

INTER-AMERICAN COURT OF HUMAN RIGHTS

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| Luisiana Ríos and others             | : |
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| vs.                                  | : |
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| The Bolivarian Republic of Venezuela | : |
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| Case 12.441 (The “RCTV” Case)        | : |
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**BRIEF OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AS  
AMICUS CURIAE IN SUPPORT OF PETITIONERS  
LUISIANA RÍOS AND OTHERS IN  
THE “RCTV” CASE**

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## **Table of Contents**

|                                                                                                                                                                    | Page |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Preliminary Statement.....                                                                                                                                         | 2    |
| Statement of Interest .....                                                                                                                                        | 4    |
| Statement of Facts.....                                                                                                                                            | 6    |
| A.    Venezuela’s Actions to Injure and Suppress RCTV and its Employees .....                                                                                      | 6    |
| 1.    Statements Generating Public Hostility to RCTV and its Personnel.....                                                                                        | 7    |
| 2.    Attacks on Petitioners .....                                                                                                                                 | 9    |
| 3.    Limited Police and Prosecutorial Response to Attacks .....                                                                                                   | 11   |
| 4.    Administrative and Legal Harassment by the Government.....                                                                                                   | 11   |
| B.    Deterioration of the Rule of Law in Venezuela .....                                                                                                          | 16   |
| C.    The Inter-American Commission Declares Venezuela in Violation of, inter alia,<br>Articles 8 and 25 of the American Convention .....                          | 19   |
| Argument .....                                                                                                                                                     | 20   |
| I.        Venezuela Breached Its Obligations Under Articles 8 and 25 by<br>Encouraging Attacks on Petitioners and By Failing to Investigate These<br>Attacks ..... | 22   |
| II.       Venezuela Violated Articles 8 and 25 by Using Its Administrative and<br>Judicial Power to Harass Petitioners and Deny Them a Broadcast<br>License .....  | 26   |
| Conclusion .....                                                                                                                                                   | 29   |

## **Table of Authorities**

### **CASES AND COURT DOCUMENTS**

|                                                                                                                                                                                                         |        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Baena-Ricardo v. Panama, Inter-Am. Ct. H.R. (ser. C) No. 72 (Feb. 2, 2001) .....                                                                                                                        | 23     |
| Bautista de Arellana v. Columbia, U.N. Hum. Rts. Ctte., U.N. Doc.<br>CCPR/C/55/D/563/1993 (Oct. 27, 1995) .....                                                                                         | 25     |
| Blake v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 36 (Jan. 24, 1998).....                                                                                                                             | 22     |
| Brief of the Association of the Bar of the City of New York as Amicus Curiae,<br>Perozo v. Bolivarian Republic of Venezuela (Inter-Am. Ct. H.R. May 30, 2008)<br>(No. 12.442) .....                     | 2, 6   |
| Brief of the Inter-American Commission on Human Rights, Perozo v. Bolivarian<br>Republic of Venezuela (Inter-Am. Ct. H.R. April 12, 2007) (No. 12.442) .....                                            | 8      |
| Brief of the Inter-American Commission on Human Rights, Ríos v. Bolivarian<br>Republic of Venezuela (Inter-Am. Ct. H.R. April 20, 2007) (No. 12.441) .....                                              | Passim |
| Brief of the Netherlands Institute for Human Rights (SIM) as Amicus Curiae in<br>Support of the Application by the Inter-American Commission on Human<br>Rights (Inter-Am. Ct. H.R.) (No. 12.441) ..... | 4      |
| Brief of Petitioners Luisiana Ríos and others v. Bolivarian Republic of Venezuela<br>(Inter-Am. Ct. H.R. July 20, 2007) (No. 12.441).....                                                               | 11-13  |
| Castillo-Páez v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 24 (Nov. 3, 1997) .....                                                                                                                          | 22     |
| Claude-Reyes v. Chile, Inter-Am. Ct. H.R. (ser. C) No. 151 (Sept. 19, 2006).....                                                                                                                        | 26, 27 |
| Cova v. Venezuela, Case 282.04, Inter-Am. C.H.R., Report No. 24/05,<br>OEA/Ser.L/V/II.124 Doc.5 (2005).....                                                                                             | 18     |
| Commission Nationale des Droits de l’Homme et des Libertés v. Chad, Af.<br>Comm’n on Hum. & Peoples’ Rights, Comm. No. 74/92 (October 1995).....                                                        | 25     |
| Hilaire v. Trinidad and Tobago, Inter-Am. Ct. H.R. (ser. C) No. 94 (June 21,<br>2002).....                                                                                                              | 23     |
| Ivcher-Bronstein v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 74 (Feb. 6, 2001) .....                                                                                                                       | 27     |
| Luisiana Ríos v. Venezuela, Order of the Court (Inter-Am. Ct. H.R. Nov. 21,<br>2003).....                                                                                                               | 4      |
| “Mapiripán Massacre” v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 134 (Mar. 7,<br>2005).....                                                                                                            | 22     |
| Özgür Gündem v Turkey, Eur. Ct. H.R., App. No. 23144/93 (March 16, 2000) .....                                                                                                                          | 25     |

|                                                                                                                              |        |
|------------------------------------------------------------------------------------------------------------------------------|--------|
| Paniagua-Morales v. Guatemala (“The Case of the White Van”), Inter-Am. Ct. H.R. (ser. C) No. 37 (Mar. 8, 1998) .....         | 23     |
| Pueblo Bello Massacre v. Colombia, Inter-Am. Ct. H.R., (ser. C) No. 140 (Jan. 31, 2006).....                                 | 22, 23 |
| Suárez-Rosero v. Ecuador, Inter-Am. Ct. H.R. (ser. C) No. 35 (Nov. 12, 1997) .....                                           | 22     |
| Tekin v Turkey, Eur. Ct. H.R., App. No. 23144/93 (1998) .....                                                                | 25     |
| Villagrán-Morales v. Guatemala (“The Case of the Street Children”), Inter-Am. Ct. H.R. (ser. C) No. 63 (Nov. 19, 1999) ..... | 24     |
| Ximenes-Lopes v. Brazil, Inter-Am. Ct. H.R. (ser. C) No. 149 (July 4, 2006) .....                                            | 24     |
| Yatama v. Nicaragua, Inter-Am. Ct. H.R. (ser. C) No. 127 (June 23, 2005).....                                                | 26     |

## **STATUTES, CONSTITUTION AND CONVENTIONS**

|                                                                          |            |
|--------------------------------------------------------------------------|------------|
| American Convention on Human Rights, Article 5 .....                     | 4, 19      |
| American Convention on Human Rights, Article 8 .....                     | Passim     |
| American Convention on Human Rights, Article 13 .....                    | 4, 19      |
| American Convention on Human Rights, Article 25 .....                    | Passim     |
| Constitution of the Bolivarian Republic of Venezuela, Article 26 .....   | 17         |
| International Convention on Civil and Political Rights, Article 2 .....  | 24, 28     |
| International Convention on Civil and Political Rights, Article 14 ..... | 25, 27, 28 |

## **GOVERNMENTAL AND INTERGOVERNMENTAL DOCUMENTS**

|                                                                                                                                                                                       |        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Venezuela (2003) .....                                                                          | 16     |
| See U.N. Hum. Rts. Comm., Concluding observations by the Human Rights Committee: Venezuela, U.N. Doc. CCPR/CO/71/VEN (Apr. 26, 2001) .....                                            | 27-28  |
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## **OTHER DOCUMENTS**

|                                                                   |    |
|-------------------------------------------------------------------|----|
| Amnesty International, Venezuela: Human Rights Under Threat ..... | 16 |
|-------------------------------------------------------------------|----|

|                                                                                                                                                                                                                                                                                                                                                     |                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Association of the Bar of the City of New York, The City Bar’s Commitment to National Security and the Rule of Law,<br><a href="http://www.nycbar.org/NationalSecurity_Rule_Law.htm">http://www.nycbar.org/NationalSecurity_Rule_Law.htm</a> .....                                                                                                  | 5              |
| Association of the Bar of the City of New York, Letter to Sen. Leahy et al. re: Restoration of Habeas Corpus and Judicial Enforcement of the Geneva Conventions Letter to U.S. Senate Regarding Habeas Corpus and Judicial Enforcement of the Geneva Conventions (Mar. 6, 2007) .....                                                               | 5-6            |
| Association of the Bar of the City of New York, Letter to President Musharraf of Pakistan urging the rule of law be restored (January 2008) .....                                                                                                                                                                                                   | 6              |
| Association of the Bar of the City of New York, Letter to the President of Uganda expressing grave concern over the arrest and detention of political opposition leader Dr. Kizza Besigye in particular the circumstances surrounding the upcoming trials of Dr. Besigye and his co-defendants in civilian and military courts (Dec. 8, 2005) ..... | 6              |
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| Allan R. Brewer-Carias, Judicial Review in Venezuela, 45 Duq. L. Rev. 439 (2006) .....                                                                                                                                                                                                                                                              | 16             |
| Lauren Castaldi, Judicial Independence Threatened in Venezuela: The Removal of Venezuelan Judges and the Complication of Rule of Law Reform, 37 Geo. J. Int’l L. 477 (2006) .....                                                                                                                                                                   | 16, 17, 18     |
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| Committee to Project Journalists, Venezuela: RCTV anchor found dead in Caracas (June 16, 2008), <a href="http://www.cpj.org/news/2008/americas/ven16june08na.html">http://www.cpj.org/news/2008/americas/ven16june08na.html</a> .....                                                                                                               | 10             |
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| Human Rights Watch, Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela, 16 Hum. Rts. Watch (2004) .....                                                                                                                                                                                                                        | 16, 17, 18, 19 |

|                                                                                                                                                                                                                                                                                                                         |    |
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**BRIEF OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK  
AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS  
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THE “RCTV” CASE**

The Association of the Bar of the City of New York (“ABCNY”), as *amicus curiae*, submits this brief to urge the Court to grant the application of the Inter-American Commission on Human Rights (“IACHR” or the “Commission”), to find the Bolivarian Republic of Venezuela (“Venezuela,” “state” or “government”) responsible for violations of Articles 8 and 25 of the American Convention on Human Rights (“American Convention”) and to order Venezuela to provide relief to Petitioners.<sup>1</sup>

ABCNY also filed a brief in *Perozo v. Bolivarian Republic of Venezuela* (The “Globovisión” Case), number 12.442, the companion to the present case before the

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<sup>1</sup> For full list of petitioners, see Brief of the Inter-American Commission on Human Rights at para. 1, Ríos v. Bolivarian Republic of Venezuela (Inter-Am. Ct. H.R. April 20, 2007) (No. 12.441) (hereinafter “IACHR Brief”).

Court.<sup>2</sup> While many of the arguments and facts are similar, this brief addresses the specific circumstances of number 12.441, involving Radio Caracas Televisión (“RCTV”) and its employees. The facts of the RCTV case are, if anything, more egregious than those in the Globovisión case. Both cases taken together present a compelling mandate for the Court to determine that Venezuela has violated international human rights norms, including Articles 8 and 25.

### **Preliminary Statement**

ABCNY, founded in 1870 and based in New York City, is a leading international bar association. Its members include over 23,000 practicing lawyers, judges and scholars from the United States and over 50 other countries. ABCNY has long been committed to promoting the rule of law, and independent, effective judiciaries, all over the world.

ABCNY asks this Court to reinforce the rule of law by declaring that Venezuela may not deprive news organizations or journalists of the right to due process and judicial protection, particularly not on the grounds that news organizations and journalists are critical of the ruling regime.

The publicly available facts indicate that the government of Venezuela, under the leadership of President Hugo Chávez, has engaged in a pattern of conduct toward the press that diminishes the rule of law. This case presents an example of this pattern that calls for strong action by the Court. Venezuela has used state power to silence RCTV,

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<sup>2</sup> Brief of the Association of the Bar of the City of New York, *Perozo v. Bolivarian Republic of Venezuela* (Inter-Am. Ct. H.R. May 30, 2008) (No. 12.442) (hereinafter “ABCNY Perozo Brief”).



the country's oldest and most widely watched private station, and other private news organizations and journalists that operate independent of government control. The President's public statements and manipulation of government is in disregard of the Venezuelan constitution and places Petitioners in a vulnerable position without judicial recourse.

Not surprisingly, the president's words were followed by attacks on "opposition" journalists, including Petitioners, who repeatedly suffered harassment and violent attacks, including several shootings.<sup>3</sup> Petitioners and other employees of private media companies then sought state protection and judicial vindication from these assaults on their bodily integrity and freedom of expression. The government of Venezuela used its control over the police, public prosecutors and the judiciary to ensure that there would be no serious state response to Petitioners' requests for investigations or prosecutions of their attackers, and to ensure that Petitioners did not obtain relief. Further, official organs of the state joined in attacking Petitioners by bringing various administrative and legal actions against RCTV and eventually depriving RCTV of its broadcast license. Again, recourse to the President-controlled judiciary was to no avail.

The state's vilification and harassment of "opposition" journalists thus gave rise to politically motivated actions that undermine and threaten the rule of law. Even though this Court ordered provisional measures to stop these human rights violations and to

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<sup>3</sup> See *infra* notes 19-27 and accompanying text.

investigate the attacks, the Venezuelan government has not acted to remedy the harms it has caused.<sup>4</sup>

The government of Venezuela has violated Articles 8 and 25 of the American Convention by refusing to provide due process and judicial protection to Petitioners. Venezuela created a climate of impunity that emboldened citizens to attack Petitioners without fear of prosecution; failed to investigate or prosecute these attacks when Petitioners sought relief; and abused the state's administrative and judicial power to harass Petitioners and RCTV. Venezuela violated other provisions of the American Convention, such as Article 5 (physical integrity) and Article 13 (freedom of expression), which are the focus of submissions by the Commission and other *amici*.<sup>5</sup> The ABCNY asks the Court to take particular care to address the violations of Articles 8 and 25, and thereby to protect Inter-American and international standards of due process, judicial protection and the rule of law.

### **Statement of Interest**

The ABCNY encourages efforts to promote legal regimes that more effectively maintain the rule of law and thereby more strongly protect human rights. With this brief,

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<sup>4</sup> See *Luisiana Ríos v. Venezuela*, Order of the Court (Inter-Am. Ct. H.R. Nov. 21, 2003).

<sup>5</sup> See IACHR Brief paras. 121-39 (analyzing Article 5) & paras. 140-98 (analyzing Article 13). See also generally Brief of the Netherlands Institute for Human Rights (SIM) as Amicus Curiae in Support of the Application by the Inter-American Commission on Human Rights (Inter-Am. Ct. H.R.) (No. 12.441) (analyzing violations of Article 13).

the ABCNY hopes to assist the Court by describing how a decision favoring Petitioners would reinforce the rule of law.

The international promotion of the rule of law and of the impartial administration of justice has long been part of the ABCNY's mission. The ABCNY was founded by lawyers who gathered to protect the independence of the judiciary and the integrity of the legal profession in New York from powerful forces trying to turn judges and lawyers into extensions of the political apparatus. The ABCNY is a purely voluntary, independent and non-partisan organization that exists solely to serve the public interest. Reports and legal analyses of the ABCNY have long had a high level of credibility with policy makers because of the independent and non-partisan nature of the organization.

The ABCNY has a history of seeking to influence governments to adopt changes in favor of the rule of law. For example, ABCNY delegations have visited Northern Ireland, Turkey and South Africa and helped promote legal changes favoring the rule of law. Recently, the ABCNY has opposed the actions of the United States government depriving detainees at Guantánamo Bay of various civil and human rights, in particular the decision to deprive detainees of the right to judicial protection via *habeas corpus* review; declared its support for the reinstatement of the rule of law in Pakistan; and backed fair trials for members of the political opposition in Uganda.<sup>6</sup>

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<sup>6</sup> See, e.g., ABCNY, *The City Bar's Commitment to National Security and the Rule of Law*, [http://www.nycbar.org/NationalSecurity\\_Rule\\_Law.htm](http://www.nycbar.org/NationalSecurity_Rule_Law.htm); ABCNY, Letter to Sen. Leahy et al. re: Restoration of Habeas Corpus and Judicial Enforcement of the Geneva Conventions Letter to U.S. Senate Regarding Habeas Corpus and Judicial Enforcement of the Geneva Conventions (Mar. 6, 2007), *available at*

### **Statement of Facts**

The following summary of the facts is based on a review of Venezuela's human rights record as documented by neutral experts, and a review of the record in this case, including submissions by the Inter-American Commission and Petitioners. The facts in the RCTV case appear, if anything, even more compelling than the facts of the Globovisión case.<sup>7</sup>

#### **A. Venezuela's Actions to Injure and Suppress RCTV and its Employees**

The government's actions against RCTV and its personnel can be understood in the context of the government's attempts to control media coverage of the government, particularly to silence criticism by private and independent news organizations. Over the past several years, dramatic changes in media control have resulted in state control of nearly all of Venezuela's broadcasting.<sup>8</sup> President Chávez repeatedly has criticized private media companies for supporting the 2002 coup attempt against his regime and for

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[http://www.nycbar.org/pdf/report/Restoration\\_Habeas\\_Corpus.pdf](http://www.nycbar.org/pdf/report/Restoration_Habeas_Corpus.pdf); ABCNY, Letter to President Musharraf of Pakistan urging the rule of law be restored (January 2008), *available at* [http://www.nycbar.org/pdf/report/0446\\_001.pdf](http://www.nycbar.org/pdf/report/0446_001.pdf); ABCNY, Letter to the President of Uganda expressing grave concern over the arrest and detention of political opposition leader Dr. Kizza Besigye in particular the circumstances surrounding the upcoming trials of Dr. Besigye and his co-defendants in civilian and military courts, *available at* [http://www.nycbar.org/pdf/report/Uganda\\_Dec8.pdf](http://www.nycbar.org/pdf/report/Uganda_Dec8.pdf).

<sup>7</sup> See ABCNY Perozo Brief, *supra* note 2, at 9-16.

<sup>8</sup> Reporters Without Borders, *Venezuela – Annual Report 2008*, [http://www.rsf.org/article.php3?id\\_article=25598](http://www.rsf.org/article.php3?id_article=25598) 2008 Annual Report; Rory Carroll, *This is Media War*, The Guardian, June 4, 2007, *available at* <http://www.guardian.co.uk/media/2007/jun/04/mondaymediasection.venezuela>.

allegedly inciting murder attempts against him.<sup>9</sup> The Venezuelan government has also invested heavily in state-owned media intended to discredit journalists and news organizations critical of the government.<sup>10</sup> Private stations that broadcast pro-opposition programming during the April 2002 coup were targeted. Private stations that stopped criticizing the government were treated favorably.<sup>11</sup> Those that remain critical of the government, such as RCTV and Globovisión, have faced continuing government harassment, described below.<sup>12</sup>

### **1. Statements Generating Public Hostility to RCTV and its Personnel**

President Chávez and other high-ranking government officials have made numerous accusations and statements about RCTV and the private media that helped incite violence and harassment. These statements fall into three categories.

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<sup>9</sup> Rory Carroll, *Chávez Attacks Another Private TV Channel*, The Guardian, May 30, 2007, available at <http://www.guardian.co.uk/media/2007/may/30/venezuela.broadcasting>.

<sup>10</sup> Committee to Project Journalists, *Attacks on the Press in 2007: Americas, Venezuela*, <http://www.cpj.org/attacks07/americas07/ven07.html> (noting that “the administration has created a large network of alternative and community media, including television and radio stations, newspapers, and Web sites basically intended to disseminate the official line and discredit critical journalists and media owners.”) (hereinafter “CPJ, Attacks on the Press”).

<sup>11</sup> *See id.* (noting that private media companies, such as Venevisión, that curtailed their criticism of the government had their broadcast concessions renewed).

<sup>12</sup> *Id.* (“With RCTV off the public airwaves, there were no national broadcasters left that were critical of the government. . . . Only local broadcaster Globovisión . . . remained critical in its coverage.”).

*First*, the president, in public speeches, characterized the private media (i.e., those media organizations not controlled by or aligned with the state) and RCTV in particular as *golpistas* (coupsters). According to President Chávez, private TV stations transmit “terrorist propaganda,” “create lies and cause panic and terror,” “conspire against the government,” constitute a “fascist perversion” reporting “garbage, lies, perversion, immorality,” and intend to topple the government with another coup like the one attempted in April 2002.<sup>13</sup> He declared RCTV and other private stations “enemies of the Venezuelan people.”<sup>14</sup>

*Second*, the president and other officials actively encouraged citizens to take physical action against RCTV and other private media. The president called “on the Venezuelan people and the national institutions to defend the mental health of our nation.”<sup>15</sup> The Ministry of Interior and Justice characterized violent protests by citizens at private TV stations such as RCTV as “people . . . on the street defending their values, defending their principles.”<sup>16</sup>

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<sup>13</sup> IACHR Brief, *supra* note 1, para. 73 (citing *Alo Presidente* aired on June 9, 2002 and *Alo Presidente* transcript of September 18, 2002); para. 75 (citing *Alo Presidente* aired on December 8, 2002); para. 77 (citing *Alo Presidente* aired on December 15, 2002).

<sup>14</sup> IACHR Brief, *supra* note 1, para. 83 (citing *Alo Presidente* aired on May 9, 2004).

<sup>15</sup> Brief of the Inter-American Commission on Human Rights, *Perozo v. Bolivarian Republic of Venezuela* at para. 64 (Inter-Am. Ct. H.R. April 12, 2007) (No. 12.442) (citing transcript of press conference at Presidential Palace on December 7, 2002).

<sup>16</sup> *Id.* para. 66 (citing declaration of the Minister of Interior and Justice on December 10, 2002).

*Third*, the president publicly threatened to shut down the private media by force. He indicated a willingness to take away RCTV's broadcast license at any moment and to "irrevocably shut down" private stations.<sup>17</sup> President Chávez warned that if "TV stations instigate again the people to rebel . . . they would be taken by the army at any cost . . . we go in with guns because that is how a country is protected."<sup>18</sup>

## **2. Attacks on Petitioners**

Following President Chávez's statements, starting in 2001, private citizens as well as government agents began to attack so-called "opposition" journalists and generally impeded them from reporting the news. RCTV news crews covering protests were insulted, threatened, and physically attacked by violent groups.<sup>19</sup> RCTV personnel suffered serious injuries in the course of their reporting duties, including three who were shot while covering the news.<sup>20</sup> One staffer was attacked by government agents after

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<sup>17</sup> IACHR Brief, *supra* note 1, para. 76 (citing *Alo Presidente* aired on December 8, 2002); paras. 78-79 (citing a video of the President's public speeches on January 12, 2003); para. 81 (citing *Alo Presidente*, aired on November 9, 2003).

<sup>18</sup> *Id.* para. 82 (citing interview of President Chávez by the newspaper, *El Universal*).

<sup>19</sup> In January 2002, an RCTV crew tried to cover the show *Alo Presidente* when a crowd shouted insults, surrounded the crew, and prevented them from accessing the President. *Id.* para. 86. In April 2002, RCTV employees were attacked while covering a protest at the Social Security Institute. *Id.* para. 106.

<sup>20</sup> In August 2002, an RCTV employee was shot while covering a trial against certain members of the army. *Id.* para. 121. In November 2002, an RCTV cameraman was shot covering a protest at a police building. *Id.* para. 125. Yet another RCTV cameraman was shot on two different occasions in 2003 covering protests. *Id.* paras. 135, 138. In April 2004, an RCTV producer was hit in the face with a heavy object

identifying himself as an RCTV employee.<sup>21</sup> Others faced death threats and damage to personal property.<sup>22</sup> RCTV vehicles and equipment were damaged or destroyed.<sup>23</sup> Protesters damaged RCTV's offices, breaking windows, covering walls with anti-RCTV graffiti, and shooting at the building and employees close to windows.<sup>24</sup> The National Guard and the police, though present for some of the attacks on RCTV's employees and offices, provided no aid or protection.<sup>25</sup> At least once, police themselves shot at RCTV employees.<sup>26</sup> The IACHR has taken note of attacks that mostly occurred four to six years ago, but private assaults on RCTV employees seem ongoing. As recently as June 2008, an RCTV news anchor was stabbed to death in his apartment.<sup>27</sup>

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while covering news at the offices of Petroleos de Venezuela. *Id.* para. 107. All were hospitalized because of their injuries.

<sup>21</sup> In April 2002, a cameraman was attacked by the police of the Ministry of Infrastructure after identifying himself as an RCTV employee. *Id.* para. 112.

<sup>22</sup> An RCTV reporter received threats from neighbors and had her car damaged several times parked outside her home. *Id.* paras. 116, 119. In December 2002, government supporters made death threats to an RCTV crew covering a protest. *Id.* para. 128

<sup>23</sup> In July 2002, while an RCTV crew tried to cover an event at the Supreme Tribunal of Justice, two RCTV vehicles were attacked and set on fire. *Id.* paras. 119, 122. In December 2002, while covering a protest, an RCTV crew had its equipment destroyed by supporters of the government. *Id.* para. 128.

<sup>24</sup> *Id.* paras. 99-100, 133-134, 141.

<sup>25</sup> *Id.* paras. 99, 113.

<sup>26</sup> *Id.* para. 139.

<sup>27</sup> Committee to Protect Journalists, Venezuela: RCTV anchor found dead in Caracas (June 16, 2008), <http://www.cpj.org/news/2008/americas/ven16june08na.html>.



### **3. Limited Police and Prosecutorial Response to Attacks**

Despite repeated instances of serious attacks on and harassment of RCTV employees, the police and prosecutors have done little to investigate. Attacks suffered by Petitioners were duly reported to the police and public prosecutor.<sup>28</sup> Despite the seriousness of the attacks, the state has yet to take effective steps to investigate them or to ensure that the attacks stop.<sup>29</sup> The great majority of attacks on Petitioners, who are still pursuing their cases, were never investigated at all, or prosecutors sought dismissal of their complaints.<sup>30</sup> In the cases involving the most serious attacks, prosecutors have taken years to proceed no further than the earliest phases of their investigations.<sup>31</sup>

### **4. Administrative and Legal Harassment by the Government**

While the government did little to investigate assaults on RCTV personnel, it did file many administrative and legal actions *against* RCTV, imposing big fines for alleged infractions based on novel theories, ultimately depriving RCTV of its broadcast license.

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<sup>28</sup> See IACHR Brief, *supra* note 1, paras. 85-150. See also Brief of Petitioners Luisianía Ríos et al., *Ríos v. Bolivarian Republic of Venezuela* paras. 571(a)-(m) (Inter-Am. Ct. H.R. July 20, 2007) (No. 12.441) (hereinafter "Petitioners' Brief").

<sup>29</sup> See IACHR Brief, *supra* note 1, para. 150.

<sup>30</sup> See *id.* paras. 143-50. See also Petitioners' Brief, *supra* note 28, paras. 571(c)-(e), (i), (j), (m)-(t), (v) (cases initiated by individual Petitioners that were never investigated at all); *id.* paras. 571(a)-(b), (g), (h) (cases initiated by Petitioners for which prosecutors sought dismissals).

<sup>31</sup> Prosecutors sought dismissal of the case in which an RCTV employee had a heavy object thrown at her face because they were unable to identify her attacker. Petitioners' Brief, *supra* note 28, para. 571(f). Prosecutors are still in only the initial phases of cases involving RCTV cameramen who were shot. *Id.* paras. 571(k), (u).

Over five years, RCTV had been subject to at least fifteen tax audits or assessments, imposing large fines on arbitrary, capricious and often completely unsubstantiated grounds. In 2002, the tax division of the National Commission on Telecommunications (CONATEL) audited RCTV and imposed a large fine, 3.2 billion Bolívares (about US \$1.5 million), for taxes allegedly unpaid for the period 1996-98 even though the applicable statute of limitations had expired for taxes from that period before the fine was assessed.<sup>32</sup> RCTV is still challenging this tax penalty before an administrative tribunal.<sup>33</sup> In 2003, another agency (Servicio Nacional Integrado de Administración Aduanera y Tributaria, or SENIAT), asked RCTV to pay value added taxes on advertisements that it did not run because of a nationwide strike, even though RCTV had already paid SENIAT these taxes.<sup>34</sup> SENIAT also, in 2004, fined RCTV 2 billion Bolívares for allowing NGOs and other groups to broadcast their views, mostly unfavorable to the government, under the novel theory that such free broadcasts were valuable gifts for which RCTV owed gift taxes.<sup>35</sup>

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<sup>32</sup> *Id.* paras. 134-36. Further, the tax basis computed by CONATEL included items that do not normally constitute income. *See id.* para. 135.

<sup>33</sup> *See id.* para. 136.

<sup>34</sup> *Id.* paras. 137-38.

<sup>35</sup> *Id.* paras. 143-47.

In 2004, a privately-held station brought antitrust claims against RCTV before yet another agency, Procompetencia.<sup>36</sup> After investigating for one-and-a-half years and finding no evidence of the existence of a cartel or monopolist practices, the agency still imposed the largest fine in its history, requiring RCTV to pay 21 billion Bolívars (over US \$10 million), 1000% higher than the agency's previous record.<sup>37</sup> RCTV's judicial challenge to this fine is still pending.<sup>38</sup>

On many occasions, the state prevented or attempted to prevent RCTV from broadcasting freely. In April 2002, during the attempted coup, the Venezuelan government simply overrode RCTV's transmissions, broadcasting state-sponsored programming on RCTV's frequency.<sup>39</sup> The government did so without declaring a state of emergency, asking permission, or giving RCTV an opportunity to challenge these acts. RCTV filed judicial challenges to these state actions. The challenges are still pending.

In 2003, the Ministry of Infrastructure attempted to suspend or revoke RCTV's broadcast concessions on the grounds that RCTV aired news opposing the President that was "false, misleading or tendentious," and "disrespected legitimate institutions and authorities."<sup>40</sup> These administrative proceedings, filed five years ago, are still pending.

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<sup>36</sup> *Id.* para. 140.

<sup>37</sup> *Id.* para. 141-42.

<sup>38</sup> *Id.* para. 142.

<sup>39</sup> IACHR Brief, *supra* note 1, paras. 94-104.

<sup>40</sup> Petitioners' Brief, *supra* note 28, para. 139.

In all, the government brought eleven requests for injunctions and seven actions to protect minors against RCTV, in order to temporarily halt RCTV's broadcasts on the grounds that RCTV's programs were "contrary to the Revolution," "offensive to the President of the Republic," and "damaging to television viewers."<sup>41</sup>

All of this administrative and legal harassment culminated in the government's 2007 decision—supported by the judiciary—to refuse to renew RCTV's broadcast license. In December 2006, President Chávez publicly announced that RCTV's 20-year license, set to expire in May 2007, would not be renewed, referring to RCTV as a "coup-mongering" station.<sup>42</sup> In March 2007, CONATEL published *The White Book on RCTV*, a 360-page report detailing alleged violations of broadcasting laws and justifying President Chávez's decision not to renew RCTV's license.<sup>43</sup> The *White Book* accused RCTV of "inciting rebellion" and concluded that the government had full discretion whether or not to renew RCTV's license under a 1987 decree.<sup>44</sup>

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<sup>41</sup> *Id.* para. 149-50.

<sup>42</sup> Carlos Lauría & Sauro González Rodríguez, *Static in Venezuela*, Committee to Protect Journalists Special Report, April 24, 2007, [http://www.cpj.org/Briefings/2007/DA\\_spring\\_07/Venezuela\\_07/venezuela\\_07.html](http://www.cpj.org/Briefings/2007/DA_spring_07/Venezuela_07/venezuela_07.html).

<sup>43</sup> *Id.*

<sup>44</sup> Human Rights Watch, *Venezuela: TV Shutdown Harms Free Expression*, May 22, 2007, <http://www.hrw.org/english/docs/2007/05/22/venezu15986.htm>.

On May 25, 2007, the Supreme Judicial Tribunal ordered provisional measures that allowed the government to seize RCTV's broadcast equipment.<sup>45</sup> On May 27, 2007, the government enforced the measures and RCTV was replaced by a new state-sponsored station, TVES, which used RCTV's frequency.<sup>46</sup> RCTV appealed to the courts, with no effect.<sup>47</sup> RCTV now broadcasts on cable, to many fewer viewers. The government is still attempting to prevent RCTV from broadcasting on cable.<sup>48</sup>

The government's shutdown of RCTV on May 27, 2007 triggered large protests throughout Venezuela and drew international criticism. Yet just days later, President Chávez issued a warning to Globovisión that all media stations were obliged to air: "Enemies of the homeland, particularly those behind the scenes, I will give you a name: Globovisión. Greetings gentlemen of Globovisión. You should watch where you are going."<sup>49</sup> The clear implication was that Globovisión, perhaps the only station other than RCTV still critical in its coverage of the government, would share RCTV's fate.<sup>50</sup>

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<sup>45</sup> El Universal, *TSJ Orders RCTV to Hand Over Its Broadcast Infrastructure*, May 26, 2007, [http://english.eluniversal.com/2007/05/26/en\\_pol\\_art\\_tsj-orders-rctv-to-h\\_26A874677.shtml](http://english.eluniversal.com/2007/05/26/en_pol_art_tsj-orders-rctv-to-h_26A874677.shtml).

<sup>46</sup> BBC News, *Second Venezuela TV is Under Fire*, <http://news.bbc.co.uk/1/hi/world/americas/6699383.stm>.

<sup>47</sup> CPJ, *Attacks on the Press*, *supra* note 10.

<sup>48</sup> BBC News, *supra* note 46.

<sup>49</sup> Carroll, *supra* note 8.

<sup>50</sup> CPJ, *Attacks on the Press*, *supra* note 10.

## **B. Deterioration of the Rule of Law in Venezuela**

Venezuela's violation of Petitioners' rights to due process and judicial protection—the failure to investigate attacks or prosecute attackers of RCTV personnel as well as the government's arbitrary and capricious administrative and judicial harassment of RCTV—can be better understood in the broader context of the deterioration of the rule of law in Venezuela, and the government's attempts to control all possible checks on its power. Venezuela's failure to uphold the principle of separation of powers prevents anyone deemed an opponent of the state from obtaining access to justice or a fair and impartial judiciary. The president's attacks on “opposition” journalists are politically motivated actions that undermine and threaten the rule of law.

Venezuela's assault on the rule of law, from the removal of qualified, independent judges to the erosion of the country's separation of powers, has been well-documented by non-governmental organizations and international bodies.<sup>51</sup> The state, under President Chávez, systematically has wielded its power to silence opposition voices. Such politically motivated governance threatens to make all government branches mere instruments of the president and his supporters.

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<sup>51</sup> See Human Rights Watch, *Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela*, 16 Hum. Rts. Watch (2004) (hereinafter “HRW Report”); Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Venezuela* (2003); Amnesty International, *Venezuela: Human Rights Under Threat*, <http://www.amnestyusa.org/document.php?lang=e&id=F075A829FDC8DDCF80256E8C004200F9>; see also Allan R. Brewer-Carias, *Judicial Review in Venezuela*, 45 Duq. L. Rev. 439 (2006); Lauren Castaldi, *Judicial Independence Threatened in Venezuela: The Removal of Venezuelan Judges and the Complication of Rule of Law Reform*, 37 Geo. J. Int'l L. 477 (2006).

The Chávez regime came to power in 1999 promising political reform and an overhaul of the judiciary, which had been widely regarded as corrupt.<sup>52</sup> By popular referendum, a National Constituent Assembly, backed by the president, was created to ratify a new constitution which, among other things, purports to guarantee basic human rights, an independent judiciary and access to a fair and impartial judicial system. Article 26 of the 1999 “Constitution of the Bolivarian Republic of Venezuela” provides:

Everyone has the right to access the organs comprising the justice system for the purpose of enforcing his or her rights and interests, including those of a collective or diffuse nature to the effective protection of the aforementioned and to obtain the corresponding prompt decision. The State guarantees justice that is free of charge, accessible, impartial, suitable, transparent, autonomous, independent, responsible, equitable and expeditious, without undue delays, superfluous formalities or useless reinstating.

Despite these constitutional guarantees, Venezuela has fallen short in protecting the constitutional rights of citizens and ensuring adherence to the rule of law.

Under the pretext of judicial reform, the Venezuelan government has weakened the independence of the judiciary. In 1999, the National Constituent Assembly enacted a Decree of Judicial Emergency, which permitted an Emergency Judicial Commission to suspend judges for “corruption” or “inexcusable procedural delays.”<sup>53</sup> In practice, the Decree enabled the Venezuelan government to remove hundreds of judges deemed to be

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<sup>52</sup> HRW Report, *supra* note 51, at 7.

<sup>53</sup> Castaldi, *supra* note 51, at 496-97.

opponents of President Chávez and replace them with Chávez supporters.<sup>54</sup> Eighty percent of judges in Venezuela hold provisional or temporary positions, making the judicial system vulnerable to politically motivated actions.<sup>55</sup> The lack of an independent judiciary itself, according to various NGOs and international organizations, can be a violation of international human rights norms.<sup>56</sup>

After the failed coup by opposition leaders in April 2002, President Chávez and his supporters took forceful measures to purge perceived opponents from positions of power. In May 2004, the National Constituent Assembly passed the Law of the Supreme Tribunal of Justice, which expanded Venezuela's Supreme Court from 20 to 32 members and allowed a simple majority of the Assembly to appoint and remove judges, in lieu of the two-thirds majority requirement of the Constitution.<sup>57</sup> The Assembly then used the

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<sup>54</sup> HRW Report, *supra* note 51, at 17-20; Castaldi, *supra* note 51, at 497-98.

<sup>55</sup> HRW Report, *supra* note 51, at 9.

<sup>56</sup> *See Cova v. Venezuela*, Case 282.04, Inter-Am. C.H.R., Report No. 24/05, OEA/Ser.L/V/II.124 Doc.5 at paras. 7, 48 (2005) (holding admissible claims under American Convention Articles 8 and 25 brought by former judges in Venezuela who were dismissed from the positions after issuing decisions unfavorable to the legislative and executive branches); Castaldi, *supra* note 51, at 489 (commenting on *Cova*). *See also* U.N. Hum. Rts. Comm., *General Comment No. 32*, U.N. Doc. CCPR/C/GC/32 at para. 19 (Aug. 23, 2007) (“A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.”) (hereinafter “General Comment 32”).

<sup>57</sup> *See* Castaldi, *supra* note 51, at 503 (noting the “puzzling” nature of Article 8 of the law, which allows a judge to be elected by simple majority if he or she does not succeed in garnering a two-thirds majority after three attempts).



new law to remove the vice-president of Venezuela's Supreme Court, Franklin Arrieche, who had voted to acquit military officers involved in the attempted 2002 coup.<sup>58</sup> Human Rights Watch concluded in 2004 that "President Chávez and his allies have taken steps to control the country's judicial branch, undermining the separation of powers and the independence of the judiciary in ways that violate basic principles of Venezuela's constitution and international human rights law."<sup>59</sup>

**C. The Inter-American Commission Declares Venezuela in Violation of, *inter alia*, Articles 8 and 25 of the American Convention**

In July 2002, Petitioners filed this case with the Inter-American Commission. In October 2006, the Commission concluded that Venezuela had violated Petitioners' rights to personal integrity (Article 5), freedom of expression (Article 13), due process (Article 8), and judicial protection (Article 25). The Commission found that Venezuela should investigate the acts that had occurred, guarantee the right to freedom of expression and personal integrity, repair the damage suffered by Petitioners, compensate Petitioners for the costs incurred in vindicating their rights, publicly recognize its responsibility, and reform laws to prevent further rights violations. Venezuela did not abide by the Commission's ruling. This case was then filed with the Court.

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<sup>58</sup> Juan Forero, *Venezuelan Leader Braces for Recall Vote*, N.Y. Times, June 18, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9E06E3DD1739F93BA25755C0A9629C8B63>.

<sup>59</sup> HRW Report, *supra* note 51, at 1.

### **Argument**

As set forth above, the international community has expressed growing concern about the decline of the rule of law and human rights in Venezuela. The facts of this case show that the concern is well-founded. The state's actions and inactions concerning RCTV and its employees constitute violations of international human rights law as well as the American Convention. Specifically, Venezuela's conduct violates the international norms of due process and judicial protection, and Articles 8 and 25 of the American Convention, in two ways:<sup>60</sup>

*First*, Venezuela violated the rights to due process and judicial protection by creating a climate of impunity that encouraged assaults on Petitioners and then refusing to effectively investigate or prosecute these attacks. Venezuela weakened its independent

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<sup>60</sup> Article 8(1), Right to a Fair Trial, provides: "Every 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."

Article 25, Right to Judicial Protection, provides:

1. Everyone 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.
2. The States Parties undertake:
  - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
  - b. to develop the possibilities of judicial remedy; and
  - c. to ensure that the competent authorities shall enforce such remedies when granted.

judiciary while encouraging citizens to attack so-called “opposition” journalists, making them believe that not only were their attacks legal and justified, but that the army would join them. Venezuela compounded the violation of Petitioners’ rights by refusing to make diligent efforts to investigate and prosecute the attacks on them. The police and prosecutors in Venezuela did not take seriously the numerous complaints filed by RCTV’s employees. The international community recognizes that direct state action is not the only way that governments can violate human rights, the rule of law and free speech. Inaction in response to private attacks, as the record in this case reflects, is just as much a violation.<sup>61</sup>

*Second*, Venezuela violated the right to due process and judicial protection by filing arbitrary and frivolous administrative and judicial actions against RCTV and by depriving RCTV of its broadcast license without any opportunity to challenge the decision. Many administrative or judicial actions against RCTV, despite the severity of proposed penalties, have yet to be concluded though initiated years ago. The right to due process clearly is violated when justice is neither swift nor even-handed.

By continuing the conduct condemned by the Commission, Venezuela disregards its obligations under international human rights law and the American Convention and shows its intent to continue violating the rights of Petitioners and others. The rights that

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<sup>61</sup> See, e.g., Committee to Protect Journalists, Global Campaign to End Impunity (2008), <http://www.cpj.org/impunity/> (campaign focused on unresolved murders of journalists in Russia, the Philippines and elsewhere; “Our research suggests that the absence of justice promotes a higher incidence of murder.”).

Venezuela has violated constitute “fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society.”<sup>62</sup> This Court should not permit Venezuela to further diminish the rule of law by using its power to repress RCTV and other independent media outlets.

**I. Venezuela Breached Its Obligations Under Articles 8 and 25 by Encouraging Attacks on Petitioners and By Failing to Investigate These Attacks**

Venezuela committed serious violations of international human rights law and Articles 8 and 25 of the American Convention by creating a “climate of impunity,” resulting in profound “deficiencies of the judicial system” by encouraging attacks on Petitioners, and by failing to meaningfully investigate the attacks (no doubt because it had encouraged them).<sup>63</sup>

Venezuela created the dangerous conditions for attacks on Petitioners with two policies—by weakening law enforcement and the judiciary and by suppressing independent news organizations. Venezuela deprived the judiciary of its independence such that citizens no longer can obtain, and no longer expect to obtain, adequate and effective remedies for violations of their rights.<sup>64</sup> Venezuela violates its obligation to

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<sup>62</sup> *Pueblo Bello Massacre v. Colombia*, Inter-Am. Ct. H.R., (ser. C) No. 140 at para. 19 (Jan. 31, 2006) (separate opinion of Cançado-Trindade, J.); *Suárez-Rosero v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 35 at para. 65 (Nov. 12, 1997); *Castillo-Páez v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 24 at para. 82 (Nov. 3, 1997).

<sup>63</sup> *See Blake v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 36 at para. 94 (Jan. 24, 1998).

<sup>64</sup> “*Mapiripán Massacre*” *v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 134 at para. 195 (Mar. 7, 2005).

ensure due process and judicial protection when it “tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights.”<sup>65</sup> By stating publicly that the intimidation of journalists would have state support—calling on Venezuelans to “defend” the nation from RCTV and others—Venezuela created a “chronic high-risk situation” that violates the Convention.<sup>66</sup>

Venezuela further violated its Convention obligations by failing in its affirmative duty to investigate complaints filed by Petitioners, who were attacked or harassed because of the high-risk situation that Venezuela created in the first place. Venezuela’s duty to investigate human rights violations is inherent to Articles 8 and 25. The right to a fair trial is “not limited to judicial remedies in a strict sense, ‘but [to] all the requirements that must be observed in the procedural stages’ . . . in order for all persons to be able to defend their rights adequately vis-à-vis any type of State action that could affect them.”<sup>67</sup> Under Articles 8 and 25, Venezuela was required to conduct, with all available means, a meaningful investigation of the attacks on Petitioners.<sup>68</sup> Venezuela was obligated to investigate violence against RCTV personnel “*as its own legal duty*, not as a step taken

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<sup>65</sup> *Hilaire v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 94 at para. 151 (June 21, 2002).

<sup>66</sup> *See Pueblo Bello*, *supra* note 62, para. 7 (Separate Opinion of Cançado-Trindade, J.).

<sup>67</sup> *Baena-Ricardo et al. v. Panama*, Inter-Am. Ct. H.R. (ser. C) No. 72 at para. 124 (Feb. 2, 2001).

<sup>68</sup> *Paniagua-Morales et al v. Guatemala* (“*The Case of the White Van*”), Inter-Am. Ct. H.R. (ser. C) No. 37 at para. 139 (Mar. 8, 1998).

by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.”<sup>69</sup>

Further, RCTV’s employees, as victims of human rights violations, should have had “full possibilities of being heard and appearing at the corresponding legal proceedings, in furtherance of the discovery of the truth[ and] the punishment of the offenders . . . .”<sup>70</sup>

A determination that Venezuela violated Petitioners’ right to due process and judicial protection would be consistent with international standards apart from the American Convention. Venezuela violates its obligations under Article 2(3) of the International Covenant on Civil and Political Rights by “failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”<sup>71</sup> Indeed, Venezuela had a duty to

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<sup>69</sup> *Villagrán-Morales v. Guatemala* (“*The Case of the Street Children*”), Inter-Am. Ct. H.R. (ser. C) No. 63 at paras. 226, 230 (Nov. 19, 1999) (finding that an investigation was “completely omitted” and that the state failed to order or evaluate available evidence that would have been important to an eventual prosecution of the guilty parties) (emphasis added).

<sup>70</sup> *Ximenes-Lopes v. Brazil*, Inter-Am. Ct. H.R. (ser. C) No. 149 at para. 193 (July 4, 2006).

<sup>71</sup> See U.N. Hum. Rts. Comm., *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, at para. 8 (May 26, 2004); see also *id.* para. 18 (“[F]ailure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant.”).

diligently investigate once Petitioners made thorough allegations of the human rights violations they suffered.<sup>72</sup>

Under facts similar to those here, the European Court of Human Rights held that a state failed in its obligation “to take adequate protective and investigative measures to protect” employees of an “opposition” newspaper.<sup>73</sup> The newspaper’s reporters suffered a campaign of attacks and harassment, allegedly directed or approved of by the state, including murder, kidnappings and torture.<sup>74</sup> Likewise, the African Commission on Human and Peoples’ Rights determined that a state must diligently investigate conduct that threatens the physical integrity of its citizens.<sup>75</sup> In short, by providing “[n]o response . . . to almost all petitions and requests for protection submitted,” Venezuela violated Petitioners’ right to due process and judicial protection.<sup>76</sup>

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<sup>72</sup> See *Bautista de Arellana v. Columbia*, U.N. Hum. Rts. Comm., U.N. Doc. CCPR/C/55/D/563/1993 at para. 8.6 (Oct. 27, 1995) (noting that, under ICCPR Article 14, a “State party is under a duty to investigate thoroughly alleged violations of human rights”).

<sup>73</sup> *Özgür Gündem v. Turkey*, Eur. Ct. H.R., App. No. 23144/93 at para. 71 (2000).

<sup>74</sup> *Id.* para. 12-13; *Tekin v. Turkey*, Eur. Ct. H.R., App. No. 22496/93 (1998).

<sup>75</sup> See *Commission Nationale des Droits de l’Homme et des Libertés v. Chad*, Af. Comm’n on Hum. & Peoples’ Rights, Comm. No. 74/92 at para. 22 (October 1995) (“Even where it cannot be proved that violations were committed by government agents, the government had a responsibility to secure the safety and the liberty of its citizens and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.”).

<sup>76</sup> *Özgür Gündem*, *supra* note 73, para. 44.

## **II. Venezuela Violated Articles 8 and 25 by Using Its Administrative and Judicial Power to Harass Petitioners and Deny Them a Broadcast License**

Venezuela violated its obligations under international human rights law and Articles 8 and 25 by exercising its authority arbitrarily to harass Petitioners through frivolous administrative and legal proceedings, ultimately denying them the ability to broadcast, by unreasonably delaying such proceedings, and by having a judiciary lacking the necessary independence and impartiality to decide such proceedings.

First, the filing of frivolous administrative and judicial actions against RCTV thwarts the “main purpose of the international protection of human rights,” which is to protect individuals “from the arbitrary exercise of public authority.”<sup>77</sup> To meet Inter-American standards, judicial recourse “must be appropriate to contest the violation . . . and its implementation by the competent authority must be effective.”<sup>78</sup> The summary denial of rights and access, without justification, constitutes a further violation of Articles 8 and 25.<sup>79</sup> The Venezuelan government, without due process, deprived RCTV of its ability to broadcast to the public. These violations of due process directly harm the Venezuelan public by compelling it to obtain news of important events solely from news organizations favored by the government. As this Court has determined before, state

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<sup>77</sup> *See also Yatama v. Nicaragua*, Inter-Am. Ct. H.R. (ser. C) No. 127 at para. 167 (June 23, 2005).

<sup>78</sup> *Claude-Reyes v. Chile*, Inter-Am. Ct. H.R. (ser. C) No. 151 at para. 131 (Sept. 19, 2006).

<sup>79</sup> *Id.* paras. 134-44.



measures used to silence TV networks critical of the government, through arbitrary administrative actions, violate Articles 8 and 25.<sup>80</sup>

Second, Venezuela had the “obligation to offer . . . an effective judicial recourse to contest acts that violate [Petitioners’] fundamental rights.”<sup>81</sup> Part of an effective judicial recourse is the Article 8(1) requirement that proceedings take place “within a reasonable time.” RCTV’s judicial challenges to the Venezuelan government’s arbitrary actions—filed many years ago—still have yet to be significantly advanced, much less resolved. These “unjustified delay[s] in the decision” of cases against RCTV constitute a violation of the right to due process and judicial protection.<sup>82</sup>

Third, the administrative and legal actions against RCTV demonstrate that Venezuelan judicial system can hardly be called independent and fair. Venezuela violates its obligations under Article 8 of the American Convention and Article 14 of the ICCPR, simply by forcing RCTV to defend its rights in a judicial system that is, as explained above, neither independent nor impartial.<sup>83</sup>

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<sup>80</sup> *Ivcher-Bronstein v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 74 paras. 116 & 142 (Feb. 6, 2001) (holding that the State’s arbitrary deprivation of the owner’s citizenship undermined the rule of law where no effective legal recourse was available to remedy the harms).

<sup>81</sup> *Claude-Reyes*, *supra* note 78, para. 128.

<sup>82</sup> *Ivcher-Bronstein*, *supra* note 80, para. 137. *See also Ximenes-Lopes*, *supra* note 70, para. 203 (noting that a six-year delay in prosecuting a criminal case constituted an unreasonable delay)

<sup>83</sup> *See* U.N. Hum. Rts. Comm., *Concluding observations by the Human Rights Committee: Venezuela*, U.N. Doc. CCPR/CO/71/VEN, para. 13 (Apr. 26, 2001)

Aside from the general absence of an independent and impartial judiciary, Venezuela's highest court helped the executive branch deprive RCTV of its broadcast license, refusing to hear RCTV's arguments on this point and ordering measures that aided the government's takeover of RCTV's broadcast frequency and equipment.<sup>84</sup> The president declared that RCTV's permit to broadcast "can be taken away at any moment that the State decides to do so."<sup>85</sup> Such declarations by the highest executive authority of the state show the failure of the judicial system that does not dare to contradict the stated desires of the executive.

Based on the facts submitted to this Court by the Commission, Venezuela clearly has violated Articles 8 and 25 of the Convention as well as Article 14 of the ICCPR. Venezuela failed in its duties under the Convention and engaged in harassment and oppression by using state's powers to persecute and deprive Petitioners of their rights to due process and judicial protection.

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("An extended reform process threatens the independence of the judiciary, given the possibility that judges could be removed as a results of the performance of their duties, thus infringing on article 2, paragraph 3, and article 14 of the [ICCPR]."). *See also* General Comment 32, *supra* note 56, para. 19 ("The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1 is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges . . . and the actual independence of the judiciary from political interference by the executive branch and the legislature.").

<sup>84</sup> *See supra* note 45 and accompanying text.

<sup>85</sup> IACHR Brief, *supra* note 1, paras. 68-69.

### Conclusion

For the foregoing reasons, the ABCNY as amicus curiae respectfully supports  
Petitioner's request that the Court declare that Venezuela violated Articles 8 and 25 by:

- creating a climate of impunity that emboldened citizens to harass and assault so-called "opposition" journalists to prevent them from reporting on and broadcasting events of public interest;
- refusing to order diligent and serious investigations into the assaults suffered by Petitioners;
- using the judicial and administrative apparatus of the government to harass RCTV by making its ongoing operation, as a company, difficult;

The ABCNY also supports Petitioners' request that the Court order Venezuela to:

- investigate and, where necessary, prosecute those persons responsible for the assaults suffered by Petitioners;
- if the Court finds that the facts and the law so warrant, provide reparations for damages suffered by Petitioners; and
- assume public responsibility for not taking adequate steps to investigate attacks on Petitioners simply because they were critical of the government.

Respectfully submitted,

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