of the view that it would be appropriate to prolong the measures so long as the situation that gave rise to them remains."

42. In 2003 and 2004, the IACHR kept the aforementioned precautionary measures in effect because it considered them necessary while the situation that gave rise to them subsisted. However, on July 9, 2004, the Commission submitted to the Court a request to expand the provisional measures in favor of all the journalists, management and other workers at RCTV who were in its facilities or associated with that journalistic endeavor.<sup>7</sup>

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<sup>7</sup> The grounds given by the Commission in its request for expansion of provisional measures summarized as follows (See Annex 80):

a) on June 3, 2004 the National Electoral Council announced that they had sufficient signatures to hold a Presidential recall referendum, and this led to a number of violent commotions in various points of downtown Caracas by groups identifying themselves as followers of the President of the Republic. These disturbances led to the death of one person, injuries to at least two people, and attacks against the offices of the private media *El Nacional*, *Así es la Noticia*, and RCTV. The Metropolitan Mayor's Office was also attacked, and several vehicles were set on fire;

b) based on information supplied by the petitioners, a group of hooded individuals met on June 3, 2004 in front of the head office of RCTV. Even though there were two officers of the Directorate of Intelligence and Prevention Services (DISIP) nearby, they made no inquiry into the presence of this group. The hooded individuals attacked the offices of RCTV with stones and firearms, some of them high caliber ones, and aimed their shots at those who looked out from the building that is the head office of RCTV. The attack lasted approximately one hour, during which time no police or security authorities intervened;

c) the petitioners reported that another group of individuals who were a block away from the head office of RCTV commandeered an ice cream transport truck and drove it toward the main door of RCTV at full speed, crashing against the door and damaging the security bars, the channel's door, the walls and the floor of the entrance. Three individuals also set fire to the truck's engine, causing additional damage to the main door of the head office of RCTV;

d) the petitioners stated that: another group of individuals tried to disable and break two security cameras at the RCTV head office; a group of individuals met at the back door of RCTV and set a truck that belonged to another media on fire, and then went toward RCTV's door, shooting and yelling slogans in support of the President of the Republic and against the media;

e) the petitioners also stated that the RCTV workers who where outside the channel during their lunch hour were unable to enter the channel's head offices, and some of them were threatened by the attackers and were forced to seek refuge in nearby buildings. Roughly an hour after the beginning of the attack, the National Guard showed up to persuade the attackers to withdraw. However, the attackers threatened to come back, for which reason the journalists and other RCTV employees evacuated the head office, and only the staff needed to keep the station on the air remained inside the facilities; and

43. On July 27, 2004, the President of the Court decided to order the State to adopt urgent measures in favor of all the journalists, management, and workers of the media firm Radio Caracas Televisión (RCTV), as well as those who were in the facilities of this media firm or who were associated with the journalistic operation of RCTV. On September 8, 2004, the Court issued an Order in which it confirmed the decision of its President of the previous July 27 (*infra* pars. 53 and 54). Thereafter, the processing of the precautionary measures was joined in full with the processing of provisional measures before the Inter-American Court.

### C. Processing of Provisional Measures<sup>8</sup>

44. On November 25, 2002, the petitioners submitted a brief in which they requested the Commission to present to the Court a request for provisional measures to protect the lives, personal safety, and freedom of expression of Messrs. Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, and Argenis Uribe, all of whom were then connected with RCTV.

45. On November 27, 2002, the Commission presented a request for provisional measures to the Court, in light of the continued nature and seriousness of the harassment and aggressive acts against RCTV workers and its facilities, as well as the failure to investigate the incidents and the absence of concrete measures to protect the lives, personal safety, and freedom of expression of the beneficiaries of the precautionary measures. That same day, the Inter-American Court granted the provisional measures requested, and ordered the State to present bi-monthly reports and the IACHR to submit observations on those reports

46. Following the presentation of several communications by the State and observations by the Commission, the Inter-American Court held a public hearing on provisional measures on February 17, 2003. The following February 20, the Court issued a new Order in which it found "that the State ha[d] not implemented effectively the provisional measures ordered by the Inter-American Court of Human Rights." In said Order, the Court also reiterated the requirement that the State, *inter alia*, "adopt forthwith all necessary measures to protect the lives and safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe" and requested the State and the Commission "to take the necessary steps to create an appropriate mechanism to coordinate and monitor the above mentioned measures by March 21, 2003, at the latest."

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f) the set of facts "corroborates the extreme gravity and urgency of the situation and the danger of irreparable damage against the lives, right to humane treatment and freedom of expression of the journalists, management and other employees working at the head office of RCTV channel or associated with the journalistic operation" of said channel.

<sup>8</sup> In this section, the Commission presents a brief summary of what it considers to be the principal steps. In that summary, the IACHR does not provide an account of each measure adopted by the parties since it finds that the process entails the presentation of bimonthly reports and observations that have to do with the examination of the process and are included in the record on the provisional measures under examination by the Inter-American Court.

47. On March 13, 2003, the Commission wrote to the State to arrange a meeting in order to create and activate the coordination and monitoring mechanism requested by the Court in its Order of February 20, 2003. The following March 26, the Court referred to the obligation of the Commission and the State to set up a mechanism to coordinate and monitor the provisional measures, which "ought to have been created by March 21, 2003, at the latest."

48. On April 15, 2003, the Commission sent another communication to the State in order to arrange a meeting to create and activate the above-requested coordination and monitoring mechanism, to which the State replied on following April 23, that it was studying a possible date to hold said meeting. In the absence of a response, on June 19, 2003, the Commission sent another note to the State in order to make the necessary arrangements to comply with the Order of the Inter-American Court regarding the mechanism to monitor the provisional measures.

49. On September 16, 2003, the IACHR received a request for the expansion of the provisional measures in favor of the RCTV workers Pedro Nikken, Carlos Colmenares, and Noé Pernía. On October 2, 2003, the President of the Court ordered urgent measures in favor of the aforementioned persons and on the following November 21, the Inter-American Court issued an Order reaffirming the terms of the Order of the President of the Court.

50. On December 2, 2003, the Court issued an Order in which it decided, *inter alia*:

- 1) To reiterate that the State has not implemented effectively the different provisional measures ordered by the Inter-American Court of Human Rights in the instant case;
- 2) To declare that the State has failed to comply with the obligation imposed on it by Article 68(1) of the American Convention on Human Rights;
- 3) To declare that the State failed to comply with the obligation to inform the Inter-American Court of Human Rights on the implementation of the measures it had ordered; [and decided]
- 4) Should the current situation persist, to inform the General Assembly of the Organization of American States, in application of Article 65 of the American Convention on Human Rights, and Article 30 of the Statute of the Inter-American Court of Human Rights, of the State's failure to comply with the decisions of this Court.

51. The processing of the provisional measures continued and, on May 4, 2004, the Court issued an order declaring that the State has the obligation to comply with the decisions of the Court, "which has the authority, inherent to its powers, to monitor compliance with same." The Court decided that the State "failed to fulfill the duty to report to the [Inter-American Court] on its implementation of the measures ordered by the Court." By the same token, the Court reiterated that the State "should adopt the measures necessary to protect the lives and safety of the petitioners and that it should carry out the obligation to investigate the alleged facts that gave rise to the measures in question."

52. On July 9, 2004, the Commission submitted to the Court a request for expansion of the measures in favor of all the journalists, management, and any other workers at RCTV that were in the facilities or involved in the journalistic operation.

53. On July 27, the President of the Court decided to order the State to adopt all necessary measures to safeguard and protect the lives, safety, and freedom of expression of all the journalists, management, and workers of the media firm Radio Caracas Televisión; as well as those who were in the facilities of this media firm or involved in the journalistic operation of RCTV. The President of the Court reiterated that the State should adopt, forthwith, such measures as may be necessary to protect the perimeter of the head offices of RCTV and fulfill its obligation to investigate the facts that gave rise to the provisional measures.

54. On September 8, 2004, the Court issued an order in which it reaffirmed the Decision of its President of the previous July 27. Following the presentation of several reports by the State and observations thereto, on September 12, 2005, the Court issued an order in which it found that freedom of expression is a cornerstone upon which the very existence of a democratic society rests and that the general obligation to effectively ensure the rights recognized in the Convention is imperative not only with regard to the State authorities, but also in relation to the acts of individual third parties. The Court also mentioned the failure of the State on several occasions to present information requested.

55. Since that time the State has presented reports on implementation of provisional measures and both the beneficiaries and the Commission have formulated comments on those reports.

## **VI. FACTS**

### **A. The political situation and the context of intimidation of media workers**

56. At the time when the facts that are the subject matter of this case began to occur, Venezuela was in a period of institutional and political conflict that caused the extreme polarization of its society<sup>9</sup>. The prevailing general situation in Venezuela fueled a climate of constant aggression and threats against reporters, camera operators, photographers, and other media workers.<sup>10</sup>

57. On April 9, the Confederation of Workers of Venezuela and *Fedecámaras* called a strike. An opposition march was held on April 11, calling for the resignation of President Hugo Chávez Frías.<sup>11</sup> It was in this context that tragic incidents of violence occurred that ended in large numbers of people being killed and wounded, the attack on the

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<sup>9</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, pars. 75 *et seq.*

<sup>10</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 378.

<sup>11</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 79.

constitutional government by means of a coup d'état, and the subsequent restoration of constitutional order.<sup>12</sup>

58. The IACHR conducted a visit to Venezuela from May 6 to 10, 2002, after which it "expressed its concern over the polarization of Venezuelan society, which found its most tragic and serious expression in the April incidents."<sup>13</sup> With respect to the situation or freedom of expression, the IACHR mentioned that it had found that,

while it is possible to direct criticisms at the authorities, they result in acts of intimidation that limit the possibility of free expression. The IACHR finds that in Venezuela newspapers have not been shut down, nor have journalists been detained. Nonetheless, free expression cannot be limited to the absence of censorship, shutdowns of newspapers, or arbitrary detentions of those who speak freely. In the particular case of journalists, the IACHR received information describing verbal and physical assaults in recent months, and recalled that it is a responsibility of the state to provide protection to citizens, including media workers, through strong measures aimed at disarming sectors of the civilian population who operate outside the law and who have been involved in such incidents.<sup>14</sup>

59. At the time, the IACHR noted actions by the media that had hindered Venezuelan society's access to vital information during those tragic events. This led the IACHR to state in the press release issued on that occasion that "although there may be many justifications to explain this lack of information, to the extent that the suppression of information has resulted from editorial decisions motivated by political considerations, it should be subject to a necessary process of analysis by the Venezuelan media as to their role at that time."<sup>15</sup>

60. Furthermore, in December 2002, the Inter-American Commission issued a press release on Venezuela in which it said,

The Commission has also noted increasing attacks on the media and journalists, particularly those covering political events and rallies. Journalists, camera operators, photographers, and other press workers have been subjected to direct aggression and harassment. Reported incidents include the murder of a journalist; physical assaults, including injuries by firearms; threats; and the seizure, looting, and destruction of media facilities, such as those carried out on December 9 by groups supporting the Government in Caracas and major cities of the interior. The Commission notes that this situation not only intimidates reporters, who are afraid to identify themselves as

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<sup>12</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 81.

<sup>13</sup> IACHR, Press Release upon the Conclusion of the On-Site Visit to the Bolivarian Republic of Venezuela No. 23/02, par. 4.

<sup>14</sup> IACHR, Press Release upon the Conclusion of the On-Site Visit to the Bolivarian Republic of Venezuela No. 23/02, par. 9.

<sup>15</sup> IACHR, Press Release upon the Conclusion of the On-Site Visit to the Bolivarian Republic of Venezuela No. 23/02, par. 10 and IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 471.



journalists for fear of reprisal, but also compromises Venezuelan society's right to information.<sup>16</sup>

61. In March 2003, the Commission issued a press release in which it mentioned that

Freedom of expression in Venezuela is another area of particular concern. The Commission has also noted an alarming and widespread increase in attacks on the media and journalists, particularly those covering political events and rallies. The IACHR has been told that no thorough and exhaustive investigation into these acts has been carried out. Hostile remarks about the press by senior government officials and the impunity of those investigated for attacking journalists have contributed to an atmosphere of intimidation curbing the full exercise of freedom of expression in Venezuela.<sup>17</sup>

62. In 2004, the Commission expressed its concern over the acts of violence that occurred during demonstrations in Venezuela from February 27 to March 1, 2004, and urged

Venezuelan officials to ensure the safety of journalists and media workers and facilities to enable them to continue their task of informing Venezuelan society [in view of the injuries suffered by members of the media covering the demonstrations]<sup>18</sup>.

63. The violence against the media and media workers mainly occurred during periods of great social and political upheaval in the country, such as those described above.<sup>19</sup> In some cases, the security forces played an active role in the attacks or by their passivity allowed individuals to initiate and continue them.<sup>20</sup> As mentioned, the Commission expressed its concern at the constant threats to the media and media workers on several occasions.

#### **B. The Radio Caracas Televisión (RCTV) Network and employees who are the victims in the instant case**

64. Radio Caracas Televisión (RCTV) is a private network legally registered in the Business Register of the Judicial District of the Federal District and State of Miranda on August 22, 1977.<sup>21</sup>

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<sup>16</sup> IACHR, Inter-American Commission on Human Rights Urges OAS Member States to Take Immediate Action to Halt Erosion of Rule of Law in Venezuela, Press Release 47/02.

<sup>17</sup> IACHR, The Commission Voices Concern at the Continuing Deterioration of the Rule of Law in Venezuela, Press Release 5/03. In this release, the IACHR also said that it was:

[ ] concerned at the extreme political polarization and consequent acts of violence periodically occurring between demonstrators representing different sectors [ ] [and]

[ ] [reiterated] its concern over the activities of armed civilian groups engaging in political violence and the fact that they act with impunity [ ]

<sup>18</sup> IACHR, IACHR concerned over recent events in Venezuela, Press Release 5/04.

<sup>19</sup> IACHR, Annual Report 2004, Chapter V. Follow up on Recommendations. Venezuela, par. 284.

<sup>20</sup> IACHR, Annual Report 2004, Chapter V. Follow up on Recommendations. Venezuela, par. 276.

<sup>21</sup> This information comes from a copy of the power of attorney of November 22, 1999. Annex 42.

65. It is a media outlet whose editorial opinions are critical of the government and it is one of the four private television networks in Venezuela identified as active political participants in events of disorder, such as the coup d'état of April 2002 and the strike in December of that same year. The network has also been singled out for comments at the domestic level by the President and high-ranking officials with respect to the way in which it broadcasts certain information, with the argument that it incites violence, undermines respect for the good name of the President of the Republic, and imparts false and tendentious information.<sup>22</sup>

66. The unbroken continuity of acts of aggression and intimidation directed at media workers in Venezuela generated a definite risk to the lives, safety, and freedom of expression of the victims in the case. Incidents such as stonings, beatings with metal pipes, burning of vehicles, attacks with explosives, and attacks against teams of journalists who were covering marches and rallies of other types;<sup>23</sup> the murder with a firearm of Jorge Tortosa, a press photographer with *Diario 2001*, on April 11, 2002, and attacks on personal safety, including wounding by gunfire, threats, and attacks with explosives on media organizations,<sup>24</sup> had a direct impact on the victims in this case, who feared that they would be the target of reprisals and attacks on their personal safety if identified as RCTV journalists or employees. Coupled with the foregoing, they had to witness a large number of anti-media demonstrations held outside the RCTV headquarters.<sup>25</sup>

67. As will be made clear (*infra*, par. 69), the accusations leveled at the television network have directly affected Eduardo Sapene Granier, Vice President for Information and Special Programs; Luisiana Ríos, reporter; Luis Augusto Contreras Alvarado, camera operator; Javier García, reporter; Isnardo Bravo, reporter; David Pérez Hansen, reporter; Wilmer Marcano, journalist; Winston Gutiérrez, journalist; Isabel Mavarez, correspondent and production coordinator; Anahís Cruz, reporter; Herbigio Hernández, camera operator; Armando Amaya, camera assistant; Antonio José Monroy, camera operator; Laura Castellanos, reporter; Argenis Uribe, camera operator; Erika Paz, reporter; Samuel Sotomayor, camera operator; Pedro Nikken, reporter; Noé Pernía, reporter; and Carlos Colmenares, camera assistant.

68. The victims suffered the consequences of the legitimization of violence against media workers and on numerous occasions were unable to

<sup>22</sup> See, for example, Summary and Recommendations in the Human Rights Watch report, "Caught in the Crossfire: Freedom of Expression in Venezuela" At: <http://www.hrw.org/reports/2003/venezuela/index.htm#TopOfPage>

<sup>23</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, pars. 375, 379, and 381.

<sup>24</sup> From 2002 to 2004, the Commission outlined incidents of aggression and harassment of different media workers. See, for example, IACHR Annual Report 2002, Volume II, pars. 228, 229, 230, and 232; IACHR Annual Report 2003, Volume III, par. 295; IACHR Annual Report 2004, Volume III, pars. 185, 189, 191, and 195. Those workers were employed by different media organizations and were the targets of a number of attacks, including some with firearms.

<sup>25</sup> File containing the judicial inspections requested by RCTV. See Annex 44.

complete their assignments of covering or reporting on political events in the country. They also received written warnings and verbal threats from different groups demanding, *inter alia*,

due consideration and respect for the investiture of our president, Commander HUGO RAFAEL CHÁVEZ FRIAS [and] the image of the aforementioned President demand[ed] the removal of those programs. [F]ailure to comply with [this] request [will] make you entirely responsible [...] for any disruption to public order."<sup>26</sup>

69. In short, the victims were subjected to interference and obstructions in the performance of their work, high-ranking government officials made statements in reference to their work, and they were the target of several incidents of physical and verbal abuse on the part of agents of the state, private individuals who support the President, or unidentified persons in the course of their endeavors as RCTV employees,<sup>27</sup> a situation which impaired the performance of their work at the network.

### **C. Statements by the President of the Republic and other officials**

70. The President of the Republic and other high-ranking government officials periodically made public statements.<sup>28</sup> In several such statements, President Hugo Chávez has referred to the media in general and to RCTV in particular. In said statements, the President referred to them as "horsemen of the Apocalypse," "fascists," that they pursue "a terrorist campaign,"<sup>29</sup> that "they have a common agenda against the government of Venezuela, the people, the law, and the Republic," as well as referring to them as liars, evil, immoral, coup plotters, and terrorists<sup>30</sup>.

71. In a number of statements the President threatened to revoke or not renew the concessions granted to the media.<sup>31</sup>

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<sup>26</sup> Letter of April 14, 2002, to the media from the Glorious People of Venezuela; and file containing leaflets, pamphlets, and written attacks against RCTV journalists. See Annex 43.

<sup>27</sup> Testimony given by Ms. Luisiana Ríos and Mr. Armando Amaya at the public hearing held at the seat of the Inter-American Court on February 17, 2003, in the record on provisional measures being processed by the Inter-American Court. See also, Annex 40: Affidavit of May 28, 2002, of Ms. Luisiana Ríos and Affidavit of Mr. Eduardo Sapene Granier on May 27, 2002; Annex 45: complaints presented by Mr. Eduardo Sapene Granier on January 31, 2002, p. 3; Annex 66: DVD labeled "Agresiones" ["Attacks"]; Annex 46: complaint of May 6, 2002; Annex 1: brief from the RCTV attorneys alleging events that occurred on November 5, 2002; and videos contained in Annexes 71-75 of the application.

<sup>28</sup> The contents of these statements are in the public domain and may be found at several official government websites, including at [http://www.gobiernoonlinea.ve/misc-view/ver\\_alo\\_pag](http://www.gobiernoonlinea.ve/misc-view/ver_alo_pag).

<sup>29</sup> Transcriptions of the "Aló Presidente" program of January 10 and 12, 2003, and of the transcribed address of January 23, 2002 on *Cadena Nacional*. See Annex 47.

<sup>30</sup> Transcription of the "Aló Presidente" program of December 15, 2002. See Annex 47.

<sup>31</sup> In this regard, after the IACHR issued the report on merits, the President of the Republic made statements in that connection. Thus, for example, on December 28, 2006, the President of the Republic said that "there will be no new concession for that coup plotting television network that calls itself Radio Caracas Televisión;" on January 3, 2007, the President of the Republic said that RCTV "does not pass the test for renewal of a concession by a serious and responsible State committed to its people and to the respect, dignity, and freedoms of its people;" and, on January 8, 2007, the President of the Republic said "nothing and no one can prevent the decision not to renew the concession of that television network -and we all know which- from being carried out. Nothing and no one can prevent it." (See Annex 76). In that regard, on March 28, 2007, the Ministry of Popular Power for

72. On June 9, 2002, in his program "*Alo Presidente*", the President said, *inter alia*, that,

Even though they are privately owned, television and radio stations are only operating under a concession. The State is the owner [...] but that channel is like a pipe [...] along which those waves travel. The channels belong to the State and the State authorizes a group of businessmen who ask for permission to use them as operators, so that they can send images down that pipe; but the State reserves the right to grant that permission. It's like someone who wants to use a water pipe that belongs to the State to distribute water to a town, and the State gives them permission. [...] Let's suppose that [...] we give them permission to use the water pipe [...] [and] they start to poison the water [...] immediately their permission would not only be revoked, they'd also be thrown in jail. They are poisoning the people and exactly the same thing happens, it's the same logic, the same explanation with a television channel [...].<sup>32</sup>

73. On that same occasion, the President mentioned that "the media broadcast terrorist propaganda forgetting that they are only operating under a concession [...] they edit news footage to present falsehoods, invent lies, and fill people with panic and fear."<sup>33</sup>

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Telecommunications and Information Systems issued a resolution (Resolution 002 of March 28, 2007, Annex 64) by which it considered,

[...] that the Venezuelan State, in keeping with its obligation under Article 108 of the Constitution of the Bolivarian Republic of Venezuela to guarantee public television services in order to permit universal access to information, has decided, as part of the new public policy on telecommunications set down in the National Telecommunications Plan, to promote a new open television management model to coexist with the other models already in place in the country, under a public-service television approach, seeking, in this way, to foster democratization of the use of the radioelectric spectrum and plurality in the messages it contains. To that end it urgently requires a frequency in order to have an open television network with nationwide scope, such as the one that will become available upon expiration of the license of Radio Caracas Televisión RCTV, C.A.

[...] that implementation of the aforementioned new public policy on telecommunications causes the request made by Radio Caracas Televisión to lapse [...] inasmuch as the State shall reserve for the aforementioned purposes the exploitation and use of the portion of the radioelectric spectrum that RCTV shall hold in concession until May 27, 2007.

[...] that it would go against the principles of rationality and coherence to proceed to transform titles over portions of the radioelectric spectrum which the State has decided, as the owner thereof, to use and exploit itself once they become available [and]

declared

concluded the administrative procedure initiated by the request formulated by Radio Caracas Televisión on May 6, 2002, regarding the transformation of its concession, because the object of said request has lapsed. Consequently, that concession shall remain in effect until its expiration on May 27, 2007, pursuant to Article 1 of Decree 1.577, which contains the Regulations on Television and Radio Broadcasting Licenses of May 27, 1987.

<sup>32</sup> Complaint of June 19, 2002, Annex 48 and "*Aló Presidente*" program of June 9, 2002, No 107, Annex 47.

<sup>33</sup> "*Aló Presidente*" program of June 9, 2002, No 107, Annex 47. By the same token, on September 18, 2002, the President of the Republic (Transcription of the address of the President of the Republic of September 18, 2002, Annex 81) said

[i]f, they come and take photos and everything, and the cameras, and there are our compatriots, the cameramen and journalists [...] I greet them all and some of them become belligerent and give me dirty looks; they take it as if it were against them [...] One day they'll realize that it's not against them; it's against the evil that's behind

74. As a result of the statements made by the President on June 9, 2002, the following June 19 a member of the RCTV management and another person, representing the Venezuelan Television Industry Federation and the Venezuelan Chamber of Television, requested the Common Crimes Department of the Office of the Prosecutor General to order "the opening of an investigation" based on the public accusation of participation in a punishable act, in accordance with Article 290 of the Organic Code of Criminal Procedure. They also requested precautionary measures to ensure the right to freedom of expression and to inform the public about the march organized by retired members of the military, in light of the threat of revocation of the broadcasting license or imprisonment of the owners of the private networks "should they transmit the march organized by retired soldiers."<sup>34</sup>

75. Despite the foregoing, the statements about the possible revocation of the concession were repeated on several occasions. Thus, for example, on December 8, 2002, on his program "*Aló Presidente*", the President of the Republic stated that

All the private television companies, without exception, the big television networks at the service of a destabilization plan [...] are playing the same reckless, coup-plotting role as they were in April, led by people who seem to have lost all capacity for dialogue [...] for making amends, for awareness of the tremendous responsibility they have when the State grants them a concession to [...] direct or manage a television network [...] and if they engage in reckless lies, campaigns, editorializing [...] it is a frenzy of sick activity that causes serious psychological harm to the Venezuelan people [...] it is a terrorist's plan. Using all the technology at their command, their journalists, editors, production teams, because they produce, they [...] are in a laboratory, adding music, adding images, making a production and going on air and sowing alarm and outrage in a population that is sometimes defenseless, vulnerable [...] We can't permit the population to be abused like that<sup>35</sup>.

76. In those remarks, the President threatened to revoke the concessions of media organizations, saying that those abuses are committed taking advantage of a concession granted by the State.<sup>36</sup>

77. On December 15, 2002, President of the Republic said on his "*Aló Presidente*" program that

the whole world knows that the television networks: Channel 2, RCTV; 4, Venevisión; 10, Televisión; and 33, Globovisión, are united in a common

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those that manipulate and control the media in Venezuela; that's the truth. A perverse evil, a genuinely fascist, coup-plotting, perverse evil that's behind all the big media companies, television stations, newspapers, with a few exceptions [...] Everything else is worthless. Trash is what it is! Trash! Pure trash! Lies, evil, immorality, someone has to tell them [...] The truth is that all they have is trash.

<sup>34</sup> Request for precautionary measures of protection due to the threats expressed by the President in his program "*Aló Presidente*" No 107 of June 19, 2002. See Annex 49.

<sup>35</sup> Transcription of the "*Aló Presidente*" program of December 8, 2002. Annex 47.

<sup>36</sup> Transcription of the "*Aló Presidente*" program of December 8, 2002, Annex 47. See also footnote 31

agenda against the government of Venezuela. Let the whole world write that down! [...] committed to this destabilizing agenda against the country, the people, the law, and the Republic. I keep denouncing this to the country and to the whole world.<sup>37</sup>

78. On the "*Aló Presidente*" program of January 12, 2003, the President of the Republic, Hugo Chávez Frías, said, the

The same goes for these television network owners and radio station owners; they too have a concession from the State, but the signal does not belong to them. The signal belongs to the State. I want that clearly understood, I wanted it clearly understood because if the owners of these television networks and radio stations remain bent on their irrational aim to destabilize our country, to give subversion a foothold, because it is subversion, without question, [...] In this case it is fascist subversion egged on by the media, by those gentlemen whom I have mentioned and others whom I will not. So I am letting Venezuela know. I have ordered a review of all the legal procedures by which these gentlemen obtained concessions. We are reviewing them and if they do not resume their normal use, if they continue to use the concessions to try to disrupt the country, or overthrow the government, then I should be compelled to revoke their concessions to operate television networks.

[...]

Some media organization owners engage in blackmail, in lies, deceitfully, with deception; not in error, but because they are psychological warfare laboratories at the service of falsehoods, at the service of subversion, at the service of terrorism, at the service of destabilization [...] Some have set up veritable dictatorships in the companies they run [...] Any journalist who doesn't do what they're told is out. You can't even call them owners, no. They own the cameras [...] but the most important thing for a television station, the most important thing for a radio station, is the frequency, the electromagnetic spectrum [...] At some point the State gave them permission to use the Hertzian waves [...] and they may have the best journalists [...] but if the State doesn't grant them a concession signed by the State [...] by the government [...] by the President of the Republic [...] they cannot go on air [...] So, they are using the Hertzian waves, which are ours, that is to say, the State's [...] to destabilize.<sup>38</sup>

79. In addition, on his program of 12 January 2003, the President said that he had ordered

a review of all the legal procedures by which these gentlemen obtained concessions. We are reviewing them and if they do not resume their normal use, if they continue to use the concessions to try to disrupt the country, or overthrow the government, then I should be compelled to revoke their concessions to operate television networks.<sup>39</sup>

80. On August 27, 2003, the RCTV attorneys filed a complaint with the Second Public Prosecutor of the Office of the Attorney General, regarding the intensification of the strength of President Hugo Chávez Frías'

<sup>37</sup>Transcription of the "*Aló Presidente*" program of December 15, 2002, Annex 47.

<sup>38</sup> Transcription of the "*Aló Presidente*" program of January 12, 2003, Annex 47. See, also, footnote 31.

<sup>39</sup> Transcription of the "*Aló Presidente*" program of January 12, 2003, Annex 47. See, also, footnote 31.

discourse against the private television networks, in particular against RCTV and its management,

which has planted the seed of violence in a segment of the population, and directly causes intolerance and aggression toward the journalists who work there [...] creating in a segment of the population the nucleus of adverse opinion that violates the rights and guarantees recognized in the Constitution.<sup>40</sup>

81. On November 9, 2003, the President of the Republic, said the following on his program "*Aló Presidente*":

Now, I warn you, I warn you once again. Don't take this as a threat, no. I say it with respect and I say it out of duty: I will not let you do it again. And I swear it. Look, I swear it by God and on my mother that I will not permit it; I swear on my children, I swear on the children of Venezuela: if you, Globovisión, Televisión, Venevisión, and RCTV, tomorrow or the day after, I have ordered Jesse Chacón: you must have a team of analysts and observers watching all the networks simultaneously, around the clock. And we must be clear, I am clear, about the line that they must not cross, and they should know; it is the line of the law [...] The moment they cross the line of the law they will certainly be closed down to keep the peace in Venezuela, to preserve order in Venezuela [...] I don't care what they say about me tomorrow or the day after -- and they do anyway. Whatever they want to say about me, they have already said it, so they already owe me in advance. So I don't care one bit what they say tomorrow, that if some such council of the inter-American who knows what [*sic*]; that if the government of whatever... I don't care about any of it. What I care about is peace in Venezuela, the future of Venezuela, and as far as that is concerned it's Christmas for everyone.<sup>41</sup>

82. On January 12, 2004, the President of the Republic told *El Universal* newspaper

If certain television companies were to incite the people to rebellion again I'll take them away from them to [...] I've got the decree drawn up [...] all the better for me if they did because at the least sign of danger they would be under military occupation. I'd give the order, straightaway: storm it. And anyone who is inside had better watch out; if you have guns defend yourselves. But we'll be coming with guns because that is how a country defends itself.<sup>42</sup>

83. On May 9, 2004, on his program "*Aló Presidente*", the President of the Republic said,

[t]he ones who violate the right to receive and impart information, the right to freedom of expression, are the owners of the private media organizations -with some exceptions- but especially the big television networks: Venevisión, Globovisión, RCTV [...] The owners of these media organizations are committed to a coup, terrorism, and destabilization, and I can tell you

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<sup>40</sup> Complaint of August 27, 2003, to the Second Public Prosecutor of the Office of the Attorney General, Annex 2.

<sup>41</sup> Transcription of the "*Aló Presidente*" program of November 9, 2003. Available on March 19, 2007, at [http://www.gobiernoenlinea.ve/docMgr/sharedfiles/Aló\\_Presidente\\_171.pdf](http://www.gobiernoenlinea.ve/docMgr/sharedfiles/Aló_Presidente_171.pdf). Annex 47.

<sup>42</sup> Transcription of the interview given by President Hugo Chávez to *El Universal* newspaper. Available on March 19, 2007 at [http://buscador.eluniversal.com/2004/01/12/pol\\_art\\_12154A2.shtml](http://buscador.eluniversal.com/2004/01/12/pol_art_12154A2.shtml).

now, because I have no doubt, that we could well declare the owners of these media organizations enemies of the people of Venezuela.<sup>43</sup>

#### **D. The first incidents in late 2001 and early 2002**

84. The opposition to the government began to acquire a definite shape in late 2001 and its rejection was expressed socially in a national strike held on December 10 of that year.<sup>44</sup> Furthermore, the polarization of society and ill feeling toward a number of media organizations had started to become visible.

85. On December 17, 2001, individuals who supported the government attacked the reporter Luisiana Ríos as she was covering a ceremony to be held by President Hugo Chávez at the National Pantheon in honor of Simón Bolívar the Liberator. On that occasion, a woman attempted to strike the journalist as she was reporting the news and, in that aggressive situation, another member of the public started to chase her with a stick. Due to the hostility of the environment for the reporter, she had to be escorted from the scene by military police.<sup>45</sup>

86. On January 20, 2002, the reporter Luisiana Ríos, camera operator Luis Augusto Contreras, and camera assistant Armando Amaya had been assigned to cover the program "*Aló Presidente*" transmitted from Cajigal Observatory. On that occasion, their work was obstructed by a group of individuals sympathetic to the government who rushed up to the team from the program *El Observador* and, screaming insults, prevented the reporter from entering the place where the President of the Republic was going to host the radio program. The RCTV reporter, Luisiana Ríos, had to remove her microphone and the network logo and keep the camera hidden "to prevent them from being identified and to be able to pass" through the crowd into the Observatory. One of the leaders of the group recognized Luisiana Ríos as an RCTV journalist and told her that she could not go in because she was "a hack for hire who did not tell the truth," prompting the people there to shout abuse at them and shove them.<sup>46</sup> Subsequently, in light of the hostility from those people, officials from the *Casa Militar* (Presidential Guard) helped the crew to get away from the place. Luisiana Ríos, Augusto Contreras, and Armando Amaya were unable to complete the assignment given to them by their supervisors because of the risk that something might happen to them.

87. The Inter-American Commission was informed of the events that occurred from December 2001 to January 29, 2002, and requested the

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<sup>43</sup> Transcription of "*Aló Presidente*" program #191 of May 9, 2004, available on March 19, 2007, at [http://www.minccl.gov.ve/aló-presidente/16/6647/alopresidente\\_n191.html](http://www.minccl.gov.ve/aló-presidente/16/6647/alopresidente_n191.html). Annex 47.

<sup>44</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 76.

<sup>45</sup> Complaint lodged by Mr. Eduardo Sapene Granier on January 31, 2002, p. 3, Annex 45; testimony of Ms. Luisiana Ríos to the Inter-American Court at the public hearing held on February 23, 2003; Affidavit of Ms. Luisiana Ríos of May 28, 2002, Annex 40; DVD labeled "*Agresiones a periodistas*" ["Attacks on journalists"], Annex 67.

<sup>46</sup> Complaint lodged by Mr. Eduardo Sapene Granier on January 31, 2002, Annex 45; testimony of Luisiana Ríos and Armando Amaya to the Inter-American Court at the public hearing held on February 23, 2003; Affidavit of Ms. Luisiana Ríos of May 28, 2002, Annex 40.



State to adopt precautionary measures in favor of Luisiana Ríos, Luis Augusto Contreras, Armando Amaya, and Eduardo Sapene Granier (*supra*, par. 35).<sup>47</sup>

88. On January 31, 2002, Mr. Eduardo Sapene Granier filed a complaint with the Public Prosecutor of the Superior Court of the Judicial District of the Metropolitan Area of Caracas, alleging that the

events described [concerning the attacks of January 20, 2002 on Luisiana Ríos' news team] are grounds to presume the commission of a publicly actionable offence [...] under Article 176 of the [Criminal Code], to the detriment of the reporters who work for RCTV.<sup>48</sup>

89. The complaint also offered evidence and requested that an investigation be opened "since the individuals who threatened and attacked [his] employees can be located and identified from the video, and in accordance with the precautionary protection [...] adopted by the [...] Inter-American Commission [...]."<sup>49</sup> That complaint was assigned to the Second and Seventy-Fourth Public Prosecutors for the Metropolitan Area of Caracas.<sup>50</sup> Various other attacks on RCTV journalists were also denounced in the framework of the proceedings in this case.<sup>51</sup> For their part, Luisiana Ríos, Luis Contreras, Armando Amaya, and others gave testimony to the aforementioned prosecutors.<sup>52</sup>

90. On March 15, 2002, in response to a request for protective measures made on March 12, 2002, by the RCTV attorneys, and based on the decision of the Commission on precautionary measures of January 29, 2002, the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas decided to order protection measures in favor of Luisiana Ríos, Luis Augusto Contreras Alvarado, Armando Amaya, and other journalists and technicians attached to RCTV, and also in favor of Eduardo Sapene. Those domestic precautionary measures were later confirmed and expanded in favor of all RCTV technical staff, journalists, reporters, and management, as well as to the RCTV network headquarters.<sup>53</sup>

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<sup>47</sup> Request for adoption of precautionary measures of January 30, 2002. Annex 50.

<sup>48</sup> Complaint lodged by Mr. Eduardo Sapene Granier on January 31, 2002, p. 4, Annex 45.

<sup>49</sup> Complaint lodged by Mr. Eduardo Sapene Granier on January 31, 2002, p. 4, Annex 45.

<sup>50</sup> Communication of February 13, 2002, from the Prosecutor General to the State Representative on Human Rights and Letter from Echeverría law firm of May 3, 2002. Annex 51.

<sup>51</sup> Complaint of July 12, 2002 for threats to Ms. Lina Ron, Annex 3; Complaint filed with the Superior Court of Justice on August 14, 2002, for attacks against RCTV journalists on July 31, 2002, Annex 4; complaint filed on August 20, 2002 for attacks in August 2002 on Laura Castellanos, David Pérez Hansen, and Argenis Uribe, Annex 5.

<sup>52</sup> Letter from Echeverría law firm of May 3, 2002, and brief of the State of October 8, 2003, Annex 52.

<sup>53</sup> Request for precautionary protection measures of March 12, 2002, presented to the Offices of the Second and Seventy-Fourth Public Prosecutors, Annex 53; Decision of the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas of March 15, 2002, Annex 54; Official Letter 199-02 from the Thirty-Fifth Trial Court, Annex 55; Letter from Echeverría law firm of May 3, 2002, Annex 52; Summary of facts contained in the decision to ratify protection measures of May 6, 2004, of the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas; Brief of the RCTV attorneys of July 9, 2002, Annex 6; Decision to expand protection measures of the Thirteenth Oversight Court of the Trial Court of

91. During this period, the RCTV management received official letters from the National Telecommunications Commission (CONATEL) concerning the content of a news program called "*La Entrevista en el observador*" and RCTV's alleged violation of legal standards in force in Venezuela. Specifically, in January and February 2002, against a backdrop of intimidation and harassment directed at journalists of RCTV and the aforesaid program, CONATEL sent the network's President three official letters. In them, in the interests of the protection of children and reserving the right to such legal action as might be appropriate, it questioned the transmission of the program "*La entrevista en el observador*," which presented topics such as: "Bolivarian Circles. Do they cause conflict?", "Does the Government provoke violence with the media?", and "Journalists Say Enough Is Enough." The official letters mentioned that those transmissions broadcast images of confrontations between several persons and acts of violence in the streets, as well as attacks on media workers.<sup>54</sup>

## **E. Incidents in 2002**

### **1. The events of April 2002 connected with the RCTV network and its employees**

92. As mentioned (*supra*, par. 57), several events occurred between April 9 and 11, 2002, in which the opposition called for the resignation of the President of the Republic.<sup>55</sup> As a result of those events, in April 2002, tragic incidents of violence occurred that produced many deaths and injuries, an attack on the constitutional government by means of a coup d'état, and the subsequent restoration of constitutional order.<sup>56</sup>

93. The media were largely critical of the government<sup>57</sup> and some media organizations in Venezuela even adopted a tendentious position, reflecting the extreme polarization of the country.<sup>58</sup> An example of the foregoing was the limitation and, at times, complete absence of information available to Venezuelan society during the days of institutional crisis in April 2002.

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the Criminal Court Circuit of the Metropolitan Area of Caracas of April 11, 2002, Annex 8; Brief of March 21, 2003, to the Second Public Prosecutor of the Office of the Attorney General, Annex 9; Decision to ratify of August 19, 2003, Annex 10; Decision of the Second Chamber of the Court of Appeals of the Criminal Court Circuit of the Metropolitan Area of Caracas, Annex 11; Communication of August 12, 2004, from the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas, Annex 12; Letter from the General Manager of RCTV of January 26, 2005, to the Chief of Rafael Urdaneta Police Station, Annex 13.

<sup>54</sup> Copies of 26 official letters received by RCTV in connection with the program "*La Entrevista en el Observador*"; Two official letters of January 28, 2002 and one of February 14, 2002; and the reply of the president of RCTV to the observations and comments of CONATEL, Annex 56.

<sup>55</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 79.

<sup>56</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 81.

<sup>57</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 372; Annual Report of the IACHR. 2004. Chapter V. Follow-Up on Recommendations. Venezuela, par. 274.

<sup>58</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 373.

94. RCTV broadcasting stations were the object of interruptions by the State on a number of occasions.<sup>59</sup> As a result, on April 8 and 9, 2002, RCTV had to transmit

successive and interspersed remarks and speeches by different government entities, such as the Mayor of the Capital District, the Minister of Labor, the Commander-in-Chief of the Armed Forces [...], the Minister of Defense, the Minister of Education, the President of Petróleos de Venezuela S.A. (PDVSA), the Governor of the State of Cojedes, the President of FEDEPETROL, and representatives of different transport workers unions, who, in exercise of the prerogative recognized in Article 192 of the Organic Law on Telecommunications, caused those transmissions of approximately 20 minutes each to be broadcast successively and in an uninterrupted and interspersed manner with an interval of some 40 to 60 minutes between each one, by different television and radio companies from yesterday, Monday, April 8, 2002, at approximately 2:30 in the afternoon, until today, April 9, 2002, making official speeches and transmissions, and given the also widely known fact of the call for a general strike made by the Venezuelan Workers Confederation (CTV), which was publicly backed by the Federation of Chambers of Commerce of Venezuela (Fedecámaras) [...] <sup>60</sup>.

95. RCTV requested a judicial inspection to verify that the network had indeed broadcast the aforementioned remarks and speeches; however, the Sixth Trial Court for Civil, Commercial, and Traffic Matters of the Judicial District of the Metropolitan Area of Caracas ruled that said broadcasts were common knowledge that required no proof.<sup>61</sup>

96. On April 10, 2002, agents of the Directorate of Intelligence and Prevention Services (DISIP) and of the *Casa Militar* (Presidential Guard) presented themselves at RCTV broadcast facilities at Los Mecedores Station with the "order that if they saw the screen split on a presidential channel they were to shut down the signal."<sup>62</sup> In light of this situation, the RCTV attorney requested judicial and extrajudicial visual inspections to make an official record of the condition of the antennae and other facilities belonging to RCTV at that station.<sup>63</sup> None of those inspections could be carried out because the members of the security forces who were at Los Mecedores Station barred entry to the station.<sup>64</sup>

97. On April 11, 2002 the broadcast signal of the private networks was interrupted while the State network signal continued to be transmitted. The Fourth Municipal Court of the Judicial District of the Metropolitan Area of Caracas conducted a judicial inspection at the request of the RCTV

<sup>59</sup> Brief of the RCTV attorneys denouncing the events of November 5, 2002, Annex 1.

<sup>60</sup> Decision of April 19, 2002, of the Sixth Trial Court for Civil, Commercial, and Traffic Matters of the Judicial District of the Metropolitan Area of Caracas, Annex 57.

<sup>61</sup> Decision of April 19, 2002, of the Sixth Trial Court for Civil, Commercial, and Traffic Matters of the Judicial District of the Metropolitan Area of Caracas, Annex 57.

<sup>62</sup> Witness testimony of Rafael Antonio Lorca submitted before the Office of the Third Notary Public of the Municipality of Chacao on April 11, 2002, Annex 58.

<sup>63</sup> Judicial inspection of the Fourth Municipal Court of the Judicial District of the Metropolitan Area of Caracas of April 10, 2002, and Extrajudicial visual inspection conducted by the Third Notary Public of the Municipality of Chacao, Annex 44.

<sup>64</sup> Judicial inspection of the Fourth Municipal Court of the Judicial District of the Metropolitan Area of Caracas of April 10, 2002, and Extrajudicial visual inspection conducted by the Third Notary Public of the Municipality of Chacao, Annex 44.

attorney to officially record which national television stations were transmitting their signal. It was officially recorded in that inspection that "there was no image or sound" on the RCTV channel, Channel 2.<sup>65</sup>

98. On April 13, 2002, activities in the RCTV network headquarters proceeded amid great tension and suspicious movements of individuals in its vicinity. In spite of the fact that the building was guarded by five members of the Metropolitan Police, at one point an individual fired two shots into the air and caused a stampede of people toward the network building.<sup>66</sup>

99. In the course of the day different groups of persons approached the network headquarters shouting, and from the morning until midnight the RCTV building was the target of a series of attacks by motorized groups of supporters of President Chávez.<sup>67</sup> In this way, at around 1 p.m., part of the RCTV production staff left the building, where approximately 100 persons remained, including Mr. Eduardo Sapene Granier (Vice President for Information and Special Programs). A request was sent for "armed assistance to [...] Commanders of the Metropolitan Police and National Guard." "[T]he members of the Metropolitan police assigned to the network [...] went away from the building at the height of the violence without offering an explanation."<sup>68</sup>

100. At around 4 p.m., the demonstrators outside the network headquarters caused damage to the glass facade of the building with a blunt instrument. It was not until approximately 7 p.m. that a motorized squadron of the Metropolitan Police appeared to provide protection, with National Guardsmen of the 54th Mobile Detachment arriving thereafter.<sup>69</sup>

101. At around 8 p.m. a group of soldiers from the *Casa Militar* armed with shoulder weapons arrived at the network headquarters. Two members of the group asked to see the executives in charge, saying they wanted "to do a live interview". Eduardo Sapene Granier had to "turn off the RCTV signal and transmit the State network signal instead."<sup>70</sup>

102. Following the acts of violence perpetrated on April 13, 2002, Mr. Eduardo Sapene Granier ordered various expenditures to increase the security of RCTV employees because their work was exposing them to risk. Accordingly, RCTV purchased bullet-proof vests, helmets, and gas masks for its workers. Also "a metal-clad double wall was built to strengthen

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<sup>65</sup> Judicial inspection of April 11, 2002, Annex 44.

<sup>66</sup> Video entitled "*Vándalos En la Sede de RCTV el 13/04/02*", Annex 70; Complaint of May 6, 2002, Annex 46, and written statement given by Mr. Eduardo Sapene on May 27, 2002, Annex 40.

<sup>67</sup> Video entitled "*Vándalos En la Sede de RCTV el 13/04/02*", Annex 70; Complaint of May 6, 2002, Annex 46, and written statement given by Mr. Eduardo Sapene on May 27, 2002, Annex 40.

<sup>68</sup> Video entitled "*Vándalos En la Sede de RCTV el 13/04/02*", Annex 70; Complaint of May 6, 2002, Annex 46, and written statement given by Mr. Eduardo Sapene on May 27, 2002, Annex 40.

<sup>69</sup> Video entitled "*Vándalos En la Sede de RCTV el 13/04/02*", Annex 70; Complaint of May 6, 2002, Annex 46, and written statement given by Mr. Eduardo Sapene on May 27, 2002, Annex 40.

<sup>70</sup> Video entitled "*Vándalos En la Sede de RCTV el 13/04/02*", Annex 70; Complaint of May 6, 2002, Annex 46, and written statement given by Mr. Eduardo Sapene on May 27, 2002, Annex 40.

resistance against future attacks " and several of the network building's doors were repaired.<sup>71</sup>

103. On May 6, 2002, the attorney representing the RCTV management and several of its journalists filed a complaint with the Superior Court Prosecutor of the Judicial District of the Metropolitan Area of Caracas which, *inter alia*, contained a description of the events of April 13, 2002. The complaint requested that an investigation be ordered pursuant to Article 283 of the Organic Code of Criminal Procedure, "and that all the necessary steps be taken to collect evidence of the above-described events." It also requested that 21 persons "employed at RCTV" be summonsed to testify. The Offices of the Second and Seventy-Fourth Public Prosecutors of the Metropolitan Area of Caracas were assigned to open a preliminary inquiry into the case.<sup>72</sup>

104. On May 29, 2002, the RCTV attorneys submitted a brief to the Second and Seventy-Fourth Public Prosecutors of the Judicial District of the Metropolitan Area of Caracas, attaching evidence and reiterating the aforementioned offer of the testimony of employees who were at the network headquarters at the time of the events of April 13. The brief also requested the deposition of "the clearly identifiable individual on the video footage, who broke the glass on the facade" of the network headquarters on the day of the attacks in question.<sup>73</sup>

## **2. The events during news coverage by RCTV reporting teams on the streets in March, April, and May 2002**

105. On March 12, 2002, the reporters Javier García, Isnardo Bravo, and David Pérez Hansen reported to the Office of the Prosecutor General the attacks that they had suffered in the vicinity of the Universidad Central de Venezuela as they covered the events concerning the presence of persons identified as *Tomistas* in the University Council Chamber and during the news coverage of the people's courts led by the lawyer of one of the leaders of the Bolivarian Circles. Some of the assailants in those attacks were identified as members of a pro-government group.<sup>74</sup>

106. On April 3, 2002, Isnardo Bravo, Wilmer Marcano, and Winston Gutiérrez were attacked by unidentified assailants at the headquarters of the Social Security Institute. Unidentified citizens also threatened to beat them with chains while they were covering a demonstration. On April 4, 2002, Messrs. Bravo, Marcano, and Gutiérrez appeared before the Second

<sup>71</sup> File of the Office of the Vice President for Administration and Finance of RCTV, Annex 59; RCTV purchase invoices, Annex 60, and Affidavit of Mr. Eduardo Sapene Granier of May 27, 2002, Annex 40.

<sup>72</sup> Complaint of May 6, 2002, Annex 46, and brief prepared by Echeverría & Asociados law firm, Annex 61.

<sup>73</sup> Brief of May 29, 2002, presented by the RCTV attorneys to the Second and Seventy-Fourth Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, Annex 62.

<sup>74</sup> Letter from Echeverría & Asociados law firm of May 3, 2002, Annex 52; and DVD entitled "Agresiones a Periodistas" [Attacks on Journalists], Annex 67.

and Seventy-Fourth Public Prosecutors to testify on the incidents that occurred at the Social Security Institute.<sup>75</sup> They filed a complaint that is not being processed jointly with the action brought by Mr. Sapene but is the subject of a separate complaint presented by another network that was attacked on the same day.<sup>76</sup>

107. On April 10, 2002, correspondent Isabel Mavarez, an RCTV production coordinator, was assaulted by an unidentified person as she covered the news at the PDVSA headquarters in Chuao. Ms. Mavarez was injured when a blunt object was thrown and struck her face. She was immediately taken to La Floresta where she received medical assistance.<sup>77</sup>

108. On April 10, 2002, in light of the acts of violence perpetrated against RCTV journalists, in particular against the correspondent Isabel Mavarez, the RCTV attorneys asked the Office of the Second Public Prosecutor of the Metropolitan Area of Caracas to request that the precautionary measures issued on March 15, 2002, in favor of all RCTV representatives, property, and facilities, be expanded and their compliance made mandatory for all state security forces, whether at the national, state, or municipal level, including the National Guard.<sup>78</sup>

109. That day, the RCTV attorneys also presented the preliminary medical report on Isabel Mavarez and requested the Second and Seventy-Fourth Public Prosecutor's Office to order the forensic medicine division of the Penal and Criminal Scientific Investigations to conduct a medical examination of the correspondent.<sup>79</sup>

110. On April 11, 2002, the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas, at the request of the RCTV attorneys and the Second Public Prosecutor's Office of the Office of the Attorney General of the Metropolitan Area of Caracas, ordered the previously issued precautionary measures to be expanded.<sup>80</sup>

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<sup>75</sup> Request of the beneficiaries for precautionary measures of February 28, 2003, Annex 82.

<sup>76</sup> Petition of July 23, 2002, p. 26, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>77</sup> Complaint of May 7, 2002 presented by the RCTV attorneys to the Second and the Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, concerning the acts of violence against Isabel Mavarez, Annex 14; Brief of the RCTV attorneys providing a copy of entry 4911 of the Forensic Medicine Division of the Penal and Criminal Scientific Investigations Corps on Isabel Mavarez, Annex 15, and Brief of the RCTV attorneys to the Second and the Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas to which they attach the Emergency Medical Report of La Floresta Medical Institute of April 9, 2002, concerning the examination of Isabel Mavarez for the injuries sustained on April 9, 2002, Annex 16.

<sup>78</sup> Request for expansion of protection measures of April 10, 2002 presented by the RCTV attorneys, Annex 17.

<sup>79</sup> Request for expansion of protection measures of April 10, 2002 presented by the RCTV attorneys, Annex 17, and Brief of the RCTV attorneys to the Second and the Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas to which they attach the Emergency Medical Report of La Floresta Medical Institute of April 9, 2002, concerning the examination of Isabel Mavarez for the injuries sustained on April 9, 2002, Annex 16.

<sup>80</sup> Decision to expand protection measures of the Thirteenth Oversight Court of the Trial Court of the Criminal Court Circuit of the Metropolitan Area of Caracas of April 11, 2002, Annex 8.

111. On April 18, 2002, reporter Luisiana Ríos was verbally abused by a captain of the Venezuelan army at Miraflores Presidential Palace. Ms. Ríos reported the abuse to one of the officer's immediate superiors in the Honor Guard at Miraflores Palace and an official record was made of the incident.<sup>81</sup> A brief in connection with this incident was sent to the Second and the Seventy-Fourth Public Prosecutors.<sup>82</sup>

112. The camera operator Argenis Uribe reported that on April 19, 2002, he was beaten and verbally abused by members of the Highway Brigade (VIVEX in Spanish) of the Ministry of infrastructure when he identified himself as an RCTV employee after they stopped him.<sup>83</sup> In addition, the Second and Seventy-Fourth Public Prosecutors for the Metropolitan Area of Caracas ordered a forensic medical examination.<sup>84</sup>

113. On May 2, 2002, reporter Luisiana Ríos was threatened by members and supporters of the government party as she was covering the impeachment of Mr. Pedro Carmona in the Venezuelan parliament.<sup>85</sup> The persons who threatened her continued to circle the Legislative Palace so that Ms. Ríos was unable to leave the building for more than three hours because she feared for her safety. She asked National Guard members who were present to help her leave the building but they refused to intervene. Eventually she was escorted away from the place by the Metropolitan Police.<sup>86</sup>

114. A complaint was presented on May 7, 2002 in connection with the acts of violence against Ms. Isabel Mavarez.<sup>87</sup> The complaint was taken up by the Second and Seventy-Fourth Public Prosecutors Office, which ordered a forensic medical examination.<sup>88</sup> The lawyers representing the RCTV journalists submitted a brief in which they said that the Forensic Medicine Division of the Penal and Criminal Scientific Investigations Corps

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<sup>81</sup> Letter from Echeverría law firm of May 3, 2002, Annex 52, and Testimony of Ms. Luisiana Ríos at the public hearing held at the seat of the Inter-American Court on February 17, 2003.

<sup>82</sup> Petition of July 23, 2002, p. 26, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>83</sup> Brief of the State of October 8, 2003, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights; Request for provisional measures presented to the Inter-American Court of Human Rights on November 27, 2002, Annex 83.

<sup>84</sup> Request of the beneficiaries for precautionary measures of February 28, 2003, Annex 82.

<sup>85</sup> Testimony of Ms. Luisiana Ríos at the public hearing held at the seat of the Inter-American Court on February 17, 2003.

<sup>86</sup> Affidavit of May 28, 2002, of Ms. Luisiana Ríos, Annex 40.

<sup>87</sup> Complaint of May 7, 2002 presented by the RCTV attorneys to the Second and the Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, concerning the acts of violence against Isabel Mavarez, Annex 14.

<sup>88</sup> Letter from Echeverría law firm of May 3, 2002, Annex 52; Brief of the RCTV attorneys providing a copy of entry 4911 of the Forensic Medicine Division of the Penal and Criminal Scientific Investigations Corps on Isabel Mavarez, Annex 15; and Brief of the RCTV attorneys to the Second and the Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas to which they attach the Emergency Medical Report of La Floresta Medical Institute of April 9, 2002, concerning the examination of Isabel Mavarez for the injuries sustained on April 9, 2002, Annex 16.

stated that the results of the forensic medical examination could only be removed by persons affiliated with the Public Prosecutor's Office.<sup>89</sup>

115. On May 24, 2002, a group of government supporters who were holding a demonstration outside the National Assembly verbally abused RCTV reporter Isnardo Bravo, shouting expressions such as "Out! We're going to lynch you, you bastard!" [*"fuera. Te vamos a linchar, maldito"*] and warning him to get ready for what was to come.<sup>90</sup>

116. On May 28, 2002, reporter Luisiana Ríos denounced to the Office of the Mayor of the Metropolitan District of Caracas that as a result of practicing her profession she had received threats outside her home, telling her to move away or a local Bolivarian Circle would be informed of her presence. She also reported numerous damages to her vehicle.<sup>91</sup>

117. On June 12, 2002, the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas decided "to broaden the protective measures ordered on March 15, 2002, in favor of Luisiana Ríos, Luis Augusto Contreras Alvarado, Armando Amaya and other journalists and technicians attached to Radio Caracas Television Network, and also in favor of Eduardo Sapene Granier, as Vice President for Information and Opinion of RCTV), and in favor of the employees and facilities of *Empresa Radio Caracas Radio, Emisora 92.9*."<sup>92</sup>

### **3. Events during the coverage of the Supreme Tribunal of Justice decision in the trial of military personnel for rebellion and in the National Assembly. July and August 2002**

118. On July 31, 2002, followers of President Hugo Chávez Frías and members of the opposition gathered outside the gates of the Supreme Tribunal Justice of Venezuela where a plenary session was to be held to discuss the indictment presented by the Prosecutor General against general officers and admirals charged with military rebellion. By a vote of 12 to eight the aforementioned Tribunal rejected the indictment for institution of proceedings for military rebellion.

119. While covering the news in the vicinity of the Supreme Tribunal of Justice unidentified persons verbally abused journalists Isnardo Bravo, Wilmer Marcano, and Winston Gutiérrez, telling them, *inter alia* that they

<sup>89</sup> Complaint of May 7, 2002 presented by the RCTV attorneys to the Second and the Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, concerning the acts of violence against Isabel Mavarez, Annex 14.

<sup>90</sup> Brief of August 8, 2003, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>91</sup> Record of complaint 272 of May 28, 2002, presented to the Second Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas by Luisiana Ríos, Annex 18, and Complaint of June 5, 2002, presented to the Second Prosecutor of the Office of the Attorney General by the RCTV attorneys, Annex 19.

<sup>92</sup> Decision to expand protection measures of June 12, 2002 issued by the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas, Annex 20.



were going to kill them. Acts of vandalism were also committed as the media workers were insulted by their assailants; two RCTV vehicles that were parked near the tribunal were scratched, their windows broken, and their tires punctured. In the afternoon of that same day (July 31, 2002) one of the RCTV vehicle was set on fire when a teargas grenade was thrown into it.<sup>93</sup>

120. On August 13, 2002, reporter Laura Castellanos was verbally abused by supporters of President Chávez who were members of a pro-government group, as she was covering a session of parliament at the National Assembly. Her assailants sought to prevent her from carrying out her professional duties.<sup>94</sup>

121. On August 15, 2002, RCTV cameraman Antonio Monroy sustained a gunshot wound to his leg outside the Superior Tribunal of Justice as he was covering the outcome of the preliminary hearing on merits in the trial of members of the military. Mr. Monroy underwent a surgical operation under general anesthetic, an aluminum splint was fitted, and he was issued crutches. On September 9, 2002, he was examined by the doctor who told him that he would be able to go back to work in two weeks.<sup>95</sup>

122. August 15, 2002, camera operator Argenis Uribe was riding a motorcycle on his way to cover the protests at the decision of the Supreme Tribunal Justice to acquit the members of the military accused of rebellion. Upon seeing him, a group of government sympathizers blocked the road and pushed him off the motorcycle. They took away the camera and threatened to kill him and beat him up. Some hours later the camera was delivered to the National Assembly by a Chávez follower. On that occasion, the lawyers requested that statements be taken from the persons involved.<sup>96</sup>

123. On the same day that the camera operator Argenis Uribe was attacked (August 15, 2002), reporter Pérez Hansen was insulted and verbally abused by supporters of President Chávez, who also shoved, struck, and "physically harassed" him, as well as attempting to rob him, while he was covering statements given by the Vice President. The situation caused the National Guard to circle the crew; however, this did not prevent the attempts to lynch the journalist from continuing. The incident

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<sup>93</sup> Brief of August 8, 2003, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>94</sup> Brief of August 8, 2003, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights and Complaint presented by the RCTV attorneys to the Second Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas on August 20, 2002 for attacks on Laura Castellanos, David Pérez Hansen, and Argenis Uribe, Annex 5.

<sup>95</sup> Video labeled "Camarógrafo lesionado" [Wounded cameraman] (Monroy), Annex 69, and Medical report on Mr Antonio Monroy of September 9, 2002, Annex 21.

<sup>96</sup> Complaint presented by the RCTV attorneys to the Second Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas on August 20, 2002 for attacks on Laura Castellanos, David Pérez Hansen, and Argenis Uribe, Annex 5, and Brief of August 8, 2003, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

was reported to the public prosecutor's office charged with investigating the threats against RCTV journalists.<sup>97</sup>

124. On August 20, 2002, the lawyers for the RCTV journalists filed a complaint with the Second Public Prosecutor of the Attorney General of the Judicial District of the Metropolitan Area of Caracas "for the latest attacks suffered by RCTV employees between August 13 and 15, 2002, namely: Laura Castellanos, David Pérez Hansen and Argenis Uribe."<sup>98</sup>

#### **4. Other incidents during coverage of other demonstrations. November and December 2002**

125. On November 12, 2002, camera assistant Armando Amaya, reporter Pedro Nikken, and camera operator Luis Contreras were covering the violent incidents involving the so-called *tomista* Metropolitan Police, who had occupied the Metropolitan Police facilities in protest against the Metropolitan Mayor.<sup>99</sup> Mr. Armando Amaya sustained a gunshot wound to the back of his right thigh as he was filming these events.<sup>100</sup>

126. A complaint in connection with the incident which directly affected the physical well-being of Mr. Amaya was filed on November 21, 2002. As part of the investigations a planimetric and ballistic study of the events was carried out, witnesses were deposed, a medical forensic examination was conducted, and photographs and video footage were collected. The public prosecutor's office assigned has yet to report its conclusions.<sup>101</sup>

127. On December 2, 2002, a national civic strike was called by *Coordinadora Democrática*, an umbrella political movement for the different sectors of the opposition, the Confederation of Workers of Venezuela and

<sup>97</sup> Complaint presented by the RCTV attorneys to the Second Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas on August 20, 2002 for attacks on Laura Castellanos, David Pérez Hansen, and Argenis Uribe, Annex 5, and Brief of August 8, 2003, p. 13, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>98</sup> Complaint presented by the RCTV attorneys to the Second Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas on August 20, 2002 for attacks on Laura Castellanos, David Pérez Hansen, and Argenis Uribe, Annex 5.

<sup>99</sup> Complaint of November 21, 2002, for attacks on Armando Amaya, Pedro Nikken, and Luis Contreras, presented to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, Annex 22; Press article entitled "*Violencia Política. Desalojo de policías tomistas provocó caos y vandalismo. Un muerto y 35 heridos en disturbios*" [Political violence. Eviction of *tomista* policemen led to chaos and vandalism. One dead and 35 injured in disturbances], Annex 63 Testimony of Mr. Armando Amaya at the public hearing held at the seat of the Inter-American Court on February 17, 2003.

<sup>100</sup> Medical report on Mr. Armando Amaya issued on November 19, 2002, by the medical director of Administradora Rescarven C.A., Annex 23; Complaint of November 21, 2002, for attacks on Armando Amaya, Pedro Nikken, and Luis Contreras, presented to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, Annex 22, and Testimony of Mr. Armando Amaya at the public hearing held at the seat of the Inter-American Court on February 17, 2003.

<sup>101</sup> Complaint of November 21, 2002, for attacks on Armando Amaya, Pedro Nikken, and Luis Contreras, presented to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, Annex 22, and Testimony of Mr. Armando Amaya at the public hearing held at the seat of the Inter-American Court on February 17, 2003.

*Fedecámaras*. The move was taken with the declared intent of pressing the government to seek an electoral solution to the Venezuelan crisis through a "consultative" referendum on whether or not President Hugo Chávez should stay in office in February 2003, with a view to holding subsequent elections as appropriate. The strike was also called to denounce the militarization and takeover of the country's principal cities by the Metropolitan Police.<sup>102</sup>

128. On December 4, 2002, reporter Erika Paz and cameraman Samuel Sotomayor received death threats. They were also insulted, physically assaulted, and had cameras and other journalistic equipment destroyed by private citizens sympathetic to the government, as they were covering a demonstration. The regional police set up a security cordon between the opposing bands.<sup>103</sup> At other times other journalists were also verbally attacked, such as, for example, on December 8, 2002, when Anahís Cruz and Herbigio Henríquez were verbally abused by private citizens as they were covering a strike by the "Tomas Quiara" transport company.<sup>104</sup>

#### **F. Incidents in 2003**

129. On January 27, 2003, reporter Anahís Cruz was the victim of verbal abuse from an army major-general at a press conference at Paramaconi Barracks in Maracay, Aragua State. The general had the aforementioned reporter forcibly removed from the press conference and barred entry because he did not give statements to coup plotters.<sup>105</sup>

130. On March 21, 2003, as a result of the decision of the IACHR of March 17, 2003, to expand the precautionary measures of March 17, 2003, to include certain other persons, the attorneys of Sociedad Mercantil "RCTV C.A." requested the Second Public Prosecutor of the Office of the Attorney General, Judicial District of the Metropolitan Area of Caracas to take the necessary steps to ensure that the Thirteenth Court of First Instance with oversight functions of the Criminal Court Circuit of the Metropolitan Area of Caracas ordered precautionary measures in favor of Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Luis Augusto Contreras, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Wiston Gutiérrez, Isabel Mavarez and Eduardo Sapene, all of whom are RCTV employees.<sup>106</sup>

131. On July 5, 2003, a squad of army personnel occupied the television broadcasting station located in the Mecedores sector and barred entry to the technical staff who worked there because the executive branch feared the blocking of the source television signal. At the time *Cadena*

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<sup>102</sup> IACHR, Report on the Situation of Human Rights in Venezuela 2003, par. 115.

<sup>103</sup> Request of the beneficiaries for precautionary measures of February 28, 2003, Annex 82.

<sup>104</sup> Brief of August 8, 2003, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>105</sup> Brief of August 8, 2003, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>106</sup> Brief of March 21, 2003, presented by the RCTV attorneys to the Second Public Prosecutor of the Office of the Attorney General, Annex 25.

*Nacional* was due to broadcast the acts commemorating the signing of the Declaration of Independence from Paseo Los Próceres. The 32nd National Public Prosecutor and the 126th Public Prosecutor for the Metropolitan Area presented themselves at the broadcasting station and drew up an official record of the violations of the precautionary measures ordered.<sup>107</sup>

132. On August 5 and 15, 2003, the RCTV attorneys wrote to the Second Public Prosecutor of the Metropolitan Area of Caracas in order to provide an account of acts that could constitute crimes, direct attacks, and violations of constitutional guarantees, such as freedom of expression and the right to receive and impart information, and violation of the precautionary measures issued at the domestic and international level in favor of RCTV. All of the foregoing was in connection with statements of the President of the Republic, with the withdrawal of National Guard members who were protecting the RCTV facilities, and the violent demonstrations that took place on August 14 at those facilities. They also requested that all necessary steps be taken to collect evidence relating to the incidents and to determine the responsibility of the persons involved.<sup>108</sup>

133. On August 14, 2003, another a large group of pro-government supporters presented themselves at the RCTV headquarters and proceeded to stage a violent demonstration and write insults on the building's façade.<sup>109</sup>

134. The next day, August 15, 2003, a judicial inspection of the RCTV building was carried out, during which graffiti containing statements such as: "RCTV, fascist misinformers" [*RCTV, comunicadores fascista*] and "Long live Chávez, No to media violence" [*Viva Chávez, no a la violencia mediática*] was noted.<sup>110</sup>

135. On August 19, 2003, the news team from RCTV's "El Observador" program, composed of reporter Pedro Nikken and cameraman Carlos Colmenares, was covering a rally referred to as "El Cohetazo" near "Las Acacias", a residential development in Caracas. A police squad from the Office of the Mayor of Libertador Municipality proceeded to quell and break up the rally, firing teargas and pellets. That night there was an

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<sup>107</sup> Brief of the RCTV attorneys July 9, 2003, to the Second and the Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, Annex 7, and Official record of July 5, 2003, issued by the Thirty-Second National Public Prosecutor and the One Hundred and Twenty-Sixth Public Prosecutor for the Metropolitan Area of Caracas, in accordance with the orders of the Director of Protection of Fundamental Rights in connection with the occupation of the Mecedores Station by army personnel, Annex 26.

<sup>108</sup> Brief of August 5, 2003, by which the RCTV attorneys present a complaint to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, Annex 27, and Brief of August 15, 2003, by which the RCTV attorneys present a complaint to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas Annex 28.

<sup>109</sup> Complaint of August 26, 2003, presented by the RCTV attorneys to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, Annex 32.

<sup>110</sup> Judicial inspection of August 15, 2003, ordered and conducted by the Sixth Trial Court for Civil, Commercial, and Traffic Matters of the Judicial District of the Metropolitan Area of Caracas, Annex 29.

exchange of fire with the municipal police.<sup>111</sup> Carlos Colmenares was wounded by pellets in his arm and right leg. This was the second time that a member of Pedro Nikken's news team had been wounded by gunfire (*supra* par. 125).

136. On August 26, 2003, the attorneys representing RCTV filed a complaint with the Second Public Prosecutor of the Office of the Attorney General, Judicial District of the Metropolitan Area of Caracas, in connection with the events of August 19, 2003. The complaint requested that an investigation be opened and evidence collected.<sup>112</sup>

137. On August 21, 2003, reporter Noé Pernía of RCTV was verbally abused by a leader of the "Bolivarian Circles" as he was covering a labor union protest by a group of employees of the Office of the Mayor of Libertador Municipality. On August 26, 2003, the RCTV attorneys filed a complaint in connection with these acts with the Second Public Prosecutor of Office of the Attorney General and Mr. Pernía provided a statement.<sup>113</sup>

### **G. Incidents in 2004**

138. On March 3, 2004, RCTV cameraman Carlos Colmenares sustained a gunshot wound in the ankle as he was covering political demonstrations held by the opposition in Caracas against the government of President Chávez. This was the second time that Mr. Carlos Colmenares had been shot. The incident was assigned to the Twenty-First Public Prosecutor's Office with nationwide jurisdiction, which closed the case. However, a request was made to reopen the case.<sup>114</sup>

139. On the same day, March 3, 2004, RCTV reporter Isnardo Bravo was covering an opposition protest and was on the roof of a building as policemen on motorcycles from La California Municipality, Sucre, proceeded to break up the demonstration. Some of the policemen shot at the news team. The incident was assigned to the Twenty-First Public Prosecutor's Office with full nationwide jurisdiction, which closed the case for lack of evidence from which to identify the culprits.<sup>115</sup>

140. That same day, Anahís Cruz was covering an opposition protest in the city of Maracay when a group of private citizens loyal to the government began to attack the opposition demonstrators with stones and

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<sup>111</sup> Brief of the petitioners of September 5, 2006, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>112</sup> Complaint of August 26, 2003, presented by the RCTV attorneys to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, Annex 30.

<sup>113</sup> Brief of the petitioners of September 5, 2006, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights and Complaint of August 26, 2003, presented by the RCTV attorneys to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas, Annex 30.

<sup>114</sup> Brief of the petitioners of September 5, 2006, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>115</sup> Brief of the petitioners of September 5, 2006, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

other blunt objects. Ms. Anahís Cruz reported to the authorities that a policeman on a motorcycle ran over her foot with the front wheel. There has been no response from the Attorney General's office in connection with these events. The case was assigned to the 21st Public Prosecutor's Office with full nationwide jurisdiction, which closed the case for lack of evidence to identify those responsible.<sup>116</sup>

141. On June 3, 2004, Mr. Noé Pernía was covering a press conference at the Metropolitan Mayor's Office on Plaza Bolívar when a group of government supporters went up to the main entrance to the Mayor's Office and discharged firearms.<sup>117</sup> The group made their way to the RCTV network headquarters and proceeded to demonstrate violently outside its offices.<sup>118</sup> They also tried to force open the security doors into the network building, set fire to a truck belonging to the "Tío Rico" company, fired shots at the façade, and wrote insults on the walls.<sup>119</sup> The attack was recorded by the company's security cameras and witnessed by officials of the Directorate of Intelligence and Prevention Services (DISIP) who were sitting on a parked motorcycle a short distance from the main entrance to RCTV. In the course of the attack, which lasted almost one hour, shots were fired at the windows, at the façade, and even at RCTV employees who looked out.<sup>120</sup>

142. With respect to the investigations into the incident, it was determined from the evidence in the possession of the Fifth Public Prosecutor's Office of the Metropolitan Area of Caracas, which was assigned this case, that the attack was led by a member of the administrative staff of the Metropolitan Mayor's Office. The Public Prosecutor's Office has issued a summons for this individual in order to charge him but the IACHR is unaware if he has come forward to respond to the charges.<sup>121</sup>

## H. The investigations

143. On August 5, 2004, the RCTV attorneys wrote to the Prosecutor General of the Bolivarian Republic of Venezuelan in order to reiterate formally

all of the complaints that form part of the proceedings [...] directly assigned by your office to the Sixth-Eighth and Sixty-Seventh Public Prosecutors of the Caracas Metropolitan Area and to the Twenty-First Public Prosecutor with full nationwide jurisdiction [...] [and to request that] the prosecutors assigned to

<sup>116</sup> Video "Agresiones a Anahís Cruz" [Attacks on Anahís Cruz], Annex 68.

<sup>117</sup> Affidavit of Mr. Noé Pernía, Annex 33.

<sup>118</sup> Affidavit of Mr. Noé Pernía, Annex 33 and Affidavit of Laura Castellanos, Annex 34.

<sup>119</sup> Brief of the petitioners of September 5, 2006, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>120</sup> Affidavit of Laura Castellanos on the attacks of June 3, 2004, Annex 34; Judicial Inspection of June 3, 2004, which certifies the incidents that occurred in the vicinity of the RCTV network headquarters on June 3, 2004, Annex 35; Judicial Inspection of June 4, 2004, which certifies the damages caused to the RCTV network building by the incidents that occurred on June 3, 2004, Annex 36 and Brief of the beneficiaries on provisional measures of July 2, 2004, Annex 84.

<sup>121</sup> Brief of the petitioners of September 5, 2006, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

the instant investigation proceed with the identification of the perpetrators of the crimes charged in the complaints and to present the necessary indictments based on the evidence contained in the records of the proceedings.<sup>122</sup>

144. In that connection, the complaint presented on January 31, 2002, by Mr. Sapene Granier to the Superior Court Prosecutor of the Judicial District of the Metropolitan Area of Caracas (*supra*, par. 88), was referred in February 2004 to the Office of the Fiftieth Public Prosecutor.<sup>123</sup> The Office of the Prosecutor commissioned entered a motion for dismissal and on February 21, 2006, the Fiftieth Criminal Trial Court with Oversight Functions dismissed the proceeding initiated against unknown persons for physical injuries sustained by Ms. Luisiana Ríos because the time allowed for criminal action under the statute of limitation had run.<sup>124</sup>

145. Furthermore, with respect to the complaint filed on November 21, 2002, concerning the physical injuries to Mr. Armando Amaya and the care that he received from the company RESCARVEN (*supra*, par. 126), on February 22, 2006, the public prosecutor commissioned requested information on the aforesaid incident from Brigade 11-a, attached to the National Homicide Division of the Penal and Criminal Scientific Investigations Corps.<sup>125</sup>

146. Regarding the complaint filed for the acts that occurred on December 8, 2002 to the detriment of Anahís Cruz and Herbigio Henríquez (*supra*, par. 128), on March 22, 2006, the Fourth Public Prosecutor of the Office of the Attorney General of the Judicial District of the State of Aragua asked the relevant court to dismiss the case.<sup>126</sup>

147. As regards the complaint filed with the Second Public Prosecutor of the Office of the Attorney General, Judicial District of the Metropolitan Area of Caracas, for the events of August 19, 2003, in connection with the injuries suffered by Carlos Colmenares (*supra*, par. 136), by June 5, 2006, the proceeding was at the "investigation stage, and among the steps taken to shed light on the events was the interview of a witness and the transmission of an official letter dated April 10, 2006, to the legal department of the television network requesting it to furnish a video containing the images recorded by the news team at the scene of the incident.<sup>127</sup>

148. On July 4, 2006, the Fiftieth Public Prosecutor's Office applied to the Criminal Court Circuit of the Metropolitan Area of Caracas for a

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<sup>122</sup> Reiteration of complaints of August 5, 2004, addressed to the Prosecutor General of the Bolivarian Republic of Venezuela, Annex 37.

<sup>123</sup> Observations of the beneficiaries on the provisional measures of April 14, 2004, Annex 85

<sup>124</sup> Brief of the petitioners of September 8, 2006, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>125</sup> Report of the State of June 5, 2006, Annex 24.

<sup>126</sup> Brief of August 8, 2003, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>127</sup> Report of the State of June 5, 2006, Annex 24.

warrant for the arrest of the man who shot Antonio José Monroy, in order to charge him with the crimes of attempted murder, illegal possession of a weapon of war, and unlawful use of a firearm. The case was assigned to the Ninth Criminal Trial Court with Oversight Functions of First Instance acting as a Control Court.<sup>128</sup>

149. Furthermore, on July 11, 2006, the public prosecutor's office assigned to the case submitted a confirmation of request to the National Forensic Science Coordinator of the Penal and Criminal Scientific Investigations Corps to forward the results of the forensic medical examination of Isabel Mavarez.<sup>129</sup>

150. In sum, the complaints filed have still not been diligently processed and at present, the acts committed against the victims have yet to be diligently and effectively investigated with a view to obtaining justice and punishing those responsible.

## VII. LEGAL ARGUMENTS

### A. Preliminary considerations

151. According to the consistent jurisprudence of the inter-American system, the State may be held responsible --even when the alleged violation is committed by a private individual or responsibility has yet to be determined-- if it is demonstrated that the State failed to act with due diligence to prevent the violation or to respond to it in the manner required under the American Convention.

152. Venezuela has the obligation to organize the governmental apparatus and all structures through which public power is exercised in order to ensure the free and full enjoyment of human rights. As the Inter-American Court has held, the foregoing

applies whether those responsible for the violations of those rights are members of the public authorities, private individuals, or groups,<sup>130</sup> since any infringement on human rights recognized in the Convention that can be attributed under the rules of international law to acts or omissions of any public authority constitutes an action attributable to the State, for which it is responsible under the terms of the Convention.<sup>131</sup> (emphasis added).

<sup>128</sup> Brief of the petitioners of September 8, 2006,, in Appendix 3, Record of the proceeding before the Inter-American Commission on Human Rights.

<sup>129</sup> Report on provisional measures of the State of Venezuela of August 3, 2006, Annex 86.

<sup>130</sup> Inter-Am. Ct. H.R., *Case of the 19 Merchants*. Judgment of July 5 2004. Series C, No. 109, par. 183; Inter-Am. Ct. H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C, No. 99, par. 142; Inter-Am. Ct. H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C, No. 70, par. 210; and Inter-Am. Ct. H.R., *Case of the Panel Blanca (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C, No. 37, par. 174.

<sup>131</sup> Inter-Am. Ct. H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C, No. 110, par. 71; Inter-Am. Ct. H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C, No. 99, par. 142, and Inter-Am. Ct. H.R., *Case of the "Five Pensioners"*. Judgment of February 28 2003. Series C, No. 98, par. 163.



153. With respect to the possibility of attributing responsibility to the State for acts committed by third parties, the Inter-American Court has recognized that

the State's international responsibility may arise from attribution to the State of human rights violations committed by third parties or individuals, within the framework of the State's obligations to guarantee respect for those rights between individuals.<sup>132</sup>

[and that]

The obligations *erga omnes* to respect and ensure respect for the norms of protection, which is the responsibility of the States Parties to the Convention, extend their effects beyond the relationship between its agents and the persons subject to its jurisdiction, because they are also manifest in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in inter-individual relations. The attribution of responsibility to the State for the acts of individuals may occur in cases in which the State fails to comply with the obligations *erga omnes* contained in Articles (1) and 2 of the Convention, owing to the acts or omissions of its agents when they are in the position of guarantor.<sup>133</sup>

154. Regarding the determination of responsibility in each case, the Inter-American Court has found that

when interpreting and applying the Convention, the Court must pay attention to the special needs for protection of the individual, the ultimate beneficiary of the provisions of the respective treaty. Owing to the nature *erga omnes* of the State's treaty-based protection obligations, their scope cannot be determined on the basis of a vision that focuses on the sovereign will of the States and merely on the effects of inter-State relations. These obligations devolve upon all subjects of international law and presumptions of non-compliance must be determined in function of the need for protection in each particular case.<sup>134</sup>

155. Elaborating on this standard for attribution of responsibility, the Court recently ruled in its judgment on the case of the *Pueblo Bello Massacre* that

a State cannot be responsible for all the human rights violations committed between individuals within its jurisdiction. Indeed, the *erga omnes* nature of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed of an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because

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<sup>132</sup> Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C, No. 140, par. 113.

<sup>133</sup> Inter-Am. Ct. H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C, No. 134, par. 111.

<sup>134</sup> Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C, No. 140, par. 117.

the specific circumstances of the case and the execution of these guarantee obligations must be considered.<sup>135</sup>

156. To determine whether acts of third parties can be attributed to the State as violations for which it is internationally accountable, the Court has followed the reasoning used by the European Court, which is that the State can incur international responsibility for acts committed by third parties when it is proven that the State had knowledge of a real and immediate risk and failed to adopt reasonable measures to prevent it. The Inter-American Court has cited the European Court's jurisprudence, as follows:

Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see the *Osman* judgment [...], pp. 3159-60, para. 116).<sup>136</sup>

157. The Court has also found that "States must adopt the necessary measures, not only at the legislative, administrative and judicial level, by issuing criminal norms and establishing a system of justice to prevent, eliminate and punish the deprivation of life as a result of criminal acts, but also to prevent and protect individuals from the criminal acts of other individuals and to investigate these situations effectively."<sup>137</sup>

158. The duty to prevent violations "includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages."<sup>138</sup>

159. The European Court of Human Rights, on considering the positive duty to adopt measures of protection for the right to life, has considered "whether in the circumstances the authorities failed in a positive obligation to protect [the victim] from a risk to his life."<sup>139</sup> When these

<sup>135</sup> Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*, Judgment of January 31, 2006, Series C, No. 140, par. 123.

<sup>136</sup> European Court of Human Rights, *Kiliç v. Turkey*, Judgment of 28 March 2000, Application No. 22492/93, paras. 62 and 63; *Osman v. the United Kingdom*, Judgment of 28 October 1998, *Reports of Judgments and Decisions 1998-VIII*, paras. 115 and 116; Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*, Judgment of January 31, 2006, Series C, No. 140, par. 124.

<sup>137</sup> Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*, Judgment of January 31, 2006, Series C, No. 140, par. 120.

<sup>138</sup> Inter-Am. Ct. H.R., *Velásquez Rodríguez Case*, Merits, Judgment of July 29, 1988, Series C, No. 4, par. 175.

<sup>139</sup> ECHR, *Case of Mahmut Kaya v. Turkey*, 28 March 2000, para. 87.

defects in the state response "removed the protection which [the victim] should have received by law" the European Court concluded that "in the circumstances ... the authorities failed to take reasonable measures available to them to prevent a real and immediate risk to the life of [the victim]."<sup>140</sup>

160. With respect to the duty to investigate in the framework of the obligation to ensure rights, the Inter-American Court determined that,

The execution of an effective investigation is a fundamental and conditioning element for the protection of certain rights that are affected or annulled by these situations, such as [...] the rights to personal liberty, humane treatment and life.<sup>141</sup>

161. In its Declaration of Principles on Freedom of Expression, the Commission holds that,

The murder, kidnapping, intimidation of and/or threats to media workers, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.<sup>142</sup>

162. By the same token, the Declaration of Chapultepec states that

Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.<sup>143</sup>

163. This investigation must be carried out by all available legal means with the aim of determining the truth and the investigation, pursuit, capture, prosecution and punishment of the masterminds and perpetrators of the facts.<sup>144</sup>

## **B. Violation of the right to freedom of thought and expression (Article 13 of the Convention in connection with Article 1(1) thereof)**

### **1. The content of the right to freedom of thought and expression and the right to**

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<sup>140</sup> ECHR, *Case of Mahmut Kaya v. Turkey*, 28 March 2000, paras. 99-101.

<sup>141</sup> Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C, No. 140, par. 145.

<sup>142</sup> Principle No. 9, Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission on Human Rights during its 108<sup>th</sup> Regular Session.

<sup>143</sup> Principle No. 5, Declaration of Chapultepec, adopted by the Hemisphere Conference on Free Speech, Mexico City March 11, 1994.

<sup>144</sup> Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C, No. 140, par. 143.

**seek, receive, and impart information of  
media workers in a democratic society**

164. Article 13 of the American Convention provides that

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

respect for the rights or reputations of others; or  
the protection of national security, public order, or public health or morals.

The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

165. The Commission and the Inter-American Court have drawn attention to the broad content of the right to freedom of thought and expression and, based on their analysis of Article 13 of the Convention, have developed diverse scenarios involving human beings and information. In adopting this broad interpretation of the right to freedom of thought and expression the two organs have examined its two dimensions: individual and social.

166. Particularly, in developing the content of this right and how it relates to the exercise of journalism, the Court has stressed the essential role that the media play "as vehicles for the exercise of the social dimension of freedom of expression in a democratic society." Journalism is the primary and principal manifestation of freedom of expression of thought.<sup>145</sup> For this reason, it is vital that the media and media workers are able to gather the most diverse information and opinions.<sup>146</sup> They are required to engage responsibly in activities that are indistinguishable from or inextricably intertwined with the freedom of expression guaranteed in the Convention.<sup>147</sup>

167. In this connection, the Court has stated that the right to freedom of thought and expression grants those under the protection of the Convention not only the right and freedom to express their thoughts, but

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<sup>145</sup> Inter-Am. Ct. H.R., *Case of Herrera-Ulloa*, Judgment of July 2, 2004, Series C, No. 107, par. 118, and Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, Series A, No. 5, pars. 72 and 74.

<sup>146</sup> Inter-Am. Ct. H.R., *Case of Herrera-Ulloa*, Judgment of July 2, 2004, Series C, No. 107, par. 117, and Inter-Am. Ct. H.R., *Case of Ivcher-Bronstein*, Judgment of February 6, 2001, Series C, No. 74, par. 149.

<sup>147</sup> Inter-Am. Ct. H.R., *Case of Herrera-Ulloa*, Judgment of July 2, 2004, Series C, No. 107, par. 118, and Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, pars. 72 and 74.

also the right to seek, receive and disseminate information and ideas of all types.<sup>148</sup> The American Convention as well as other international instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, recognize a general right to seek and receive information.<sup>149</sup>

168. In describing the social dimension of this right, the Court held that in addition to being a right that belongs to each individual, it also "implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others."<sup>150</sup>

169. The right to seek, receive, and impart information contains the two dimensions (individual and social) developed by the Court and the Commission, and entails, in the framework of the instant case, the right of those who practice journalism to seek information, investigate matters of interest, include the information in their reports, write about it, analyze and divulge the product of their work, disseminate the information yielded by their research, and transmit their conclusions and opinions. It also entails the right of society to be informed, to have a plurality of information sources available to them with different versions of a particular event, and to choose which information sources they wish to read, listen to, or watch.

170. In its judgments concerning the right to freedom of thought and expression, the Inter-American Court has highlighted the fact that the different regional systems for the protection of human rights and the universal system agree on the essential role played by freedom of expression in the consolidation and dynamics of a democratic society.<sup>151</sup>

<sup>148</sup> Inter-Am. Ct. H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C, No. 141, par. 163; Inter-Am. Ct. H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C, No. 111, par. 77, and Inter-Am. Ct. H.R., *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Series C, No. 107, par. 108.

<sup>149</sup> Inter-Am. Ct. H.R. *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C, No. 151, par. 76.

<sup>150</sup> Inter-Am. Ct. H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C, No. 141, par. 163; Inter-Am. Ct. H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C, No. 135, par. 68; Inter-Am. Ct. H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C, No. 111, par. 77; Inter-Am. Ct. H.R., *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Series C, No. 107, par. 108; and Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, par. 30.

<sup>151</sup> Inter-Am. Ct. H.R., *Case of Ricardo Canese*, par. 86; I/A Court H.R., *Case of Herrera Ulloa*, par. 113; *Case of Ivcher Bronstein*, par. 152; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*, Judgment of February 5, 2001. Series C, No. 73, par. 69<sup>o</sup>; *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 29, ECHR 2003-XI; *Perna v. Italy [GC]*, no.48898/98, § 39, ECHR 2003-V; *Dichand and others v. Austria*, no. 29271/95, § 37, ECHR 26 February 2002; *Eur. Court H.R., Case of Lehideux and Isorni v. France*, Judgment of 23 September, 1998, par. 55; *Eur. Court H.R., Case of Otto-Preminger-Institut v. Austria*, Judgment of 20 September, 1994, Series A no. 295-A, par. 49; *Eur. Court H.R. Case of Castells v. Spain*, Judgment of 23 April, 1992, Series A. No. 236, par. 42; *Eur. Court H.R. Case of Oberschlick v. Austria*, Judgment of 25 April, 1991, par. 57; *Eur. Court H.R., Case of Müller and Others v. Switzerland*, Judgment of 24 May, 1988, Series A no. 133, par. 33; *Eur. Court H.R., Case of Lingens v. Austria*, Judgment of 8 July, 1986, Series A no. 103, par. 41; *Eur. Court H.R., Case of Barthold v. Germany*, Judgment of 25 March, 1985, Series A no. 90, par. 58; *Eur. Court H.R., Case of The Sunday Times v. United Kingdom*, Judgment of 29 March, 1979, Series A no. 30, par. 65; and *Eur. Court H.R., Case of Handyside v. United Kingdom*, Judgment of 7 December, 1976, Series A No. 24, par. 49; UN, Human Rights Committee, 12 July 1996, *Aduayom et al. v. Togo* (422/1990, 423/1990 y 424/1990), par. 7.4; *African Commission on Human and Peoples' Rights*, Media Rights Agenda and Constitutional Rights Project v. Nigeria, Communication Nos. 105/93, 128/94, 130/94 and 152/96,

Without effective freedom of expression, exercised in all its forms, democracy is eviscerated, pluralism and tolerance start to deteriorate, the mechanisms for control and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society.<sup>152</sup>

171. The Commission considers it important to mention that, in the framework of a political crisis in a polarized society, the right to seek and receive information, in both of its dimensions, is particularly important for generating, fuelling, and enriching debate, and for capturing news when it occurs. Accordingly, the exercise of free and independent journalism is an essential tool for the formation of public opinion in a State.

172. It should also be mentioned that the exercise of journalism may also entail editorial opinion critical of the government, evincing the intimate relationship between freedom of expression and freedom of thought. The latter is expressed in the possibility to adopt an ideological or political position and realized when a person speaks their mind when expressing an opinion. For that reason, the ideas and expressions of those who exercise journalism critical of the government enjoy broad protection under the Convention insofar as they are part of the political debate in society.

## **2. Restrictions on freedom of thought and expression**

173. The Commission has found that in cases such as this one, the evaluation of an alleged restriction or limitation to freedom of expression should not be restricted to examining the facts in question, but should also examine those facts in the light of the circumstances and context in which they occurred.<sup>153</sup>

174. In this regard, on the matter of restrictions on freedom of expression, the Commission wishes to underscore that it is clearly in the public interest to ensure the freest possible circulation of news on events in a state, and that that circulation should not be restricted unduly. Insofar as the news constitutes information of public interest, it enjoys a high margin of protection, in accordance with the standards developed by the Commission and the Court.<sup>154</sup>

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Decision of 31 October, 1998, para 54; Inter-American Democratic Charter. Adopted at the first plenary session of the OASS General Assembly held on September 11, 2001, Article 4.

<sup>152</sup> Inter-Am. Ct. H.R., *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Series C, No. 107, par. 116.

<sup>153</sup> Inter-Am. Ct. H.R., *Case of Ivcher-Bronstein*. Judgment of February 6, 2001. Series C, No. 74, par. 154; Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, par. 42; Eur. Court H.R., *Müller and Others* judgment of 24 May 1988, Series A no. 133, par. 32; and Eur. Court H.R., *case of Sürek and Özdemir v. Turkey*, Judgment of 8 July 1999, par. 57 (iii).

<sup>154</sup> Inter-Am. Ct. H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C, No. 135, par. 82; Inter-Am. Ct. H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C, No. 111, par. 98; Inter-Am. Ct. H.R., *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Series C, No. 107, par. 128; and Inter-Am. Ct. H.R., *Case of Ivcher-Bronstein*. Judgment of February 6, 2001. Series C, No. 74, par. 155.

175. This is so because free discussion and political debate are essential for consolidating democracy in society and constitute an imperative social interest. Therefore, the justifications for the State to restrict freedom of expression in this context are much stricter and more limited.<sup>155</sup>

176. The Court has also held that in the arena of public debate or matters of pressing public interest, the inter-American system not only protects discourse or expressions that are inoffensive or favorably received by public opinion, but also those that offend or shock the State or any sector of the population.<sup>156</sup>

177. Therefore, State authorities should permit such news to be circulated and received, even when it is covered by media workers employed by a media outlet perceived as opposed to the government by a sector of society.

178. The Commission notes that under the American Convention, a restriction is legitimate when it does not impose prior censorship of the expression; it occurs through subsequent imposition of liability as a result of the abusive exercise of this right, the grounds for which are expressly and precisely previously established by law; it is necessary to ensure "respect for the rights or reputations of others" or "the protection of national security, public order, or public health or morals," and in no way limits, except to the extent strictly necessary, the full scope of the right to freedom of expression, nor constitutes an indirect mechanism of prior censorship.<sup>157</sup>

179. In other words, in order to fulfill its duty to respect the aforesaid right, the State must ensure that the restriction is proportionate to the interest that justifies it and closely tailored to accomplishing this legitimate objective, interfering as little as possible with the effective exercise of the right to freedom of expression.<sup>158</sup>

180. Accordingly, the State should limit restrictions on the free circulation of ideas as much as possible and, when presented with a choice of alternatives, should select the one that least infringes rights. To be compatible with the Convention, the restrictions must be justified with reference to collective purposes which, owing to their importance, clearly outweigh the social need for the full enjoyment of the right that Article 13 guarantees and do not limit the right established in this Article more than is

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<sup>155</sup> Feldek v. Slovakia, European Court of Human Rights. Judgment of 12 July 2001, par. 59.

<sup>156</sup> Inter-Am. Ct. H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*, Judgment of February 5, 2001. Series C, No. 73, par. 69.

<sup>157</sup> Inter-Am. Ct. H.R., *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Series C, No. 107, par. 120; and Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, par. 39.

<sup>158</sup> Eur. Court H. R., *Case of The Sunday Times v. United Kingdom*, par. 59; and Eur. Court H. R., *Case of Barthold v. Germany*, par. 59.

strictly necessary.<sup>159</sup> In the instant case, the duty to respect the right to freedom of thought and expression includes abstaining from the imposition of restrictions by indirect methods or means, as provided in Articles 13(1) and 13(3) of the Convention.

181. Taking this into consideration, the Commission finds that in the context of this case there was a violation of the right to freedom of expression of the 20 victims. In this case, the right of journalists or media workers of a media outlet critical of the government to seek, receive, and impart information has been obstructed by acts and omissions of state agents as well as those of private individuals.

182. In practice, RCTV media workers, who operated in a climate of generalized aggression against and intimidation of journalists, encountered difficulties when they sought to cover the news, events of public interest, or public demonstrations in the streets. They also encountered difficulties or obstacles created by the State to impair the pursuit of an editorial position of their choosing and, in their case, the independent broadcast of the news or information.

183. For almost three consecutive years the victims endured obstacles in their reporting activities. Those obstacles consisted of State interference in the broadcast of the RCTV signal, official letters sent by CONATEL concerning transmission of information about acts of violence against journalists, statements by high-ranking government officials, and physical and verbal abuse of different types and intensity that mostly came from private third parties or individuals who could not be identified.

184. In this context, RCTV employees encountered obstacles in covering the news and doing their work; on occasion they were unable to complete their assignments and, in some cases, sustained gunshot wounds while covering the news on the streets. This latter is the case of Messrs. Armando Amaya, Antonio José Monroy, and Carlos Colmenares.

185. Indeed, some demonstrations began or ended outside the RCTV headquarters and resulted in open acts of violence. Among the many demonstrations and protests held outside the RCTV offices, the Commission wishes in particular to mention those that took place on April 13, 2002 and June 3, 2004 due to their intensity and connection with the victims. These events were also brought to the attention of the competent authorities.

186. The vast majority of acts committed against the victims occurred in the context of events of high political and institutional interest, or during coverage of a news item, including public demonstrations attended by government sympathizers as well as by supporters of the opposition. Private individuals would obstruct news coverage when they

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<sup>159</sup> Inter-Am. Ct. H.R., *Case of Herrera-Ulloa*, Judgment of July 2, 2004. Series C, No. 107, pars. 121 and 123; Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, par. 46; see, also, Eur. Court H. R., *Case of The Sunday Times v. United Kingdom*, par. 59; and Eur. Court H. R., *Case of Barthold v. Germany*, par. 59.



realized that the victims were media workers who worked for RCTV and thus identified them as members of the opposition.

187. As the Court has established previously, and reiterated recently in *Palamara Iribarne v. Chile*, Article 13 of the Convention may be violated under different circumstances, depending on whether the violation results in the denial of freedom of expression or only imposes restrictions that are not authorized or legitimate.<sup>160</sup> Therefore, the Commission finds that the duty of the State to respect the right to freedom of thought and expression and, in this particular case, the right to seek, receive, and impart information, entails the obligation not to impose any restrictions other than those recognized in Article 13 (2) of the Convention.

188. It should be noted that the duty to respect the right to freedom of thought and expression set down in Article 13 of the Convention includes, *inter alia*, the duty not to restrict that right by indirect methods or means, such as the abuse of government controls, as expressly mentioned in Article 13(3) of the Convention. In turn, the State also has an obligation not only to respect rights but also ensure that the violation does not result from "private controls" or any other means tending to impede the communication and circulation of ideas and opinions.<sup>161</sup>

## **2.1 State interruptions of RCTV broadcasts and official letters concerning the content of an information program as indirect means to restrict the right to freedom of thought and expression**

189. As described (*supra*, par. 94), Mr. Eduardo Sapene Granier had to permit the broadcast of multiple interruptions by different government entities and organizations, which made use of the network's signal on April 8 and 9, 2002, during the national strike and days before the coup d'état to place in Venezuela. Furthermore, on April 13, 2002, a group of soldiers from the *Casa Militar* arrived at the network facilities and forced Mr. Sapene Granier to turn off the RCTV signal and transmit the State network signal instead. In addition to that interruption, groups of soldiers from the *Casa Militar*, as well as agents of DISIP and the Army caused other interruptions at the antennae facilities located in the Mecedores sector from where the RCTV signal is broadcast.

190. These interruptions by state agents are incompatible with the Convention, given that this treaty only permits a state to impose the restrictions recognized in Article 13(2) and that section 3 of said Article expressly prohibits any restriction on the right to freedom of thought and expression by indirect methods and means that entail government control

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<sup>160</sup> Inter-Am. Ct. H.R. *Case of the Pueblo Bello Massacre*, par. 218; *Case of Palamara Iribarne*, par. 68; *Case of Ricardo Canese*, par. 77, and *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights), pars. 53 and 54.

<sup>161</sup> Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, par. 48.

of property or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. In addition to the foregoing, the network signal was also used by the Mayor of Libertador Municipality of the Capital District, the Minister of Labor, the Governor of the State of Cojedes, the Commander-In-Chief of the Armed Forces, the Minister of Defense, the Minister of Education, and other individuals, including the President of Petróleos de Venezuela S.A. (PDVSA), the President of FEDEPETROL, and representatives of different transport workers unions. (See Annex 57, which refers to the law on use of national broadcasting networks).

191. The aforementioned interruptions constitute an indirect restriction since they affect the content of the information that Mr. Eduardo Sapene Granier, as one of the network executives, and the media workers employed at that television station identified as victims in this case were able to transmit on those occasions, thereby forcing them to transmit certain contents or preventing them from broadcasting the information that they wished to impart.<sup>162</sup>

192. In the context of the country at the time and the constant obstructions and acts of aggression and harassment against RCTV media workers and the network itself, the National Telecommunications Commission (CONATEL) sent the president of RCTV three official letters concerning the content of the program "*La entrevista en El Observador*" on which the victims in this case worked. Formally, those official letters cited the Partial Regulations on Television Broadcasts (Decree 2625) and the alleged violation by RCTV of legal standards in force in Venezuela on transmission of violent images during classified program viewing times. However, the Commission finds that the purpose of the aforementioned official letters was to indirectly influence and put pressure on the management regarding the content of information imparted by RCTV and the victims.

193. The programs which prompted the official letters contained images and information concerning the acts of violence and confrontation in the streets and the attacks on media workers. In this respect, Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR prohibits the exercise of power by the State to put pressure on and punish media workers and communications media because of the information they disseminate, which is the case in this instance.

194. The obligation of the State was not only to permit RCTV to disseminate, in accordance to law, any program that the network management happened to choose and the information that the journalists prepared for informative television programs, but also to refrain from pressuring its management regarding the content of the news broadcasts and to ensure their wide circulation.

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<sup>162</sup> See Principles 5 and 13 of the Declaration of Principles on Freedom of Expression of the IACHR.

195. The Commission finds that the interruptions by the State of the network's broadcasts, the interferences with the technical mechanisms essential for a television network to disseminate information, and the transmission of official letters in order to control the transmission of news and information in an unlawful manner, constitute indirect restrictions on the right of the journalists, management, and communicators of said network to impart information and practice their profession independently, and violate Article 13(1) and (3) of the Convention, to the detriment of the 20 victims in the case.

## **2.2 Statements made by government officials or high-ranking state authorities as indirect means to restrict the right to freedom of thought and expression**

196. The President of the Republic and high-ranking state authorities issued numerous public statements in reference to the private media organizations in Venezuela, including RCTV and its editorial opinions. On several occasions he has drawn particular attention in his statements to the power of the State, and especially the government and the office of the President, to decide to revoke or not renew RCTV's broadcast license, which would make it impossible for RCTV to continue operating and thus for its employees to continue working at the network.<sup>163</sup>

197. In the aforementioned statements, the President of the Republic has referred to measures that he could adopt in response to the reporting of certain media organizations and their management, including RCTV. The content of these statements had a number of points in common: i) mention of the reporting of the private media in Venezuela; ii) reference to the use of the radioelectric spectrum that is the property of the State; and, iii) possible ways in which the State could intervene by imposing conditions on RCTV.

198. There are three types of warnings to the management of media organizations. The first concerns the revocation and/or non-renewal of licenses for the use of radioelectric frequencies; the second refers broadly to "imprisonment" for using the radio waves which belong to the State; and the third has to do with reprisals for broadcasting "the march organized by the retired members of the military," a threat that prompted the RCTV representatives to seek precautionary measures.

199. The Commission will not discuss the scope of the authority of the State to act in the framework of concession contracts with private entities, nor any possible subsequent liability that may be applied to media organizations, which might entail certain penalties provided by law and in strict observance of 13(2) of the Convention. However, inasmuch as the statements refer to a media organization, harshly criticize its reporting, and set out the possible consequences that such reporting might incur, in addition to originating from an official with decision-making power in

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<sup>163</sup> See footnote 31.

respect of said consequences, on which the possibilities of continued operation genuinely depend, they constitute indirect forms of restriction of the exercise of the right to freedom of expression by the persons who exercise that right through the media organization in question.

200. It is unacceptable for the State to exert economic or political pressure aimed at influencing or limiting the expression of individuals or the mass media. In this regard, the Inter-American Commission has stated that the use of authority to limit the expression of ideas lends itself to abuse, since stifling unpopular or critical ideas and opinions restricts the debate that is essential to the effective functioning of democratic institutions. Limitations on the free flow of ideas that do not incite lawless violence are incompatible with freedom of expression and with the basic principles that form the underpinnings of the pluralistic, democratic way of life in modern societies.

201. Article 13(3) of the American Convention and Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR prohibit any indirect pressure by the State aimed at influencing reporting by media workers or undermining the independent exercise of the right to impart information. It is not permissible under the Convention for the State to control or impose pressure on the media so that the only outlets that exist are those which advocate for or criticize the government, defeating any critical evaluation of the State's performance and undermining the democratic control that individuals and the media exercise over the way in which public functions are exercised.

202. For effective exercise of freedom of expression in Venezuela, there must be a diversity of media organizations with different reporting styles, thereby ensuring a plurality of information sources and providing Venezuelans with a choice as to which information sources to read, listen to, or watch.

203. In the framework of the facts in the instant case concerning a media organization, by threatening revocation of a broadcasting license after referring to the style of reporting and the possible consequences that could accrue thereto, together with the fact that those statements are made by an authority with decision-making power over said consequences, on which the possibilities of continued operation genuinely rest, the State, with the threat of revocation and/or non renewal of broadcasting licenses, has restricted the exercise of the right to freedom of expression of the victims in this case, who exercise that right through the media organization in question

204. Threats of that nature have placed pressure on RCTV media workers, put at risk the independent exercise of their work, and could have the effect of influencing the content, reporting, and, in general, the ideas and opinions transmitted by the media organization, which, under Article 13 (2) of the American Convention, may only be subject to the possible imposition of subsequent liability. The way in which the State has acted in this case constitutes an indirect restriction on the exercise of the right to freedom of expression and is incompatible with the right to seek and impart

information freely and, in general, express ideas and thoughts of all kinds. Accordingly, the Commission finds that the State of Venezuela violated Article 13(1) and 13(3) in conjunction with the obligation to respect rights enshrined in Article 1(1) of the American Convention to the detriment of the 20 victims in this case.

### **2.3 Acts of violence by private individuals or unidentified persons as indirect means to restrict the right to freedom of thought and expression**

205. The facts in this case concern activities in which the victims sought to gain access to information about violent incidents or disturbances, cover them, film them, and disseminate the information they managed to collect. In many cases the actions of private citizens prevented them from completing their coverage of the news, despite the fact that the exercise of this right stimulated public debate and an informational exchange with television viewers, providing them with more information to form an opinion about events in their country.

206. The Commission notes that in cases of violence perpetrated against media workers in the practice of their profession, the State should intervene to prevent any violation of the rights of persons exposed to such acts. This obligation is even more evident with respect to persons who, as in the case of the victims, are under the protection of precautionary or provisional measures and whom the State therefore has a special duty to protect.

207. In the instant case the State had a duty to prevent further violations of the rights to life, humane treatment, and freedom of thought and expression, and to adopt all necessary measures available to ensure the cessation of the situation of extreme gravity, urgency and imminent irreparable injury to those rights, by creating security conditions commensurate with a democratic society to enable media workers to practice their profession.

208. All the incidents of physical assault or verbal abuse of the victims occurred while they were carrying out their work as journalists or because they were recognized as RCTV media workers, whether in instances where the news teams sought to gain access to information sources, or when they were broadcasting events of political significance.

209. Furthermore, the incidents featured the use of physical and/or verbal violence, which sometimes resulted in physical injuries by unidentified individuals for the most part; however, on occasion it was not possible to say for sure if the assailants were private individuals or state agents. In all of the aforementioned cases, the acts were accompanied by others, such as obstruction when broadcasting the news, persecution, snatching of microphones, being cornered, damage to vehicles, theft of work implements, gunshots, destruction of cameras and materials used in journalism, gathering of large crowds at the entrance and exit to the

network headquarters and writing of graffiti, objects thrown at RCTV workers or at the cars in which they were traveling, and threats to their safety by means of language and gestures.

210. All of these incidents had a common effect on journalists' roles in seeking and disseminating the news and information in general. In the majority of the incidents, the RCTV employees had to leave the scene in order to protect their safety or the integrity of the information collected. Furthermore, in some cases, depending on the nature of the event or the information source, the acts described meant that the news teams either were unable to access the information source or had only partial access to it. The acts of obstruction were an intentional response to the identification of the workers with the RCTV television network by the logos on their clothing, cameras, microphones, and other technical equipment that they used to cover events and at the building where they worked. In short, the acts were designed to jeopardize the information gathering and dissemination activities of the employees of a media organization regarded as critical of the government, rather than to harm persons singled out in advance as potential targets for violence.

211. The foregoing is sufficient to conclude that the facts in this case constitute restrictions on the exercise of the basic purpose of the right to freedom of expression, which is to seek, receive, and impart information freely under the terms of Article 13(1) of the American Convention.

212. Thus, for example, on April 13, 2002, various groups of demonstrators arrived at the RCTV network headquarters and in the course of the entire day and part of the night engaged in acts of violence. Although it was possible to evacuate some of the journalists who were in the building, for the entire period that the demonstrators remained outside the building, none of those who stayed inside were able to leave because of the danger of exposing themselves to the violence of the demonstrators.

213. In these particular circumstances, Mr. Sapene Granier was inside the building and had to stay there until the attacks on the facade of the network headquarters stopped that night. Naturally, the violent attacks on the network's offices make those who work there afraid to go to work in light of the possible danger to their lives and safety, especially given the obviously non-peaceful nature of the demonstrations.

214. Despite the fact that from time to time the police appeared on the scene and that the demonstrations of the persons outside the building went beyond the limits of exercise of freedom of thought and expression (inasmuch as they caused acts of violence that culminated in gunshots and the destruction of the network building's windows), the police failed to take any steps, make any arrests, or disperse the violent demonstration, and instead withdrew from the scene despite the evidence of violence. Furthermore, the State later failed to investigate the events despite having video evidence with which to identify those responsible.

215. The Commission considers that acts of this nature, owing to the potential risk they pose, in particular to the lives and safety of those

connected with RCTV media organization, could lead indirectly to self-censorship or involuntary changes in the way they report the news. The foregoing is particularly true bearing in mind that as yet none of those responsible for the attack on the RCTV headquarters on April 13, 2002, or for any other attacks on the network headquarters, or for the attacks on the victims has been identified or punished. The failure of the State to take any action or subsequently investigate causes such acts of violence to be repeated, as shown by further attacks on the RCTV headquarters, among which attention should be drawn because of its violent nature to the one carried out on June 3, 2004, by private individuals without any appearance by the police during the attack, despite the fact that they were present moments before the demonstrators approached the building. Furthermore, in spite of the fact that the investigations seemed to suggest that a person from the Metropolitan Mayor's Office was involved in the aforesaid attack of June 3, 2004, the culprits have not been identified or punished.

216. The constant exposure to violence of media workers, particularly evident in the case of RCTV employees through the attacks on their headquarters, clearly made the prospect of continuing to do their work intimidating. The victims are intimidated and have good reason to fear attack. In this regard, the Commission wishes to draw attention to other particularly serious incidents that resulted in physical injuries to Armando Amaya, José Monroy and Carlos Colmenares, who sustained gunshot wounds as they were covering the news on the streets.

217. During the proceedings on provisional measures, the Court and its President issued a total of nine orders. One of them also expanded the universe of beneficiaries to protect all RCTV workers, in light of the ineffectiveness of the precautionary measures and the "grave risk" to those workers. Among said orders, the Commission draws attention to the decisions in which the Court declared that the State had failed to comply with the measures and that it had failed to comply with the obligation to keep the Court informed. In that connection, the Commission notes the Order of the Court of December 2, 2003, in which it declared that the State had failed to comply with its obligations under Article 68(1) of the Convention.<sup>164</sup>

218. In this connection, as the Court has held, it is the responsibility of the State to adopt safety measures to protect all those persons who are subject to its jurisdiction. This obligation is evident in this case, in which the State was aware of the risk faced by the victims and yet it did nothing to prevent the legitimization of violence against them or to avert further attacks on them.

219. The individuals who were wounded by gunfire as they were covering the news away from the network headquarters, and for whom protective measures had been ordered, were not only injured but also had to shoulder a burden that belonged to the State rather than to a news team, which was to acquire protective equipment, including bullet-proof

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<sup>164</sup> Order of the Inter-American Court of Human Rights: Provisional Measures, December 2, 2003.

vests, in order to be able to continue to carry out their work and reduce the risk to their safety. As the record shows, it was a network executive who had to supply protective equipment to safeguard the rights to life and humane treatment of its employees, thereby altering the conditions in which the aforesaid workers had to perform their duties.

220. Based on the foregoing, the State failed in its duty to protect the physical integrity of these persons from violation. Furthermore, despite the time elapsed since the violations were reported, and the fact that in one case an individual was identified, there has not been a single conclusive action taken from which to affirm that the State investigated the aforesaid injuries, which were reported in a timely manner, punished those responsible, or provided reparation to the victims.

221. In the instant case, apart from the adoption of protection measures, one of the conditions for effectively ensuring the right to humane treatment and the right to freedom of thought and expression is to fulfill the obligation to investigate violations of these rights, which arises from Article 1(1) of the Convention, together with the substantive right that must be protected or ensured.<sup>165</sup>

222. Furthermore, the Court, in issuing precautionary measures, ruled that the State has the obligation to investigate the facts that gave rise to the request for provisional measures and their expansions, in order to identify those responsible and impose the appropriate penalties on them. The basis for this consideration of the Court is that Venezuela has the obligation to combat the situation that produced the measures by all available legal means, since impunity promotes the chronic repetition of human rights violations and the total defenselessness of the victims,<sup>166</sup> as in the instant case.

223. The Commission notes that, insofar as it was aware of the occurrence of violent incidents in the streets and at the RCTV network headquarters, during which journalists and media workers of that network were attacked, the State breached its obligation to prevent the acts of third parties from potentially impairing the exercise of the right to freedom of expression.

224. Based on the foregoing, the Commission concludes that the State of Venezuela is responsible for violation of the rights to freedom of expression in the sense of freedom to seek, receive, and impart information recognized at Article 13 (1) and (3) of the American Convention, in

<sup>165</sup> Inter-Am. Ct. H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006, Series C, No. 149, par. 147; *Case of Baldeón García*, par. 92; *Case of the Pueblo Bello Massacre*, par. 142; and *Case of the Mapiripán Massacre*, par. 233.

<sup>166</sup> Inter-Am. Ct. H.R., *Case of Luisiana Ríos et al.*, Provisional Measures. Order of October 2, 2004. *Case of Luisiana Ríos et al.*, Provisional Measures. Order of February 20, 2003, "considering" par. 9; Inter-Am. Ct. H.R., *Case of Bámaca Velásquez. Reparations* (Art. 63.1 American Convention on Human Rights). Judgment of February 22, 2002. Series C, No. 91, par. 64; *Case of Bámaca Velásquez*. Judgment of November 25, 2000, Series C, No. 70, par. 211; and Inter-Am. Ct. H.R., *Case of Loayza Tamayo. Reparations* (art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998, Series C, No. 42, par. 170.



conjunction with the duty to ensure rights enshrined in Article 1(1) of the same instrument, to the detriment of the 20 victims.

225. Viewed under the criteria set out in the legal arguments, the facts in this case, as well as the existence of risk, recurring acts of violence, and the existence of a consistent pattern in the characteristics and effects of those acts, show that the RCTV media workers, the victims in this case, were at a real risk of being obstructed in the performance of their work, particularly as regards the search for information and coverage of events of political significance. In any event, it is important to mention that the Commission had found that the acts of aggression initially suffered by some of the victims were reason enough to order precautionary measures for their protection, an opinion subsequently shared by the Inter-American Court in its decision on provisional measures. The foregoing leads to the conclusion that the victims did indeed run a real risk of attack and/or obstruction in the exercise of their journalistic labors.

226. With respect to the Venezuelan State's awareness of this risk, the incidents were reported to various State authorities at least as early as January 31, 2002, and until August 5, 2004. This, combined with the ongoing international proceedings for protection measures, which were adopted and remain in force in favor of the victims, constitutes sufficient evidence to find that the State was fully aware of the risk they faced.

227. With respect to the particular situation of the persons affected, the Commission notes that the majority of obstructions on the exercise of freedom of expression occurred at precisely the time when the alleged victims were under the protection of precautionary or provisional measures, which signifies that, insofar as the victims are concerned, the State not only knew of the risk that they faced but also had a special duty to protect them.

228. As regards reasonable possibilities of prevention, there are two relevant aspects to be borne in mind. The first has to do with the presence of members of the State security services at the majority of the incidents analyzed in this section; and the second relates to the overall context for the exercise of freedom of expression by media outlets perceived as opposed to the government.

229. In this context, the continuous use of certain expressions in statements made by officials at the highest levels of government helped to create a climate of intolerance and social polarization incompatible with the State's duty to prevent violation of rights. These statements can give rise to acts of violence against persons identified as workers of a given media outlet with the aim of obstructing their efforts to seek, obtain, and impart information. The foregoing is true even though such statements might not specifically target individual journalists and related workers.

230. The Commission notes in this regard that statements by authorities at the highest level of government referred to RCTV employees not only as liars and coup plotters, but also as terrorists.

231. The Commission finds that in that context of repeated statements directed at RCTV, a reasonable preventive measure would have been to issue a clear and unequivocal public condemnation of any acts potentially harmful to the safety of the network's management, journalists, and other workers, in order to prevent possible misinterpretations of the contents of political discourses that could result in acts of violence and/or unlawful curbs on the freedom to seek, receive, and impart information.

232. Another reasonable prevention measure would have been effective implementation of the precautionary measures requested by the Commission and the provisional measures subsequently ordered by the Court.

233. The foregoing permits the Commission to find that the State did not make reasonable use of all of the means available to it to prevent restriction of the right to freedom of expression by private citizens in a sufficient, consistent, and continuous manner.

234. With respect to the duty to investigate and, as appropriate, punish those responsible for such acts, by the State's own admission in the proceeding before the Commission the victims reported the acts examined in this section to different agencies of the Office of the Prosecutor General. As described in the section concerned with violation of the rights enshrined in Articles 8 and 25 of the Convention, the Commission considers that the Venezuelan State has not acted diligently and that the investigations at the domestic level have gone on for longer than is reasonable.

235. Based on the foregoing considerations, the Commission finds that the violations described in this section are attributable to the Venezuelan state for failure to fulfill its duty to ensure rights set forth in Article 1(1) of the Convention.

236. Finally, the determination of the victims on this point should be made from both an individual and a collective perspective. Individually, in the sense of the members of the RCTV news teams who were directly attacked, and collectively -in addition to the individual effect on each of the persons affected- in relation to the recurrence of events of this type targeting workers identified as belonging to a particular media outlet, in this instance RCTV. The reason for the foregoing is that the mere fact that they belonged to that media outlet coupled with the public's perception thereof caused an extension of the effects on their freedom to perform a given task compared with other persons in the same situation.<sup>167</sup>

237. In conclusion, the State of Venezuela is responsible for violation of the right to freedom of expression, in the sense of freedom to seek, receive, and impart information, enshrined in Article 13(1) of the American Convention, in connection with the obligation to ensure rights set

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<sup>167</sup> This can be corroborated from the description of the violations in which it is evident that actions of private citizens were aimed at a media outlet perceived by a segment of the public as opposed to the government and in favor of a coup, in order to impair its information gathering and dissemination activities, and not at persons singled out in advance as potential targets for violence for personal reasons or on grounds other than their employment relationship with the network.

forth in Article 1(1) of that instrument, to the detriment of the 20 victims in this case.

238. Based on the arguments developed in this Chapter, the aforementioned interferences by the State with the technology needed for a television network to disseminate information; the transmission by CONATEL of official letters regarding the broadcast of news or information unwelcome to the government; the references to revocation or non-renewal of RCTV's concession relating to that network's editorial opinions, and the failure to fulfill the duty to ensure rights in connection with acts committed by private citizens or unidentified third parties embodied in Article 1(1) of the American Convention, constitute violations of Article 13 of the Convention to the detriment of Eduardo Sapene Granier, Luisiana Ríos, Luis Augusto Contreras Alvarado, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares.

**C. Violation of the right to humane treatment (Article 5 of the Convention in connection with Article 1(1) thereof)**

239. Article 5(1) of the American Convention provides that "[e]very person has the right to have his physical, mental, and moral integrity respected."

240. For its part, Article 1(1) of the American Convention states:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

241. The section on legal arguments in the instant application provides an account of the constant physical attacks on several of the victims, some committed by the agents of the State security forces and others by private individuals.

242. The Commission considers that the widespread climate of aggression and harassment against journalists and media workers, particularly with respect to RCTV employees, and the above-described context in which the victims in this case went about their work, entails the existence of a continuing situation of danger of violation of their rights, as demonstrated by the existence of precautionary and provisional measures for their protection.

243. Despite the foregoing, the Commission must draw a distinction, owing to their seriousness, between the facts in the case as a whole and those that concern José Antonio Monroy, Armando Amaya, and Carlos Colmenares, who sustained injuries caused by the impact of projectiles. As

a result of lack of due diligence in the investigation that the State of Venezuela was required to carry out, there is insufficient evidence to determine with certitude to whom responsibility should be attributed for the physical injuries suffered by Messrs. Amaya, Monroy, and Colmenares during their coverage of violent demonstrations.

244. As mentioned, the obligation to guarantee the human rights enshrined in the Convention requires governments to conduct themselves in such a way as to safeguard the real existence of an effective guarantee of free and full exercise of human rights.<sup>168</sup>

245. In this same connection, the Commission wishes to draw attention to the special duty of the State to protect the three aforementioned individuals, given that they were under the protection of precautionary measures granted by the IACHR since January 2002 and July 2002, owing to the fact that they were RCTV media workers and at risk. Said precautionary measures were extended by the Commission. Moreover, it should be recalled that, after the aforesaid events, on November 27, 2002, the Commission requested the Inter-American Court for protection, through provisional measures, specifically for Armando Amaya and José Monroy; and on September 29, 2003, sought protection for Mr. Colmenares, *inter alia*, due to the aforesaid gunshot wounds they received as they were covering demonstrations. Said provisional measures were granted by the Court on November 27, 2002, and by its President on October 2, 2003, respectively. Furthermore, it should be mentioned that the last gunshot wound that Mr. Colmenares sustained was on March 3, 2004, when he was already a beneficiary of provisional measures.

246. Accordingly, it is important to underscore that the State had a special duty of protection and should have prevented the foreseeable acts of non-State agents or persons who could not be identified against José Antonio Monroy, Armando Amaya, and Carlos Colmenares, whom the inter-American system had found to be risk, given the precautionary and provisional measures in place. To that end, the State was required to prevent violation of the beneficiaries' rights and to take reasonable steps to ensure that prevention.

247. In that connection, the State should have adopted the essential security measures to reduce the risk that these individuals faced as much as possible and to implement that protection at the domestic level. Despite the State's special duty of protection, it failed to adopt sufficient protection measures or to comply with the decisions of the Commission and the Court in a context where, at the time these incidents occurred, violence against the victims, the RCTV journalists, was rampant.

248. In addition, based on the aforementioned considerations regarding attribution of responsibility to the State,<sup>169</sup> the Commission finds that there are other instances of the State's failure to prevent the

<sup>168</sup> Inter-Am. Ct. H.R., *Case of Sawhoyamaya Indigenous Community*, par. 167; and *Case of the Pueblo Bello Massacre*, par. 142.

<sup>169</sup> Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*, pars. 113, 117, and 123.

occurrence of acts of violence, such as the gunshot wounds sustained by Messrs. Amaya, Monroy, and Colmenares, which did not help to prevent those acts from taking place or reduce the risk in which the victims found themselves. In this connection, the Commission considers that, while the statements of the President of the Republic cannot be construed as incitement to violence, they reveal that, as a government official, rather than adopt all necessary measures and harness the whole apparatus of the State to the task of protecting the alleged victims, who were the beneficiaries of precautionary and provisional measures to guarantee their rights, he made repeated statements against the media organization where they worked at a time of extreme political polarization in Venezuela. The Commission finds that by regularly continuing to make such statements in the knowledge of the violent acts in the streets and at the RCTV network headquarters, during which journalists and media workers of that network were attacked, the State breached its obligation to take reasonable steps to prevent the possibility that acts by third parties might impair their rights.

249. In that climate of aggression toward journalists and media workers, one reasonable prevention measure could have been to carry out the orders of the Commission and the Court and adopt protection measures to lessen the risk to the victims.

250. The foregoing is sufficient for the Commission to conclude that the State did not take all of the steps available to it to prevent the physical injuries caused to Messrs. Amaya, Monroy, and Colmenares by private citizens or unidentified individuals.

251. As to the second element of the duty to ensure rights against violation by private citizens or unidentified third parties, that is, the duty to investigate and, as appropriate, punish those responsible for such acts, the victims reported the acts examined in this section to different agencies of the Office of the Prosecutor General. As was mentioned in the arguments set out on the rights recognized at Articles 8 and 25 of the Convention, the Commission considers that despite the fact that a warrant was issued for the arrest of a person for discharging a firearm at Mr. Monroy, the Venezuelan state has not acted diligently or with reasonable promptness in processing the complaints, initiating the corresponding investigations, and punishing those responsible, as appropriate, or, moreover, to guarantee the non recurrence of similar incidents.

252. In that respect, vis-a-vis the provisions contained in Article 5 in connection with Article 1(1) of the American Convention, one of the conditions for ensuring the right to humane treatment is to carry out the duty to investigate violations of that right, a duty which arises from Article 1(1) of the Convention in conjunction with the substantive right that must be protected or ensured.<sup>170</sup>

253. Therefore, according to the case law of the Inter-American Court, it is not necessary to identify the perpetrators of the violation of a

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<sup>170</sup> Inter-Am. Ct. H.R., *Case of Ximenes Lopes*, par. 147; *Case of Baldeón García*, par. 92; *Case of the Pueblo Bello Massacre*, par. 142; and *Case of the Mapiripán Massacre*, par. 233.

right enshrined in the Convention to engage the international responsibility of the State.<sup>171</sup> The obligation to ensure the right to humane treatment gives rise, in the instant case, to "the obligation to investigate the possible violations of Article 5 of the Convention."<sup>172</sup> In that regard, the Venezuelan authorities did not take all the necessary steps, within a reasonable time, to identify and punish those responsible for the gunshot wounds inflicted on the media workers José Antonio Monroy, Armando Amaya, and Carlos Colmenares while they were covering the news on the streets.

254. The Commission is of the opinion that if a person is shot in the course of his daily work and there is a failure to prevent this type of act or investigate it properly, there are bound to be direct repercussions on the wounded person. Such a situation would create a well-founded fear of suffering further harm to his or her physical well-being and cause anxiety to the families of those who have to work in conditions of risk on a daily basis.

255. Accordingly, the events described could disturb the mental and moral integrity of the victims in this case and subject them to a situation of intimidation, fear, tension and stress. To understand this disturbance, the Commission must draw attention to the key importance in a person's life of a lawful activity that they must carry out on a daily basis to support themselves and their family. The victims have the right to engage in a work activity under decent, fair conditions; work is a form of self-fulfillment and an opportunity for the worker to develop his aptitudes, capacities and potential, and to realize his ambitions, in order to develop fully as a human being.<sup>173</sup>

256. In the above described context, the frustration at not being able to complete work assignments, the real danger of sustaining physical injuries while covering the news, the lack of response from the State to complaints filed, the impunity of the crimes, and the evident lack of protection from the State, causes, in the particular circumstances of the facts in the instant case, a profound sense of anxiety, impotence, and defenselessness.

257. Moreover, the failure of the State to adopt protective measures and its negligence in investigating the above-described injuries caused a repetition of incidents such as those mentioned. The latter is clear from the situation of Mr. Colmenares, who sustained a second gunshot wound on March 3, 2004, only seven months after the he was shot the first time.

258. Based on these considerations, the Inter-American Commission finds -and asks that the Court do likewise- that the Venezuelan State

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<sup>171</sup> *Inter-Am. Ct. H.R., Mapiripán Case*, par. 110; *Caso 19 Comerciantes*. Judgment of July 5, 2004. Series C, No. 109, par. 141; *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C, No. 103, par. 41, and *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C, No. 63, par. 75.

<sup>172</sup> *Inter-Am. Ct. H.R., Case of the Moiwana Community*, par. 92.

<sup>173</sup> *Inter-Am. Ct. H.R., Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A, No. 18, par. 158.

violated, to the detriment of Messrs. José Antonio Monroy, Armando Amaya, and Carlos Colmenares, the obligation to ensure the right to humane treatment enshrined in Article 5 of the American Convention in connection with Article 1(1) thereof, by its failure to adopt protection measures to lessen the situation of risk and its failure to conduct a thorough and diligent investigation or punish those responsible for the aforementioned gunshot wounds.

**D. Violation of the right to a fair trial and judicial protection (Articles 8 and 25 in connection with Article 1(1) of the American Convention)**

259. The State has failed to fulfill its obligation to investigate the facts in the case, and to prosecute and punish those responsible for the acts of persecution, intimidation, harassment and aggression, in a thorough and effective manner and within a reasonable time, as required under Articles 8 and 25 of the American Convention.

260. Article 8(1) of the Convention provides that,

[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

261. In turn, Article 25 of the Convention states that,

[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

262. For its part, Article 1(1) of the American Convention declares that,

[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

263. These provisions enshrine the obligation of the State to ensure access to justice with guarantees of legality, independence and impartiality within a reasonable time, as well as the general obligation to provide an effective judicial remedy to any violation of fundamental rights, observing the principle of effectiveness of procedural instruments or mechanisms.

264. As the Inter-American Court of Human Rights has held:

Article 25 in relation to Article 1(1) of the American Convention requires the State to guarantee to all persons access to the courts, and, in particular, to a

simple and rapid recourse so that, among other things, those responsible for the human rights violations may be tried and reparations obtained for the damages suffered. As this Court has said, Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention."<sup>174</sup>

265. In this respect Article 25 is closely tied to Article 8(1), which recognizes the right of all persons to a hearing, with due guarantees and within a reasonable time, by an independent and impartial tribunal and entitles the victims to have the violations of their rights effectively investigated by the authorities, to see those responsible prosecuted and receive fitting punishment, and to receive compensation for the injuries suffered.<sup>175</sup> Thus, the Inter-American Court of Human Rights has held that:

under the American Convention, States parties have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), and to support them in accordance with the rules of due process (Article 8.1). This is included in the general obligation of these States to guarantee the free and fair exercise of rights recognized by the Convention to each person under their jurisdiction (Article 1.1).<sup>176</sup>

266. Inter-American case law dictates that when a publicly actionable offense is committed, the State has the obligation to institute criminal proceedings and pursue them to the end and that,<sup>177</sup> in such cases, this is the best way to clarify the facts, judge the perpetrators, and establish the corresponding criminal punishment, in addition to providing for other forms of reparation.

267. In the instant case, the State was fully aware of the attacks perpetrated against the victims by both private individuals and its agents. The Inter-American Court has held that due diligence in the investigation of human rights violations requires the investigating organ to carry out all such procedures and inquiries as may be necessary, in order to attempt to accomplish the intended result, since the investigation is otherwise not effective under the terms of the Convention.<sup>178</sup>

268. Accordingly, the Commission will analyze whether in the instant case the effectiveness of remedies was guaranteed through a diligent investigation of the alleged crimes that demanded a response from the State, bearing in mind that it was incumbent on the latter, inasmuch as it has the obligation to take criminal action, to hasten the criminal

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<sup>174</sup> Inter-Am. Ct. H.R., *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment of August 31, 2001. Series C, No. 79, par. 52; and Inter-Am. Ct. H.R., *Case of Ivcher-Bronstein*. Judgment of February 6, 2001. Series C, No. 74, par. 135.

<sup>175</sup> Inter-Am. Ct. H.R., *Case of Durand-Ugarte*. Judgment of August 16, 2000. Series C, No. 68, par. 130.

<sup>176</sup> Inter-Am. Ct. H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C, No. 148, par. 287.

<sup>177</sup> Inter-Am. Ct. H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C, No. 147; Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C, No. 140; See, also, IACHR Annual Report 1997, Report 52/97, Case 11.218, *Arges Sequeira Mangas*.

<sup>178</sup> Inter-Am. Ct. H.R., *Case of the Serrano-Cruz Sisters*. Judgment of March 1, 2005. Series C, No. 120, par. 83.



investigations -in particular the Attorney General's Office- and to move forward with all the necessary procedures to uncover the true facts and identify those responsible. The search for the truth is the responsibility of the State and does not depend on the procedural initiative of the victim or his family or upon their offer of proof.<sup>179</sup>

269. The Inter-American Court has held that due diligence in the investigation of human rights violations requires the investigating organ to carry out all such procedures and inquiries as may be necessary, in order to attempt to accomplish the intended result, since otherwise the investigation is not effective under the terms of the Convention.<sup>180</sup> By the same token, the Court has held that the duty to investigate with due diligence includes the obligation to carry out all the necessary procedures within a reasonable time.<sup>181</sup>

270. The foregoing does not mean that states have the obligation to prosecute and punish persons when the evidence and the appropriate procedures are not sufficient for that purpose or lead to another result. While the Commission recognizes that in some cases it may be difficult to identify the culprits or, in general, establish that a criminally actionable offence genuinely occurred, these are conclusions that the domestic authorities could legitimately have reached after carrying out, within a reasonable time, the necessary procedures, using all the means at their disposal to determine whether or not a crime was committed and the real possibilities of identifying those responsible.

271. However, it should be clarified that the action brought by Mr. Sapene on January 31, 2002, for the incident that occurred earlier that month involving Luisiana Ríos, contains, insofar as is relevant to the instant case, at least 16 other complaints concerning attacks on RCTV journalists and media workers that were presented as the acts occurred, all of which were assigned to the Offices of the Second and Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Metropolitan Area of Caracas. For its part, the complaint concerning the events of April 13, 2002, presented on May 6, 2002, was assigned to the same public prosecutor's office. The complaints dealing with other acts relating to attacks on the network or obstruction of journalists on the streets in 2004 were assigned to other public prosecutors.

272. Specifically with regard to the investigation of the crimes against Mr. Monroy, the Commission observes that the proceeding remained at the investigation stage for more than three years before an arrest warrant was sought on July 6, 2006, and the case was transferred to the Ninth Criminal Trial Court with oversight functions, which exceeds a reasonable time to the detriment of José Atonio Monroy. At the time of this writing the Commission was unaware if that measure had been put into effect.

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<sup>179</sup>Inter-Am. Ct. H.R., *Case of the Moiwana Community*, par. 146; *Case of the Serrano-Cruz Sisters*, par. 61; *Case of the "Mapiripán Massacre"*, par. 219.

<sup>180</sup> Inter-Am. Ct. H.R., *Case of the Serrano-Cruz Sisters*, par. 83.

<sup>181</sup> Inter-Am. Ct. H.R., *Case of the Serrano-Cruz Sisters*, par. 65.

273. Furthermore, as regards all the other investigations there has been no "response on the part of the Attorney General's Office." The State mentioned in October 2003 with respect to the investigation of the denounced acts, that those acts occurred during a public disturbance involving many witnesses in the Venezuelan capital city, who have to be located for questioning. It stated that the situation was considerably more complex in the cases alleging threatening telephone calls, insults hurled from speeding cars, and even more so in the two cases of projectiles launched from an unknown location that struck RCTV employees.

274. The Commission recognizes the difficult circumstances in which certain acts occurred, bearing in mind the polarization and demonstrations in the streets. Nevertheless, the conditions in a country, however trying they may be, generally do not release a State party to the American Convention from its legal obligations under a treaty.<sup>182</sup>

275. In this respect, the Commission mentions the following:

a) with respect to the injuries sustained by reporter Carlos Colmenares on August 19, 2003, the proceeding is still at the investigation stage. On August 26, 2003, the RCTV lawyers, in their complaint, included a copy of the video containing images of the events. In that connection, although steps had been taken to clarify the facts, a witness was deposed, the Commission notes that on April 10, 2006, the State requested the RCTV legal department to furnish a copy of the video containing the images recorded by the news team at the scene of the events.<sup>183</sup> In other words, two years and eight months after the complaint was filed it sought an exhibit that it supposedly already had in its possession. This clearly denotes a lack of diligence in the investigations and that a reasonable time has been exceeded to the detriment of Carlos Colmenares;

b) regarding the injuries caused to Mr. Armando Amaya on November 12, 2002, since the complaint was lodged on November 21, 2002, a number of procedures have been carried out, including inspections, depositions of witnesses, a medical examination of the victim, and a request for information made to Brigade 11-a by the Public Prosecutor assigned. However, three years and 10 months since the action was brought there is no evidence to suggest that the investigation stage has concluded, which indicates that a reasonable time has been exceeded to the detriment of Armando Amaya;

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<sup>182</sup> Inter-Am. Ct. H.R., *Case of the Moiwana Community*, par. 153

<sup>183</sup> Bimonthly report on compliance with the provisional measures ordered by the Court in the case of *Luisiana Ríos et al.* (Radio Caracas Televisión-RCTV). June 5, 2006.

c) as to the violent demonstration held at the network headquarters on April 13, 2002, a complaint for which was presented on May 6, 2002, no reply has been received to date. In this connection, it should be mentioned that, along with their complaint, the petitioners submitted evidence in the form of a video cassette containing images of the violent acts that occurred that day. They also offered testimonial evidence of workers who were present in the building. However, despite the fact that the images captured by the network security camera permit identification of many of the participants and, in particular, of the person who charged at the glass facade wielding a blunt instrument, there is nothing in the evidence to suggest that any steps have been taken in the proceeding to identify the persons responsible for the denounced crimes. In other words, more than four years and four months since the complaint was lodged the investigation has made no progress from which to infer that the investigation stage has concluded, which denotes a lack of due diligence and that a reasonable time has been exceeded to the detriment of the 20 victims in this case;

d) with respect to the attacks of April 10, 2002, concerning Ms. Isabel Mavarez, the lawyers representing the RCTV journalists informed the State that the results of the forensic medical examination could only be removed by persons attached to the Public Prosecutor's Office. However, on July 11, 2006, more than four years after the complaint was filed, the State requested a procedure that should have been performed in 2002. This denotes a lack of diligence in the investigations and that a reasonable time has been exceeded to the detriment of Isabel Mavarez; and

e) concerning the public demonstration held at the network headquarters on June 3, 2004, in spite of the fact that the Office of the Fifth Public Prosecutor of the Metropolitan Area of Caracas, which was assigned to this case, identified the person who led the attack, that proceeding has not progressed beyond the investigation stage and no conclusions whatever have been reported, which denotes a lack of diligence in the investigations and that a reasonable time has been exceeded to the detriment of the 20 victims in the instant case.

276. The delay in completing the investigations and the lack of measures to seek the truth help to perpetuate acts of violence and intimidation against media workers, in general, and against the victims in particular. The failure to clarify these incidents not only violates the victims' rights to justice and reparation but also broadcasts the message that the commission of acts designed to deter<sup>184</sup> those whose task it is to inform society, will be tolerated without repercussions.

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<sup>184</sup> Inter-Am. Ct. H.R., *Case of the Ituango Massacres. Judgment of July 1, 2006*. Series C, No. 148, par. 322.

277. The State has a duty to prevent and combat impunity, which the Inter-American Court has defined as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention."<sup>185</sup> Furthermore, the Inter-American Court has found that the State is obliged to combat this situation of impunity by all available legal means, since it fosters the chronic repetition of human rights violations and the total defenselessness of the victims.<sup>186</sup>

278. In light of the foregoing, the Commission considers that the inadequate investigation by Venezuela of the alleged acts, the evident lack of response, and the time elapsed without clarification of any of the charges, punishment of the culprits or reparation of the injuries caused, have violated the standards of access to justice and a fair trial contained in the American Convention and, therefore, the State violated Articles 8 and 25 of the Convention in connection with Article 1(1) thereof, to the detriment of the 20 RCTV media workers named as victims in the instant case.

### VIII. REPARATIONS AND COSTS

279. Based on the facts alleged in the instant application and on the consistent case law of the Inter-American Court, which holds that "it is a principle of International Law that all violations of an international obligation that have caused harm generate an obligation to adequately redress such harm,"<sup>187</sup> the IACHR presents to the Court its submissions on the reparations and costs imputable to the Venezuelan State as a consequence of its responsibility for the violations committed to the detriment of the victims.

280. In view of the Rules of Procedure of the Honorable Court, which provide for the possibility of autonomous representation, the Commission will only address here general criteria regarding reparations and costs that it believes it would be appropriate for the Honorable Court to apply in the instant case. The Commission understands that it is up to the victims and their representatives to specify their claims under Article 63 of the Convention and Article 23 and related provisions of the Rules of Procedure of the Court.

<sup>185</sup> Inter-Am. Ct. H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C, No. 148, par. 299; Inter-Am. Ct. H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C, No. 134, par. 237; Inter-Am. Ct. H.R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C, No. 124, par. 203; and Inter-Am. Ct. H.R., *Case of the Serrano-Cruz Sisters*. Judgment of March 1, 2005. Series C, No. 120, par. 170.

<sup>186</sup> Inter-Am. Ct. H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C, No. 148, par. 299; Inter-Am. Ct. H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C, No. 147, par. 168; Inter-Am. Ct. H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C, No. 140, par. 266; Inter-Am. Ct. H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C, No. 134, par. 237.

<sup>187</sup> Inter-Am. Ct. H.R. *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 199; Inter-Am. Ct. H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 413; Inter-Am. Ct. H.R. *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C, No. 158, par. 141.

## A. Obligation to make reparation

281. An essential function of justice is to remedy the harm caused to the victim. This function should be expressed through rectification or restitution and not simply through compensation, which does not restore the moral balance or return what was taken.

282. Article 63(1) of the American Convention provides that,

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

283. As the Court has consistently found, "Article 63(1) of the American Convention contains a rule of customary law that is one of the fundamental principles of contemporary international law as regards State responsibility. Thus, when an unlawful act is imputed to a State, that State immediately incurs responsibility for violation of the international norm in question and the consequent duty to make reparations and put an end to the consequences of that violation."<sup>188</sup>

284. Reparation is critical to ensure that justice is done in an individual case, and it is the mechanism by which the decision of the Court is raised beyond the sphere of moral condemnation. Reparations are those measures that tend to make the effects of past violations disappear. Reparation of the damage caused by infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the previous situation.

285. This obligation to provide reparation is regulated in all its aspects by international law (scope, nature, manner, and determination of beneficiaries) and the State can neither modify it nor refuse to comply with it by invoking domestic legal provisions.<sup>189</sup>

286. In the instant case, the Inter-American Commission has shown that the State incurred international responsibility by violating the victims' rights to humane treatment, a fair trial, freedom of expression, and judicial

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<sup>188</sup> Inter-Am. Ct. H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 200; Inter-Am. Ct. H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 414; Inter-Am. Ct. H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C, No. 150, par. 116.

<sup>189</sup> Inter-Am. Ct. H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 200; Inter-Am. Ct. H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 415; Inter-Am. Ct. H.R. *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C, No. 158, par. 143.

290. In consideration of the criteria established by inter-American and universal jurisprudence, the Commission presents its conclusions and claims regarding the redress measures for the pecuniary and non-pecuniary damages and other forms of redress and satisfaction applicable in the case at hand.

## 1. Compensation measures

291. The Court has established basic guidelines on just compensation designed to provide adequate and effective financial reparation for injuries suffered as a result of human rights violations. Furthermore, the Court has found that the payment of damages is merely compensatory in nature and should be provided to the extent and in the measure necessary to make good both the pecuniary and the non-pecuniary losses caused.<sup>194</sup>

### 1.1. Pecuniary damages

292. In its case law on reparations, the Court has consistently held that material damages include consequential damages and lost earnings, as well as any non-pecuniary damages or moral injury to the victims and to their family in certain cases.<sup>195</sup>

293. Consequential damages have been defined as the direct and immediate financial consequences of violations. This category includes immediate and direct capital impairment caused by such violations.<sup>196</sup>

294. As the evidence in the case shows, the victims made significant financial efforts to obtain justice at the domestic level and to surmount the physical, moral and professional consequences that facts in the instant case caused them.

295. For their part, lost earnings are defined as financial income or benefits that cease to accrue as a result of a particular act and which may be quantified based on certain measurable and objective indicators.<sup>197</sup>

<sup>194</sup> Inter-Am. Ct. H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 210; Inter-Am. Ct. H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C, No. 94, par. 204; Inter-Am. Ct. H.R., *Case of Garrido and Baigorria*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C, No. 39, par. 41.

<sup>195</sup> Inter-Am. Ct. H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C, No. 162, pars. 213 and 214; Inter-Am. Ct. H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 423; Inter-Am. Ct. H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C, No. 114.

<sup>196</sup> Inter-Am. Ct. H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 215; Inter-Am. Ct. H.R., *Case of Loayza Tamayo* Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of November 27, 1998. Series C, No. 42, par. 147; and Inter-Am. Ct. H.R., *Case of Aloeboetoe et al.* Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of September 10, 1993. Series C, No. 15, par. 50.

<sup>197</sup> See, for example, Inter-Am. Ct. H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C, No. 117, par. 105 *et seq.*; Inter-Am. Ct. H.R., *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C, No. 115, pars. 151 and 152.

protection, as well as through its failure to meet its obligation to respect and ensure human rights.

## **B.     Reparation measures**

287. The UN Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms has divided the components of that right into four general categories: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>190</sup> In the opinion of the United Nations Special Rapporteur on the impunity of perpetrators of human rights violations, these measures include: the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; an official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim; an apology, including public acknowledgement of the facts and acceptance of responsibility, judicial or administrative sanctions against persons responsible for the violations; the prevention of further violations, etc.

288. For its part, the Court has noted that reparation measures are intended to eliminate the effects of the violations that were committed.<sup>191</sup> Such measures cover the various ways a State can redress the international responsibility it has incurred, which, according to international law consist of restitution, compensation, rehabilitation, satisfaction, and guarantees that the violations will not be repeated.<sup>192</sup>

289. Furthermore, the UN Commission on Human Rights has found that,

[I]n accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>193</sup>

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<sup>190</sup> Basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to decision 1995/117 of the Sub-Commission on Human Rights E/CN.4/ sub.2/1997/17.

<sup>191</sup> Inter-Am. Ct. H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 202; Inter-Am. Ct. H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 416; Inter-Am. Ct. H.R. *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C, No. 158, par. 144.

<sup>192</sup> See United Nations, *Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law*, E/CN.4/Sub.2/1990/10, July 26, 1990. See also, Inter-Am. Ct. H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, par. 31; *Suárez Rosero Case, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, par. 41.

<sup>193</sup> United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees: Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117 of May 24, 1996, par. 7.

296. The harm caused to the victims justifies the Commission's request that the Court, in consideration of the nature of the case, order payment of compensation for material damages.

## **1.2. Non-pecuniary damages**

297. The victims in the instant case have experienced psychological suffering, anxiety, uncertainty, and changes to their lives as a result of their inability to complete work assignments and the personal and professional consequences of being subjected to acts of persecution, harassment, physical assault and moral aggression.

298. Furthermore, the lack of response from the State to the complaints filed, the impunity of the crimes in the instant case, and the evident lack of protection from the State, causes, in the particular circumstances of the facts in the instant case, a profound sense of anxiety, impotence, and defenselessness.

299. The harm caused to the victims justifies the Commission's request that the Court, in consideration of the nature of the case, order payment of compensation for non-pecuniary damages.

## **2. Cessation, satisfaction and guarantees of non-repetition**

300. Satisfaction is understood as those measures that the perpetrator of a violation must adopt in accordance with international instruments or customary law in order to acknowledge the commission of a wrongdoing.<sup>198</sup> Satisfaction occurs when three actions are carried out, generally in an accumulative manner: apologies, or any other gesture that shows recognition of the authorship of the act in question; the prosecution and punishment of those responsible; and the adoption of measures to avoid repetition of the damage.<sup>199</sup>

301. The IACHR now sets out its position with respect to cessation, satisfaction and guarantees of non-repetition required in the instant case, without prejudice to subsequent expansion of its arguments on this subject.

302. First of all, Venezuela should adopt measures to ensure the cessation of the violations. These measures should include any and all steps necessary to prevent the continuation or repetition of the undue restrictions or direct or indirect obstructions of the exercise of the right to freedom of expression examined in this case. Venezuela should take reasonable steps to prevent private individuals from unlawfully interfering with the exercise of freedom of expression. Accordingly, the State should punish unlawful actions aimed at silencing freedom of expression.<sup>200</sup>

<sup>198</sup> Brownlie, *State Responsibility, Part 1*. Clarendon Press, Oxford, 1983, p. 208.

<sup>199</sup> *Idem*.

<sup>200</sup> Principle 10 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information: Unlawful Interference With Expression by Third Parties.- Governments are



303. Second, the State should conduct an impartial and exhaustive investigation in order to prosecute and punish all those materially and intellectually responsible for the violations that are the subject of the instant case and make the results of those investigations public.

304. In connection with this, the Court has held on numerous occasions that every individual and society as a whole have the right to be informed of any human rights violations that occur.<sup>201</sup> Furthermore, the UN Commission on Human Rights has recognized that, for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations are essential steps towards rehabilitation and reconciliation. Accordingly, it has urged States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated and made public; and has encouraged victims to participate in such a process.<sup>202</sup>

305. Third, the State should permit the victims, RCTV employees, to have access to official sources of information and to cover the news. Furthermore, the nature of the facts in this case demand that the State adopt measures for the moral and professional rehabilitation of the victims. Accordingly, the Commission requests the Court to order, *inter alia*, the following measures:

- Publication in a media outlet with nationwide circulation of the judgment ultimately handed down by the Tribunal; and
- Public acknowledgment by the State of responsibility for the harm caused and the violations that occurred.

306. Finally, the Commission considers that the State has the obligation to prevent the recurrence of human rights violations such as the ones in this instance. Consequently, the Commission requests the Court to order that the Venezuelan State adopt, as a matter of priority, all the measures necessary to prevent any acts, whether by state agents or by private individuals, that might obstruct media and related workers from seeking, receiving and imparting information.

### **C. Beneficiaries**

307. Article 63(1) of the American Convention requires reparation of the consequences of the violation and "that fair compensation be paid to the

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obliged to take reasonable measures to prevent private groups or individuals from interfering unlawfully with the peaceful exercise of freedom of expression, even where the expression is critical of the government or its policies. In particular, governments are obliged to condemn unlawful actions aimed at silencing freedom of expression, and to investigate and bring to justice those responsible.

<sup>201</sup> Inter-Am. Ct. H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 347; Inter-Am. Ct. H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C, No. 150, par. 139; and Inter-Am. Ct. H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C, No. 149, par. 245.

<sup>202</sup> E/CN.4/RES/2001/70.

injured party." The persons who are entitled to said compensation are usually those directly injured by the events of the violation in question.

308. In the instant case, in the opinion of the Commission, the beneficiaries of the redress to be ordered by the Court are the victims Luisiana Ríos, Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares. The foregoing notwithstanding, during the proceeding before the Inter-American Court the representatives may accredit material and non-pecuniary damages caused to other persons, such as the next of kin of the victims, and, therefore, their condition as beneficiaries of the reparation eventually set by the Tribunal.

#### **D. Costs and expenses**

309. Based on the consistent case law of the Court, it should be understood that costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention, because the activities carried out by the victims, their successors or their representatives to access international justice imply disbursements and commitments of a financial nature that should be compensated.<sup>203</sup> The Court has also considered that the costs referred to in Article 55(1)(h) of the Rules of Procedure include the necessary and reasonable expenses that the victim or victims incur in order to have access to the supervisory bodies of the American Convention, and among such expenses are the fees of those who provide legal assistance.

310. The IACHR requests the Court, once it has heard the victims' representatives, to order the Venezuelan State to pay the costs and fees duly substantiated.

### **IX. CONCLUSION**

311. Based on the foregoing factual and legal considerations, the Inter-American Commission concludes that the Venezuelan State is responsible for violation of the rights to freedom of thought and expression (Article 13), a fair trial (Article 8), judicial protection (Article 25) and humane treatment (Article 5) recognized in the American Convention, in connection with the obligation to respect and ensure rights enshrined in Article 1(1) thereof, in the terms and to the detriment of the victims mentioned in the report on merits.

### **X. PETITION**

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<sup>203</sup> Inter-Am. Ct. H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 243; Inter-Am. Ct. H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 455; Inter-Am. Ct. H.R. *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C, No. 158, par. 152.

312. Based on the factual and legal arguments given above, the Inter-American Commission on Human Rights requests that the Court find and declare that:

- a. the Venezuelan State is responsible for violation of the right of the victims to freedom of expression recognized in Articles 13 of the American Convention, in conjunction with the general obligation to respect and ensure human rights enshrined in Article 1(1) of that instrument;
- b. the Venezuelan State is responsible for violation of the right of the victims to a fair trial and judicial protection, recognized in Articles 8(1) and 25 of the American Convention, in conjunction with the general obligation to respect and ensure human rights enshrined in Article 1(1) of that instrument; and
- c. the Venezuelan State is responsible for violation of the right of Messrs. José Antonio Monroy, Armando Amaya, and Carlos Colmenares, to the right to humane treatment recognized in Article 5 of the American Convention, in conjunction with the general obligation to respect and ensure human rights enshrined in Article 1(1) of that instrument.

313. In light of the foregoing, the Inter-American Commission requests the Court to order that the State:

- a. Adopt all the measures necessary to prevent any acts, whether by state agents or by private individuals, that might obstruct media and related workers from seeking, receiving and imparting information;
- b. Adopt all the measures necessary to respond with due diligence to any acts, whether by state agents or private individuals, that obstruct media and related workers from seeking, receiving and imparting information;
- c. Carry out an impartial, thorough investigation with a view to prosecuting and punishing all those responsible for the facts in the instant case and make public the findings of those investigations;
- d. Ensure to Messrs. Luisiana Ríos, Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares the exercise of the right to

freedom of thought and expression, and in particular the exercise of their work activities;

e. Provide reparation for the material and non-pecuniary damages occasioned by the conduct of the State organs to Messrs. Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares; and

f. Pay the court costs and legal expenses incurred by the victims and their representatives in pursuing the case, both at the domestic level and in the inter-American jurisdiction.

## **XI. SUPPORTING EVIDENCE**

### **A. Documentary evidence**

314. The IACHR encloses a list of documentary evidence available at this time.

**APPENDIX 1.** IACHR, Report 119/06 (Merits), Case 12.441, *Luisiana Ríos et al.*, Venezuela, October 26, 2006.

**APPENDIX 2.** IACHR, Informe 06/04 (Admissibility), Case 12.441, *Luisiana Ríos et al.*, Venezuela, February 27, 2004.

**APPENDIX 3.** Record of the proceeding before the Inter-American Commission on Human Rights.

**ANEXO 1.** Brief of the RCTV attorneys of November 5, 2002, denouncing the events of the morning of November 5, 2002, to the Second Public Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas.

**ANEXO 2.** Complaint of August 27, 2003, filed by the RCTV attorneys with the Second Public Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas.

**ANEXO 3.** Complaint of July 12, 2002, filed by the RCTV attorneys with the Second Public Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas for threats.

**ANEXO 4.** Complaint presented by the RCTV attorneys to the Second and Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas on August 14, 2002 for attacks on RCTV journalists on August 20, 2002, outside the seat of the Supreme Court of Justice.

- ANEXO 5.** Complaint presented by the RCTV attorneys to the Second Public Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas on August 20, 2002, for attacks on Laura Castellanos, David Pérez Hansen, and Argenis Uribe.
- ANEXO 6.** Decision to ratify protection measures of May 6, 2004, of the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas.
- ANEXO 7.** Brief of the RCTV attorneys of July 9, 2002, to the Second and Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas.
- ANEXO 8.** Decision to expand protection measures of the Thirteenth Oversight Court of the Trial Court of the Criminal Court Circuit of the Metropolitan Area of Caracas of April 11, 2002.
- ANEXO 9.** Brief of the RCTV attorneys of March 21, 2003, presented to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas.
- ANEXO 10.** Decision to ratify precautionary protection measures of August 19, 2003, of the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas.
- ANEXO 11.** Decision of November 5, 2003, of the Second Chamber of the Court of Appeals of the Criminal Court Circuit of the Metropolitan Area of Caracas.
- ANEXO 12.** Communication of August 12, 2004, from the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas.
- ANEXO 13.** Letter from the General Manager of RCTV of January 26, 2005, to the Chief of Rafael Urdaneta Police Station.
- ANEXO 14.** Complaint of May 7, 2002 presented by the RCTV attorneys to the Second and the Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the District of the Metropolitan Area of Caracas, concerning the acts of violence against Isabel Mavarez.
- ANEXO 15.** Brief of the RCTV attorneys providing a copy of entry 4911 of the Forensic Medicine Division of the Penal and Criminal Scientific Investigations Corps on Isabel Marvaez.
- ANEXO 16.** Brief of the RCTV attorneys to the Second and the Seventy-Fourth Public Prosecutors of the Office of the Attorney General

of the District of the Metropolitan Area of Caracas to which they attach the Emergency Medical Report of La Floresta Medical Institute of April 9, 2002, concerning the examination of Isabel Mavarez for the injuries sustained on April 9, 2002.

- ANEXO 17.** Request for expansion of protection measures of April 10, 2002 presented by the RCTV attorneys to the Second Public Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas.
- ANEXO 18.** Record of complaint 272 of May 28, 2002, presented to the Second Prosecutor of the Office of the Attorney General of the Metropolitan Area of Caracas by Luisiana Ríos.
- ANEXO 19.** Complaint of June 5, 2002, presented to the Second Prosecutor of the Office of the Attorney General by the RCTV attorneys.
- ANEXO 20.** Decision to expand protection measures of June 12, 2002 issued by the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas.
- ANEXO 21.** Medical report on Mr. Antonio Monroy of September 9, 2002.
- ANEXO 22.** Complaint of November 21, 2002, for attacks on Armando Amaya, Pedro Nikken, and Luis Contreras, presented to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas.
- ANEXO 23.** Medical report on Mr. Armando Amaya issued on November 19, 2002, by the medical director of Administradora Rescarven C.A.
- ANEXO 24.** Report of the State of June 5, 2006, to the Inter-American Court.
- ANEXO 25.** Brief of March 21, 2003, presented by the RCTV attorneys to the Second Public Prosecutor of the Office of the Attorney General.
- ANEXO 26.** Official record of July 5, 2003, issued by the Thirty-Second National Public Prosecutor and the One Hundred and Twenty-Sixth Public Prosecutor for the Metropolitan Area of Caracas, in accordance with the orders of the Director of Protection of Fundamental Rights in connection with the occupation of the Mecedores Station by army personnel.
- ANEXO 27.** Brief of August 5, 2003, by which the RCTV attorneys present a complaint to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas.

- ANEXO 28.** Brief of August 15, 2003, by which the RCTV attorneys present a complaint to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas.
- ANEXO 29.** Judicial inspection of August 15, 2003, ordered and conducted by the Sixth Trial Court for Civil, Commercial, and Traffic Matters of the Judicial District of the Metropolitan Area of Caracas.
- ANEXO 30.** Complaint of August 26, 2003, to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas presented by the RCTV attorneys in connection with the incidents concerning Pedro Nikken and Carlos Colmenares.
- ANEXO 31.** Bimonthly report on compliance with the provisional measures ordered by the Court in the case of Luisiana Ríos *et al.* (Radio Caracas Televisión-RCTV). June 5, 2006.
- ANEXO 32.** Complaint of August 26, 2003, to the Second Public Prosecutor of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas presented by the RCTV attorneys for the acts in connection with Noé Pernía.
- ANEXO 33.** Affidavit of Mr. Noé Pernía on the attacks of June 3, 2004.
- ANEXO 34.** Affidavit of Laura Castellanos on the attacks of June 3, 2004.
- ANEXO 35.** Judicial Inspection of June 3, 2004, which certified the incidents that occurred in the vicinity of the RCTV network headquarters on June 3, 2004.
- ANEXO 36.** Judicial Inspection of June 4, 2004, which certifies the damages caused to the RCTV network building by the incidents that occurred on June 3, 2004.
- ANEXO 37.** Reiteration of complaints of August 5, 2004, addressed to the Prosecutor General of the Bolivarian Republic of Venezuela by the RCTV attorneys.
- ANEXO 38.** List of RCTV journalists and other employees.
- ANEXO 39.** Statements, press releases, and news reports of the International Association of Broadcasting (IAB) and the Inter-American Press Association (IAPA) on Venezuela.
- ANEXO 40.** Affidavits of Luisiana Ríos, Anahís Cruz, Laura Castellanos and Eduardo Sapene Granier.
- ANEXO 41.** Letter of June 13, 2002, from the representatives of the Venezuelan Television Industry Federation, the Venezuelan

Chamber of Broadcasting, the Venezuelan Press Bloc, and the National College of Journalists of Venezuela to the Executive Secretary of the Inter-American Commission, the Secretary General of the Organization of American States, and the Special Rapporteur for Freedom of Expression.

- ANEXO 42.** Copy of the power of attorney of RCTV.
- ANEXO 43.** Leaflets, pamphlets, and written attacks against RCTV journalists.
- ANEXO 44.** Judicial inspections requested by RCTV.
- ANEXO 45.** Petitions and complaints to the Office of the Prosecutor General of the Bolivarian Republic of Venezuela.
- ANEXO 46.** Complaint of May 6, 2002.
- ANEXO 47.** Transcriptions of the "*Aló Presidente*" programs.
- ANEXO 48.** Complaint of June 19, 2002, presented to the Prosecutor General by the Venezuelan Television Industry Federation and the Venezuelan Chamber of Television.
- ANEXO 49.** Request for precautionary measures of protection due to the threats expressed by the President in his program "*Aló Presidente*" No 107 of June 19, 2002.
- ANEXO 50.** Request for adoption of precautionary measures of January 2002 and communication from the IACHR adopting the measures requested.
- ANEXO 51.** Communication of February 13, 2002, from the Prosecutor General to the State Representative on Human Rights before the Inter-American and International Systems.
- ANEXO 52.** Letter from Echeverría & Asociados law firm of May 3, 2002.
- ANEXO 53.** Request for precautionary protection measures of March 12, 2002, presented to the Offices of the Second and Seventy-Fourth Public Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas.
- ANEXO 54.** Decision of March 15, 2002, of the Thirty-third Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas.
- ANEXO 55.** Official Letter 199-02 of March 15, 2002, from the Thirty-Fifth Trial Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas.



- ANEXO 56.** Official letters in connection with communications from CONATEL and replies of RCTV.
- ANEXO 57.** Decision of April 19, 2002, of the Sixth Trial Court for Civil, Commercial, and Traffic Matters of the Judicial District of the Metropolitan Area of Caracas.
- ANEXO 58.** Witness testimony of Rafael Antonio Lorca submitted before the Office of the Third Notary Public of the Municipality of Chacao on April 11, 2002.
- ANEXO 59.** File of the Office of the Vice President for Administration and Finance of RCTV.
- ANEXO 60.** RCTV purchase invoices.
- ANEXO 61.** Brief of May 15, 2002, prepared by Echeverría & Asociados law firm.
- ANEXO 62.** Brief of May 29, 2002, presented by the RCTV attorneys to the Second and Seventy-Fourth Prosecutors of the Office of the Attorney General of the Judicial District of the Metropolitan Area of Caracas.
- ANEXO 63.** Press article entitled "*Violencia Política. Desalojo de policías tomistas provocó caos y vandalismo. Un muerto y 35 heridos en disturbios*" [Political violence. Eviction of *tomista* policemen caused chaos and vandalism. One dead and 35 injured in disturbances]."
- ANEXO 64.** Resolution 002 of March 28, 2007, of the Ministry of Popular Power for Telecommunications and Information Systems.
- ANEXO 65.** Report of the State in the record of the proceeding on precautionary measures before the IACHR.
- ANEXO 66.** DVD labeled "*Agresiones*" [Attacks].
- ANEXO 67.** DVD entitled "*Agresiones a Periodistas*" [Attacks on Journalists].
- ANEXO 68.** DVD labeled "*Agresiones a Anahís Cruz*" [Attacks on Anahís Cruz].
- ANEXO 69.** Video labeled "*Camarógrafo lesionado*" [Wounded cameraman] (Monroy).
- ANEXO 70.** Video entitled "*Vándalos En la Sede de RCTV el 13/04/02*" [Vandals at RCTV Headquarters on April 13, 2002].

- ANEXO 71.** Video labeled "*Ataque Círculos Bolivarianos a RCTV el 3/10/2003*" [Bolivarian Circles Attack on RCTV on October 3, 2003].
- ANEXO 72.** Video labeled "*Ataque Círculos Bolivarianos a RCTV el 8/10/2003*" [Bolivarian Circles Attack on RCTV on October 8, 2003].
- ANEXO 73.** Video labeled "*Agresiones al canal 8-04-2004*" [Attacks on network April 8, 2004].
- ANEXO 74.** Video labeled "*Agresiones a RCTV 3-06-04*" [Attacks on network June 3, 2004].
- ANEXO 75.** Video labeled "*Ataques a RCTV (Handycam)*" [Attacks on RCTV (Handycam)].
- ANEXO 76.** Video labeled "*Caso concesión RCTV*" [RCTV concession case].
- ANEXO 77.** Video labeled "*Incidente Miraflores Luisiana Ríos 18/04/02*" [Miraflores Incident Luisiana Ríos April 18, 2002].
- ANEXO 78.** *Curricula vitae* of experts: Toby Mendel, Ricardo Uceda, and Edumundo Cruz.
- ANEXO 79.** Powers of attorney granted to representatives.
- ANEXO 80.** Request for expansion of provisional measures in favor of all the journalists, management, and other RCTV employees presented by the IACHR to the Court on July 9, 2004.
- ANEXO 81.** Transcription of the address of the President of the Republic of September 18, 2002.
- ANEXO 82.** Request of the beneficiaries for precautionary measures of February 28, 2003.
- ANEXO 83.** Request for provisional measures presented to the Inter-American Court of Human Rights on November 27, 2002.
- ANEXO 84.** Brief of the beneficiaries on provisional measures of July 2, 2004.
- ANEXO 85.** Observations of the beneficiaries on the provisional measures of April 14, 2004.
- ANEXO 86.** Report on provisional measures of the State of Venezuela of August 3, 2006.

315. Additionally, the Commission asks the Honorable Court to request that the Venezuelan State submit certified copies of all the documents related to the investigations and proceedings carried out under

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domestic jurisdiction in connection with the incidents covered by this case, together with authenticated copies of the applicable legislation and regulatory provisions.

316. In addition, the Commission asks the Court to include, in the record in this case, a copy of all the proceedings related to the provisional measures ordered by the Inter-American Court on behalf of Luisiana Ríos *et al.* (RCTV).

#### **B. Witness testimony**

317. The Commission requests the Court to hear the testimony of the following witnesses:

- Eduardo Sapene Granier, victim, who will testify to the acts of harassment and attacks suffered by RCTV employees; the intimidating effect of those attacks on the editorial approach to information collected by employees and disseminated by the network; the effects of the political discourse of government officials on their work; the complaints and investigations opened, and the measures that the victims had to take to protect their safety in the face of the acts of harassment, among other aspects related to the subject matter and purpose of the instant application.
- Carlos Colmenares, victim, who will testify on the acts of harassment and attacks of which he was a victim; the consequences of these acts on his private life and professional activities; and the investigations into those incidents by State; among other aspects related to the subject matter and purpose of the instant application.
- Luisiana Ríos, victim, who will testify on the acts of harassment and attacks of which she was a victim; the obstructions in the search for and dissemination of information; the consequences of these acts on her private life and professional activities; and the investigations into those incidents by State; among other aspects related to the subject matter and purpose of the instant application.
- Pedro Nikken, victim, who will testify on the acts of harassment and attacks of which he was a victim; the obstructions in the search for and dissemination of information; the consequences of these acts on his private life and professional activities; and the investigations into those incidents by State; among other aspects related to the subject matter and purpose of the instant application.

#### **C. Expert testimony**


318. The Commission requests the Court to hear the expert opinions of the following:

- Toby Mendel, lawyer, who will offer his expert opinion concerning international standards and case law on the effects that intimidation, harassment, persecution and attacks on media and related workers, committed by state agents and/or private individuals, have on the exercise of freedom of expression in media workers; among other aspects related to the subject matter and purpose of the instant application.
- Ricardo Uceda, Peruvian journalist, who will offer his expert opinion concerning the intimidating effect in countries where the authorities keep up a permanent critical discourse against media and related workers; the effects of intimidation, harassment, persecution and attacks on media and related workers committed by state agents and/or private individuals, and on the impact of that on the exercise of freedom of expression in media workers; among other aspects related to the subject matter and purpose of the instant application.
- Edmundo Cruz, Peruvian journalist, who will offer his expert opinion concerning the intimidating effect in countries where the authorities keep up a permanent critical discourse against media and related workers; the effects of intimidation, harassment, persecution and attacks on media and related workers committed by state agents and/or private individuals, and on the impact of that on the exercise of freedom of expression in media workers; among other aspects related to the subject matter and purpose of the instant application.

## **XII. PARTICULARS OF THE ORIGINAL PETITIONERS AND THE VICTIMS**

319. In accordance with Article 33 of the Rules of Procedure of the Court, the Inter-American Commission presents the following information: The original petition was lodged by Luisiana Ríos, Luis Augusto Contreras Alvarado, and Eduardo Sapene Granier of Radio Caracas Televisión network, acting on their own behalf and in representation of Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marciano, Wiston Gutiérrez, and Isabel Mavárez.

320. With the exception of Messrs. Luis Augusto Contreras, Samuel Sotomayor, Armando Amaya, and Argenis Uribe, all the victims have granted powers of attorney to the lawyers Carlos Ayala Corao, Pedro Nikken, Oswaldo Quintana Cardona, and Moirah Sánchez Sanz so that they might represent them in the judicial proceedings before the organs of the inter-American system, as accredited by the documents whose copies are attached.



321. As yet, Messrs. Luis Augusto Contreras, Samuel Sotomayor, Armando Amaya, and Argenis Uribe have not designated a representative in the proceedings before the Court. Accordingly, the Commission, in its capacity as guarantor of the public interest in the inter-American system shall provisionally act on their behalf.

Washington, D.C.

April 20, 2007