

INTER-AMERICAN COURT OF HUMAN RIGHTS

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:
Gabriela Perozo, Aloys Marín, and others :
:
vs. :
:
The Bolivarian Republic of Venezuela :
:
Case 12.442 (The “Globovisión” 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
GABRIELA PEROZO, ALOYS MARÍN, AND OTHERS IN
THE “GLOBOVISIÓN” CASE**

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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.¹

Preliminary Statement

ABCNY, founded in 1870, is a leading international bar association. Its members include over 23,000 practicing lawyers, judges and scholars from the United States and

¹ For full list of petitioners, see Brief of the Inter-American Commission on Human Rights at para. 11, *Perozo v. Bolivarian Republic of Venezuela* (Inter-Am. Ct. H.R. April 12, 2007) (No. 12.442) (hereinafter “IACHR Brief”).

over 50 other countries. ABCNY is based in New York City, an international hub of business and diplomacy. ABCNY has long been committed to promoting the rule of law and independent, effective judiciaries all over the world.

The ABCNY ask this Court to reinforce the rule of law by declaring in this case that Venezuela may not deprive news organizations or journalists of the right to due process and judicial protection, particularly not on the grounds that the news organizations or journalists are independent 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 that diminishes the rule of law. This case presents an example that calls for strong action by the Court. Venezuela has used the power of the state to try to silence Globovisión and other private news organizations and journalists that operate independent of direct government control. In public statements, President Chávez repeatedly encouraged attacks on Petitioners and other journalists. The clear message was that the state would not punish the perpetrators of any such attacks. President Chávez stated that attacks on Petitioners—so-called “opposition” journalists who did not work for state-owned media companies—were justified to defend the state against “terrorists,” “coupsters” and “liars.”

Not surprisingly, the president’s words were followed by attacks on “opposition” journalists, including Petitioners. 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 was no

serious state response to Petitioners' requests for investigations or prosecutions of their attackers and that Petitioners did not obtain relief. Further, official organs of the state joined in attacking Petitioners, by bringing various administrative and legal actions against Globovisión and threatening to close down its operations. The state's vilification and harassment of "opposition" journalists thus gave rise to politically motivated actions that undermine and threaten the rule of law. While the Inter-American Commission has recognized these events to be human rights violations, the Venezuelan government has not acted to remedy the harms it has caused.

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 the 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 Globovisión. Venezuela violated other parts of the American Convention, such as Article 5 (physical integrity) and Article 13 (freedom of expression), which we understand will be the focus of submissions by Petitioners and perhaps other *amici*.² 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.

² See *id.* paras. 121-39 (analyzing Article 5) & paras. 140-98 (analyzing Article 13).

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, 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 the impartial administration of justice have 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 analysis 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 influencing governments to adopt changes in favor of the rule of law. ABCNY delegations have, for instance, 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 Guantanamo 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 of a political opposition leader in Uganda.³

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.

A. Background: Deterioration of the Rule of Law in Venezuela

Venezuela's violation of Petitioners' rights to due process and judicial protection can be 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 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.⁴ Venezuela, under President Chávez, systematically

³ 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; 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) at 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), at 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, at http://www.nycbar.org/pdf/report/Uganda_Dec8.pdf.

⁴ See Human Rights Watch, *Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela*, Vol. 16, No. 3(B) (June 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*, at <http://www.amnestyusa.org/document.php?lang=e&id=F075A829FDC8DDCF80256E8C004200F9>; see also Lauren Castaldi, *Judicial Independence*

has wielded its power to silence opposition voices under the pretext of legitimate state action. This pattern of politically motivated governance threatens to make all branches of the government mere instruments of the president and his supporters.

The Chávez regime came to power in 1999 promising political reform and an overhaul of the judiciary, which had been widely regarded as corrupt.⁵ By popular referendum, a National Constituent Assembly, backed by the president, was created to ratify a new constitution which became known as the “Constitution of the Bolivarian Republic of Venezuela.” The 1999 Constitution purports to guarantee basic human rights, an independent judiciary and access to a fair and impartial judicial system. Article 26 of the 1999 Constitution 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.

Threatened in Venezuela: The Removal of Venezuelan Judges and the Complication of Rule of Law Reform, 37 GEO. J. INT’L L. 477 (2006); Allan R. Brewer-Carias, *Judicial Review in Venezuela*, 45 DUQ. L. REV. 439 (2006).

⁵ HRW Report, *supra* note 4, at 7.

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.”⁶ In practice, the Decree enabled the Venezuelan government to remove hundreds of judges deemed to be opponents of President Chávez and replace them with Chávez supporters.⁷ Eighty percent of judges in Venezuela hold provisional or temporary positions, making the judicial system vulnerable to politically motivated actions.⁸

After the failed coup d’état by opposition leaders in April 2002, President Chávez and his supporters took forceful measures to purge all 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. Under the new law, the Assembly then removed the vice-president of Venezuela’s Supreme Court, Franklin Arrieché, who had voted to acquit military officers involved in the attempted

⁶ Castaldi, *supra* note 4, at 496-97.

⁷ HRW Report, *supra* note 4, at 17-20; Castaldi, *supra* note 4, at 497-98.

⁸ HRW Report, *supra* note 4, at 9.

2002 coup.⁹ As Human Rights Watch concluded in 2004:

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.¹⁰

Venezuela's political purge extended from the judiciary to the media. Over the past several years, dramatic changes in media control have resulted in state control of nearly all of Venezuela's broadcasting.¹¹ The president repeatedly has criticized private media companies for supporting the 2002 coup and for allegedly inciting murder attempts against him.¹² In May 2007, the government refused to renew the license of Radio Caracas Television ("RCTV"), Venezuela's oldest and most widely-watched private station, founded in 1953, shutting it down. Just after its closure, RCTV was replaced by a new state-sponsored station, TVES.¹³ Days later, President Chávez issued this warning

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

¹⁰ HRW Report, *supra* note 4, at 1.

¹¹ Reporters Without Borders, *Venezuela – Annual Report 2008*, August 2, 2008, at http://www.rsf.org/article.php3?id_article=25598 2008 Annual Report; Rory Carroll, *This is Media War*, THE GUARDIAN, June 4, 2007, at <http://www.guardian.co.uk/media/2007/jun/04/mondaymediasection.venezuela>.

¹² Rory Carroll, *Chávez Attacks Another Private TV Channel*, THE GUARDIAN, May 30, 2007, at <http://www.guardian.co.uk/media/2007/may/30/venezuela.broadcasting>.

¹³ *Second Venezuela TV is Under Fire*, BBC NEWS, May 29, 2007, at <http://news.bbc.co.uk/1/hi/world/americas/6699383.stm>.

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.”¹⁴

Venezuela’s failure to uphold the principle of separation of powers prevents anyone deemed an opponent to 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.

B. Venezuela’s Actions to Injure and Suppress Globovisión and its Employees

Based on the record generated by the Inter-American Commission, we understand the following to be the facts in the Globovisión case.

1. Statements Generating Public Hostility to “Opposition” Journalists

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

First, the president, in public speeches, characterized the private media (i.e., those media organizations not controlled by the state) and Globovisión in particular as lying traitors. According to President Chávez, private TV stations “transmit terrorist propaganda,” “create lies and cause panic and terror,” constitute a “fascist perversion” that reports “garbage, lies, perversion, immorality,” and intend to topple the government

¹⁴ Carroll, *supra* note 12.

with another coup like the one attempted in April 2002. Globovisión is “a nest that conspires against the revolution” and is one of the “enemies of the revolution.”¹⁵

Second, the president and other officials actively encouraged citizens to take physical action against the private media in general and Globovisión in particular. The president “call[ed] on the Venezuelan people and the national institutions to defend the mental health of our nation.”¹⁶ He characterized violent protests by citizens at private TV stations, including Globovisión, as “people . . . on the street defending their values and principles.”¹⁷

Third, the president publicly threatened to shut down the private media by force. He indicated a willingness to take away Globovisión’s broadcast license “at any moment” and to “irrevocably shut down” private stations.¹⁸ President Chávez warned that if “TV

¹⁵ IACHR Brief, *supra* note 1, para. 61 (citing the transcript of the program *Alo Presidente* aired on June 9, 2002); para. 63 (citing a speech given on September 18, 2002); para. 65 (citing the video of public speeches given on January 27, 2002 and June 13, 2002); para. 59 (citing public speech given on October 5, 2001).

¹⁶ *Id.* para. 64 (citing the transcript of the press conference at the Presidential Palace on December 7, 2002).

¹⁷ *Id.* para. 66 (citing declaration of the Minister of Interior and Justice on December 10, 2002).

¹⁸ *Id.* paras. 68-69 (citing a video of the President’s public speeches on January 27, 2002 and June 13, 2002); para. 70 (citing the transcript of *Alo Presidente*, aired on November 9, 2003).

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.”¹⁹

2. Attacks on Petitioners

Following President Chávez’s statements, starting in 2001, citizens began to attack “opposition” journalists and generally impeded them from reporting the news.

Globovisión news crews trying to cover protests were subjected to insults and threats and were attacked by violent groups.²⁰ Some Globovisión employees, during their reporting duties, suffered serious injuries requiring hospitalization.²¹ Yet others received death threats that stopped them from reporting.²² Globovisión crews repeatedly had their equipment stolen, including videotapes, cameras, motorcycles and gas masks, sometimes

¹⁹ *Id.* para. 71 (citing interview of President Chávez by the newspaper, *El Universal*).

²⁰ In December 2001, a Globovisión crew tried to cover a protest when citizens shouted insults, calling them “liars” and “traitors,” surrounded the crew, and prevented them from reporting. *Id.* para. 77. In November 2001, a crew drove to downtown Caracas to cover a protest when their vehicle was attacked. *Id.* para. 76.

²¹ In May 2004, a Globovisión crew was threatened covering a petition drive to revoke the President’s mandate. Joshua Torres tried to videotape these events but was beaten and had his camera stolen. Martha Palma Troconis was beaten when she tried to intervene. Both were hospitalized. *Id.* para. 102.

²² In February 2004, a Globovisión news crew tried to cover a protest. When they videotaped attacks on one of the protesters, another group threatened to kill the crew. The news crew stopped covering the event. *Id.* para. 97.

at gunpoint.²³ At least on one occasion, a group disrupted work at Globovisión's building, barring employees from entering or exiting.²⁴

The National Guard, present during some attacks on Globovisión employees, did nothing to stop assaults they witnessed, at protests or even the Presidential Palace.²⁵ At least once, the National Guard shot rubber bullets at a Globovisión team.²⁶

3. Denial of Access to Public Events

The Venezuelan government also restricted Globovisión's access to various public, newsworthy events without warning or due process—often after Globovisión had complied with the very rules or requirements established by the government for covering these events. The government summarily denied Globovisión permission to attend or broadcast official visits by the Colombian and Nicaraguan presidents even after full compliance with governmental requirements.²⁷ The government repeatedly denied Globovisión access to public events while giving state-sponsored TV stations full access, including at a Ministry of Defense press conference.²⁸ The government created barriers to the reporting of judicial hearings by barring private media from accessing certain areas

²³ *Id.* paras. 94, 102, 110.

²⁴ *Id.* para. 93.

²⁵ *Id.* paras. 94 & 110.

²⁶ *Id.* para. 90.

²⁷ *Id.* paras. 107 & 111.

²⁸ *Id.* para. 104.

of the Palace of Justice.²⁹ The government also denied Globovisión access to a public trial of alleged Colombian paramilitaries captured in Venezuela even though state-owned TV stations had full access.³⁰

4. Limited Police and Prosecutorial Response to Attacks

Despite the repeated instances of physical and verbal harassment against Globovisión and its employees, the responsible governmental agencies—the police and public prosecutors—have done little to investigate the events that took place. According to the Commission, every attack suffered by Petitioners was duly reported to the public prosecutor.³¹ Yet in spite of the seriousness of these assaults, the government took no effective steps to investigate or to ensure that the assaults would stop.

In 2002, the state began an investigation of complaints filed by certain Petitioners in connection with the attacks they suffered.³² The state summoned some of the

²⁹ *Id.* para. 113.

³⁰ *Id.* para. 106.

³¹ *Id.* paras. 76-113.

³² *Id.* para. 114. Petitioners for whom files were opened include José Vicente Antonetti, Mayela León Rodríguez, Aloys Emmanuel, María Díaz, Jhonny Ficarella Martín, Aymara Lorenzo Ferrigui, Yesenia Thais Balza Bolívar, Martha Isabel Palma Troconis, Jhon William Power Perdomo, Alfredo José Peña Isaya, José Alberto Inciarte, Ángel Mauricio Millán, Joshua Oscar Torres Ramos, Félix José Padilla Geromes, Miguel Ángel Calzadilla Piñero, Jorge Manuel Paz, Edgar Alfredo Hernández Parra, Efraín Antonio Henríquez Contreras, José Gregorio Urbina Marín, Carlos Javier Quintero, Felipe Antonio Lugo Duran and Carlos José Tovar.

Petitioners to testify about the events in question.³³ Prosecutors asked Venezuelan scientific police to submit test results on a videotape containing images of some events. They also asked Globovisión to submit a list of vehicles damaged in those events.³⁴

This is the full extent of the efforts of the Venezuelan authorities to investigate or prosecute the attacks on Petitioners. As far as Petitioners know, the prosecutors have not identified or arrested, much less prosecuted, any suspects in any of the attacks. No charges have been filed.

5. Administrative and Legal Harassment by the Government

While the government did little to investigate assaults on Globovisión personnel, it filed numerous administrative and legal actions *against* Globovisión. Many of these actions had as their stated intent the suspension of Globovisión's programming or broadcast license. Yet it seems clear that these actions were filed for the purpose of harassment. The government has pursued none of these actions to the end, but also has not terminated them. Such unresolved actions create an environment of fear and uncertainty; the unresolved administrative and legal actions act as a constant legal threat hanging over Globovisión and its personnel.

The government brought actions requesting drastic penalties—shutting down Globovisión or preventing it from broadcasting—based on alleged transgressions that

³³ *Id.* para. 115. Those called in to testify include Ángel Álvarez Colmenares, Alfredo José Peña Isaya, Carlos Javier Quintero, Felipe Antonio Lugo Duran, Efraín Antonio Henríquez Contreras, Jhonny Ficarella Martín, Gabriela Perozo and Oscar Dávila.

³⁴ *Id.* para. 116.

appear to have been frivolous or trivial at best. In one case, the National Commission of Telecommunications (“CONATEL”) brought an action to fine and shut down Globovisión for a minor reporting error even though the error was quickly rectified: Globovisión reported that nine taxi drivers died in an accident when just one person died but Globovisión corrected the error within three hours. This action, brought by CONATEL in 2001, is still pending.³⁵ CONATEL also revoked Globovisión’s license in the states of Vargas and Monagas on the grounds that Globovisión was not using these frequencies, despite the fact that Globovisión could not legally broadcast until receiving other permits.³⁶ In another case, the Ministry of Infrastructure brought an action against Globovisión alleging violations of certain content restrictions. Globovisión’s appeal to the Supreme Tribunal of Justice is still pending. Despite seeking the revocation of the concession to broadcast, among other penalties, the Ministry still has not admitted evidence submitted by Globovisión, four years after the action was filed.³⁷

Other governmental entities have also filed actions against Globovisión, its workers, directors and shareholders. As of April 2007, seven legal actions had been filed demanding fines or the suspension of Globovisión’s programming.³⁸ Despite being

³⁵ Brief of Petitioners Gabriela Perozo et al. at paras.121-22, *Perozo v. Bolivarian Republic of Venezuela* (Inter-Am. Ct. H.R. April 12, 2007) (No. 12.442) (hereinafter “Petitioners’ Brief”).

³⁶ *Id.* paras. 121 & 122.

³⁷ *Id.* paras. 129 & 130.

³⁸ *Id.* paras. 150.

commenced mostly between 2002 and 2004, none of these actions has been decided, and most of the actions have been stayed or delayed by judicial inaction.³⁹

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

In June 2003, 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.

Argument

As set forth in Part A of the statement of facts 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 actions concerning Globovisión and its employees constitute violations of the American Convention. Specifically, Venezuela's conduct violates Article 8 and Article 25,

³⁹ *Id.* paras. 150-201.

provisions concerning due process and judicial protection, in two ways:⁴⁰

First, Venezuela violated the right to due process and judicial protection by creating a climate of impunity and refusing to investigate the attacks on Petitioners. Venezuela weakened its independent 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 Globovisión’s employees. The international community has come to recognize that direct state action is not the only way that governments can

⁴⁰ 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.

violate human rights, the rule of law and free speech; inaction in response to private attacks, as reflected in the record of this case, is just as much a violation.⁴¹

Second, Venezuela violated the right to due process and judicial protection by filing arbitrary and frivolous administrative and judicial actions against Globovisión. Despite the severity of the proposed penalties, which threaten to end Globovisión's operations, none of these actions have been concluded, though initiated years ago. The right to due process is clearly violated when justice is neither swift nor even-handed.

By continuing the conduct condemned by the Commission, Venezuela disregards its obligations under the Convention and shows its intent to continue violating the rights of Petitioners and others. The rights that Venezuela has violated constitute "fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society."⁴² This Court should not permit Venezuela to further diminish the rule of law by using its power to repress Globovisión and other independent media outlets.

⁴¹ See, e.g., Committee to Protect Journalists, Global Campaign to End Impunity, <http://www.cpj.org/impunity/> (2008) (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.")

⁴² *Castillo-Páez v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 24 at para. 82 (Nov. 3, 1997); *Suárez-Rosero v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 35 at para. 65 (Nov. 12, 1997); *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.).

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 Articles 8 and 25 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).⁴³

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.⁴⁴ The fact that Venezuela “tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights” constitutes a violation of its obligation to ensure due process and judicial protection.⁴⁵ By stating publicly that the intimidation of journalists would have state support—calling on Venezuelans to “defend” the nation

⁴³ *See Blake v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 36 at para. 94 (Jan. 24, 1998).

⁴⁴ “*Mapiripán Massacre*” *v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 134 at para. 195 (Mar. 7, 2005).

⁴⁵ *Hilaire v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 94 at para. 151 (June 21, 2002).

from Globovisión and others—Venezuela created the kind of “chronic high-risk situation” that violates the Convention.⁴⁶

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.”⁴⁷ Under Articles 8 and 25, Venezuela was required to conduct, with all available means, a meaningful investigation of the attacks on Petitioners.⁴⁸ Venezuela was obligated to investigate violence against Globovisión’s journalists “*as its own legal duty*, not as a step taken 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.”⁴⁹

⁴⁶ See *Pueblo Bello*, *supra* note 42, para. 7 (Separate Opinion of Cançado-Trindade, J.).

⁴⁷ *Baena-Ricardo et al. v. Panama*, Inter-Am. Ct. H.R. (ser. C) No. 72 at para. 124 (Feb. 2, 2001).

⁴⁸ *Paniagua-Morales et al v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 37 at para. 139 (Mar. 8, 1998).

⁴⁹ *Villagrán-Morales v. Guatemala*, 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).

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."⁵⁰ 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.⁵¹ The newspaper's reporters suffered a campaign of attacks and harassment, allegedly directed or approved of by the state, including murder, kidnappings and torture.⁵² By providing "[n]o response . . . to almost all petitions and requests for protection submitted," Venezuela violated Petitioners' right to due process and judicial protection.⁵³

⁵⁰ See U.N. Human Rights 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.").

⁵¹ *Özgür Gündem v Turkey*, Eur. Ct. H.R., App. No. 23144/93 at para. 71 (March 16, 2000).

⁵² *Id.* para. 12-13; *Tekin v Turkey*, Eur. Ct. H.R., App. No. 22496/93 (June 9, 1998).

⁵³ *Özgür Gündem*, *supra* note 51, para. 44.

II. Venezuela Violated Articles 8 and 25 by Using Its Administrative and Judicial Power to Harass and Intimidate Petitioners

Venezuela has targeted Globovisión for harassment and impaired its ability to operate by filing frivolous administrative and legal proceedings, charging Globovisión with an array of civil infractions and fines. These proceedings have been stayed without decision, leaving Globovisión in a state of legal uncertainty—under constant threat of being taken off the air, paying exorbitant fines, or losing its broadcast license without any end in sight to the proceedings. Venezuela also arbitrarily denied Globovisión access to cover public news events without providing it a way to challenge these denials.

Venezuela failed in its obligations under Articles 8 and 25 by exercising its authority arbitrarily to harass Petitioners. The filing of these administration and judicial actions against Globovisión thwart the “main purpose of the international protection of human rights,” which is to protect individuals “from the arbitrary exercise of public authority.”⁵⁴ To be effective, judicial recourse “must be appropriate to contest the violation...and its implementation by the competent authority must be effective.”⁵⁵

Venezuela had the “obligation to offer . . . an effective judicial recourse to contest acts that violate [Petitioners’] fundamental rights.”⁵⁶ Part of an effective judicial recourse

⁵⁴ *See also Yatama v. Nicaragua*, Inter-Am. Ct. H.R. (ser. C) No. 127 at para. 167 (June 23, 2005).

⁵⁵ *Claude-Reyes v. Chile*, Inter-Am. Ct. H.R. (ser. C) No. 151 at para. 131 (Sept. 19, 2006).

⁵⁶ *Id.* para. 128.

is the Article 8(1) requirement that proceedings take place “within a reasonable time.” The actions against Globovisión, filed between 2002 and 2004, have yet to be resolved, dismissed or advanced. The Ministry of Infrastructure’s proceedings against Globovisión have not moved past the discovery stages *four years* after Globovisión answered the Ministry’s complaint. These “unjustified delay[s] in the decision” of cases against Globovisión constitute a violation of the right to due process and judicial protection.⁵⁷

The summary denial of rights and access, without justification, constitutes a further violation of Articles 8 and 25.⁵⁸ The Venezuelan government, without due process, has summarily deprived Globovisión of broadcast frequencies and taken steps to deny Globovisión reporters access to newsworthy judicial proceedings, visits of foreign heads of state, and other news events. 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 measures to silence TV networks critical of the government, through arbitrary administrative actions, violate Articles 8 and 25.⁵⁹

⁵⁷ *Ivcher-Bronstein v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 74 at para. 137 (Feb. 6, 2001).

⁵⁸ *Claude-Reyes*, *supra* note 55, para. 134-44.

⁵⁹ *Ivcher-Bronstein*, *supra* note 57, paras. 116 & 142 (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).

The administrative and legal actions against Globovisión demonstrate that Venezuelan judicial system can hardly be called independent and fair. Indeed, the president declared that Globovisión's permit to broadcast "can be taken away at any moment that the State decides to do so."⁶⁰ Such declarations by the highest executive authority of the state show the failure of the judicial system which will not dare to contradict the stated "desires" of its president.

Based on the facts submitted to this Court by the Commission, Venezuela clearly has violated Articles 8 and 25 of the Convention. 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.

⁶⁰ 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 Globovisión 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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