



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2888/2016*, **

<i>Communication submitted by:</i>	O.R.C.H., T.G. and S.A.A.M.
<i>Alleged victims:</i>	T.G. and S.A.A.M.
<i>State party:</i>	Bolivarian Republic of Venezuela
<i>Date of communication:</i>	17 August 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 1 December 2016 (not issued in document form)
<i>Date of adoption of decision:</i>	22 March 2023
<i>Subject matter:</i>	Prohibition of an international television news channel and its web portals in the State party
<i>Substantive issues:</i>	Freedom of expression; right to receive information; right to take part in public affairs; right to an effective remedy
<i>Procedural issues:</i>	Competence <i>ratione personae</i> ; exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	2, 14, 19 and 25
<i>Articles of the Optional Protocol:</i>	2 and 5

1.1 The authors of the communication are O.R.C.H., a practising attorney, acting on his own behalf and as a legal representative of the non-governmental organization Espacio Público;¹ T.G., a journalist acting on his own behalf and as a representative of the National

* Adopted by the Committee at its 137th session (27 February–24 March 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

¹ The authors provide a copy of the organization's charter and by-laws (2003), together with proof that O.R.C.H. was the organization's legal representative, in the form of a general power of attorney granted by the Executive Director of Espacio Público on 30 April 2012. The aim of Espacio Público is to promote high-quality social communication practices among public and private media in order to strengthen a democratic and participatory society. To this end, it engages inter alia in research and reporting on the situation of the media.



Association of Journalists;² and S.A.A.M., a journalist acting on her own behalf and as a representative of the civil society association *Expresión Libre*,³ all of whom are nationals of the Bolivarian Republic of Venezuela. They claim that the State party has violated their rights under article 2, paragraphs 1, 2 and 3 – this last paragraph read in conjunction with article 14 – and articles 19 and 25 of the Covenant. The Optional Protocol entered into force for the State party on 10 August 1978. The authors are not represented by counsel.

1.2 The authors requested the Committee to grant interim measures under which the State party would allow national cable television operators to transmit the NTN24 signal freely and without penalty and would unblock the web portals of this international channel, allowing Internet service providers to offer access to such pages and content.

1.3 On 1 December 2016, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided not to grant the interim measures requested.

1.4 On 24 June 2019, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided that the admissibility of the communication should be considered separately from the merits.

1.5 On 12 January 2023, the authors informed the Committee that O.R.C.H. had died during the period since the communication had been submitted.⁴ Consequently, and given that the authors have not submitted documentation showing that any individual, such as his heirs, can act on behalf of O.R.C.H. as a victim in the context of the present communication, the Committee considers the communication to have been discontinued in respect of this author.

Factual background

2.1 The authors argue that the NTN24 news channel played a key role during the anti-Government demonstrations of 2014 by reporting on the political context in the State party. The authors note that, at the time, the population had few sources of information about the protests and the authorities took legislative and policy measures to create an atmosphere of intimidation against the independent media, thereby affecting freedom of expression. The authors add that news outlets that did not support the official policy were thus silenced and a “pro-Government media monopoly” was promoted (see paras. 2.7–2.10).

2.2 The authors note that on 11 February 2014, the National Telecommunications Commission, which was under the de facto control of the executive branch,⁵ issued a press release in which it supported the call by the President of the Republic, Nicolás Maduro, for “restoring and building peace”. In that press release, the Commission stated that some media

² The authors indicate that this is a public law entity with legal personality and its own assets, independent of the national treasury. The authors provide a certificate, dated January 2013, showing that T.G. is the Chair of the Board of Directors of the National Association of Journalists.

³ The authors provide a copy of the organization’s charter and by-laws (2002), together with a document dated 27 October 2015 showing that S.A.A.M. is the organization’s General Coordinator. The purpose of the association is to promote the defence of freedom of expression; engage in research, analysis and evaluation of facts and proposals related to freedom of expression; promote and report on events advocating political, social and economic debate in the country; and carry out activities conducive to a participatory, just and democratic society, among others.

⁴ The authors indicate that the communication remains active with respect to the other two authors and that the case has continued to be pursued domestically by Mr. Ricardo Rosales, a lawyer with the association *Espacio Público*. In addition, the authors request that, should the Bolivarian Republic of Venezuela be found to be internationally responsible, the Committee should recognize O.R.C.H. as a victim, in recognition of his hard work on the case and, more broadly, his legacy as a human rights defender in the State party.

⁵ The authors indicate that the National Telecommunications Commission is a telecommunications regulatory body in the State party, attached to the Ministry of People’s Power for Communication and Information, and that it is responsible for investigating and sanctioning violations of the Social Responsibility in Radio, Television and Electronic Media Act, which was last amended on 7 February 2011, and for taking decisions on preventive measures that may include broadcasting bans. The authors point out that, although the Commission is defined by law as an independent institution, its board of directors is appointed by the President, who may remove its members at his discretion. Thus, the telecommunications governing body lacks sufficient guarantees of independence.

outlets' coverage of acts of violence that had occurred during the demonstrations could be considered a violation of article 27 of the Social Responsibility in Radio, Television and Electronic Media Act,⁶ which prohibits the broadcasting of content advocating hatred and/or violence. Likewise, the Commission expressed concern about the way in which certain media outlets had covered the events, stating that the coverage could be conducive to violence and the disruption of public life. It also warned that violation of the law carried penalties and sanctions. The authors claim that this press release was a threat that discouraged the national television media from covering the protests. However, the international television channel NTN24 devoted much of its programming to coverage of those events.

2.3 The authors state that on 12 February 2014, after NTN24 had reported on the killings of three young people in the context of the protests, the President, on national television, issued an order for the NTN24 signal to be suspended by all television operators and for its web pages to be blocked.⁷ The authors claim that the Director General of the National Telecommunications Commission carried out the President's order with no prior administrative or judicial procedure, stating publicly that the measure had been taken in accordance with article 27 of the Social Responsibility in Radio, Television and Electronic Media Act, which prohibited incitement to hatred and violence.⁸ The authors note that the Director of the Commission added that the measure was intended to avoid a situation like the one that had "occurred in April 2002, when an unprecedented coup d'état was engineered in [the Bolivarian Republic of] Venezuela, led by the media, ... which were promoting intolerance, hatred, terror and an emotional climate of destruction of social harmony". The Director also reportedly stated that, according to the Commission's monitoring, NTN24 had devoted 90 per cent of its programming on 12 February 2014 to coverage of the protests in the Bolivarian Republic of Venezuela, despite being an international news channel, and 80 per cent of the time had shown only one side of the conflict: that of the spokespersons who were "calling to destabilize the country". Lastly, the authors claim that the Director of the Commission stated that the measure did not require the opening of administrative proceedings by the Social Responsibility in Radio and Television Board, since NTN24 was a foreign television channel.

2.4 The authors claim that in subsequent months the main domains of the NTN24 website were blocked. They report that as of the date of submission of the communication, NTN24 was still censored and the ban covered 16 of its web portals,⁹ preventing the State party's population from obtaining information through this media outlet.

2.5 On 28 July 2015, the authors filed an application for the protection of diffuse interests, with suspension of effects by way of interim relief, before the Constitutional Chamber of the Supreme Court of Justice, requesting that the competent authorities be ordered to restore the NTN24 signal and unblock its web portals to protect the right of Venezuelan society to

⁶ Article 27 provides that: "Radio, television and electronic media services are not permitted to broadcast messages that: 1. [i]ncite or promote hatred and intolerance based on religion, political opinion or gender or arising from racism or xenophobia; 2. [i]ncite or promote and/or advocate crime; 3. [c]onstitute propaganda for war; 4. [f]uel public anxiety or disturb public order; 5. [r]efuse to recognize the lawfully constituted authorities; 6. [r]epresent incitement to homicide; or 7. [i]ncite or promote non-compliance with the legal system in force ...".

⁷ The authors refer to Espacio Público, *Informe 2014: Situación del derecho a la libertad de expresión e información en Venezuela*, 13 May 2016. Available at <https://espaciopublico.org/informe-2014-situacion-del-derecho-la-libertad-expresion-e-informacion/>.

⁸ The authors refer to statements made by the then Director of the National Telecommunications Commission in an interview on the State television channel TeleSUR, during the programme *Edición Central*.

⁹ Espacio Público, *Informe 2014: Situación del derecho a la libertad de expresión e información en Venezuela*, 13 May 2016.

freedom of expression, as enshrined in articles 57¹⁰ and 58¹¹ of the Constitution and in article 19 of the Covenant.¹² The authors claimed that the measure affecting NTN24 was an undue restriction of freedom of expression that violated both dimensions of this right: the individual right of all persons to express themselves through any media of their choice, since NTN24 was not available to transmit their ideas, and the individual right of all persons to receive information, opinions and ideas transmitted by others, since the right of Venezuelan society to obtain information through NTN24 was restricted. On the question of standing to file an application for the protection of diffuse interests, the authors referred to the relevant case law of the Supreme Court,¹³ according to which applicants are not required to have a link with the offender; rather, they act as members of society and invoke a right or interest which they share with the community. The authors indicated that they were acting as members of Venezuelan society and in their capacity as users and holders of the right to freedom of expression, invoking their shared interest with the community, stating that they had been harmed by the impairment of the exercise of that right and claiming reparation for themselves and for the community. The authors point out that although more than a year had elapsed between the filing of the application and the submission of the communication to the Committee, the application had not even been accepted for consideration; the only step taken had been the appointment of a reporting judge.

2.6 The authors report that they petitioned the Supreme Court to rule on their application on 4 August 2015; 28 January, 13 July and 3 November 2016; 28 March, 20 July and 28 November 2017; and 16 May and 8 August 2018.¹⁴

2.7 The authors refer to the context in which the events took place, which was allegedly marked by a gradual deterioration in the exercise of freedom of expression owing to statements made by high-ranking State officials disparaging the independent media, as well as a series of rules and practices aimed at unduly restricting this right. The authors refer in particular to the following practices: (a) intimidating official statements that undermine freedom of expression; (b) political control of the National Telecommunications Commission and enforcement of the Social Responsibility in Radio, Television and Electronic Media Act; and (c) a digital blackout to limit the use of the Internet as a vehicle for exercising the right to freedom of expression.

2.8 On the first point, the authors describe several cases that in their view involved undue restrictions on the right to freedom of expression. In those cases, the Inter-American Court of Human Rights found that the authorities of the State party, through their statements, had in some way incited, supported and/or condoned actions by private individuals to inflict

¹⁰ “Article 57. Everyone has the right to freely express his or her thoughts, ideas or opinions orally, in writing or through any other form of expression and to use any means of communication and dissemination for this purpose, without censorship. All persons who exercise this right are fully responsible for the content of such expression. Anonymity, propaganda for war, discriminatory messages and messages inciting religious intolerance shall not be permitted. Censorship of public officials in reporting on matters under their responsibility shall be prohibited.”

¹¹ “Article 58. Communication shall be free and pluralistic and shall carry such duties and responsibilities as are laid down by law. Everyone has the right to timely, truthful and impartial information, without censorship, in accordance with the principles of this Constitution, as well as the right of reply and rectification when he or she is directly affected by untrue or offensive information. Children and adolescents have the right to receive information conducive to their comprehensive development.”

¹² Supreme Court of Justice, Constitutional Chamber, case of *Fernando Asenjo Rosillo et al.*, judgment No. 3.648, 19 December 2003. In this judgment it is established that diffuse rights or interests are “those that concern everyone (plurality of subjects), that is, persons who, in principle, do not form an identifiable and distinct sector of the population and who, in the absence of any legal connection between them, have been harmed or threatened with harm”. It is explained that a claim for diffuse rights or interests must be based on a right that concerns the community and is not attributable to an identifiable sector of the population, and must concern a fact that harms or threatens the members of the community, in the absence of any legal connection between them.

¹³ Ibid.

¹⁴ The authors provide a copy of the relevant case document confirming this statement.

physical and other harm on journalists.¹⁵ The authors also refer to cases in which the media as such were affected, including the case of Radio Caracas Televisión, whose concession was terminated by order of the then President in retaliation for its editorial stance.¹⁶ The authors refer as well to general comment No. 25 (1996),¹⁷ in which the Committee stresses the importance, for the enjoyment of the rights protected by article 25 of the Covenant, of a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The authors cite a 2014 report by Espacio Público indicating that the year in question saw an increase in both the number and the forcefulness of public statements against media outlets and journalists (350 cases)¹⁸ and that the measures taken against NTN24 were part of this pattern of government attacks on freedom of expression.

2.9 Regarding the second point, namely the political control of the National Telecommunications Commission and the enforcement of the Social Responsibility in Radio, Television and Electronic Media Act, the authors reiterate that the Commission is not independent from the executive branch, and add that the Act has been flagged by several international bodies¹⁹ as endangering freedom of expression owing to its broadly worded provisions, which may result in disproportionate sanctions for the mere expression of criticism that displeases the officials enforcing this law.²⁰ The authors refer to the Committee's concluding observations on the State party's fourth periodic report, in which the Committee recommended that the State party ensure that any restrictions on the exercise of freedom of expression, including the exercise of monitoring powers, are in accordance with the strict requirements set out in article 19 (3) of the Covenant, and that the authorities in charge of enforcing legislation on the exercise of freedom of expression discharge their mandate independently and impartially.²¹ The authors add that the context described, as well as the authorities' and especially the Commission's monitoring of the coverage of the 2014 protests, including the suspension of the NTN24 signal and the blocking of its web pages, created a tendency towards self-censorship among other Venezuelan media, which refrained from reporting on the anti-Government demonstrations even though they were a matter of public interest. Consequently, the suspension of the NTN24 signal represented a serious restriction of the right to freedom of expression, since it was the only media outlet that was broadcasting information on those events.

2.10 Concerning the third point, namely the digital blackout and its effects, the authors state that, for Venezuelan society, the Internet has become a fundamental tool for obtaining

¹⁵ *Case of Perozo et al. v. Venezuela*, judgment of 28 January 2009, Series C No. 195; and *Case of Ríos et al. v. Venezuela*, judgment of 28 January 2009, Series C No. 194.

¹⁶ Inter-American Court of Human Rights, *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, judgment of 22 June 2015, paras. 193 and 197.

¹⁷ Para. 25.

¹⁸ Espacio Público, *Informe 2014: Situación del derecho a la libertad de expresión e información en Venezuela*, 13 May 2016.

¹⁹ Human Rights Watch, *A Decade Under Chávez. Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela*, September 2008, available at <https://www.hrw.org/sites/default/files/reports/venezuela0908web.pdf>; and Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, 30 December 2009, available at <http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf>.

²⁰ The authors refer to the cases of RCTV and Globovisión, private channels against which the Act was, in their opinion, arbitrarily enforced because they had covered the protests triggered by the killing of three brothers in 2006. The authors indicate that the National Telecommunications Commission issued sanctions and warnings against these two television channels to discourage the transmission of "violent content that could generate anxiety in the population", thereby preventing society from having free access to free, diverse and timely information on public affairs. In addition, various administrative and disciplinary proceedings were brought against the two channels and their journalists, resulting in the denial of a broadcasting concession for RCTV in 2007 and a series of sanctions procedures against Globovisión between 2008 and 2013, during which time exorbitant fines jeopardizing its viability were imposed. The authors add that, as a consequence of the arbitrary enforcement of the Act, Globovisión changed owners and its new editorial stance is pro-Government. Lastly, the authors refer to the closure of 32 radio stations and the opening of proceedings against 240 others by the National Telecommunications Commission, in retaliation for their editorial stance. The authors refer to the two reports cited in the preceding footnote.

²¹ CCPR/C/VEN/CO/4, para. 19.

information in recent years, given the Government's control over and intimidation of the traditional media. The authors claim that in 2014, restrictions on the right to freedom of expression on the Internet increased by 55 per cent and included the criminalization of Twitter users, censorship, attacks on and interference with content and applications, and leaks or hacks of social profiles and emails.²² The authors refer to several cases related to the 2014 protests, including the blocking of Twitter on 13 February 2014, which was reportedly acknowledged by the Director of the National Telecommunications Commission; the blocking of a news portal²³ and an application²⁴ that same month; and the blocking of several other news portals over the course of the year,²⁵ including NTN24. These actions were taken in the absence of a prior court order. The authors indicate that these moves by the Government amounted to an information blackout in relation to the 2014 protests, aimed at curbing Venezuelan society's access to information critical of the Government and at imposing an ideological and media monopoly.

Complaint

3.1 The authors claim that the State party has violated their rights under article 2, paragraphs 1, 2 and 3 – this last paragraph read in conjunction with article 14 – and articles 19 and 25 of the Covenant.

3.2 The authors maintain that the measures taken by the State party against NTN24 constitute arbitrary censorship of the exercise of the right to freedom of expression recognized in article 19 of the Covenant, in both of its dimensions: (a) the individual right of all persons to express themselves and impart their messages through any media of their choice, since NTN24 was eliminated as a means of transmitting and disseminating their ideas; and (b) the collective right of all persons to receive information, facts and opinions, since Venezuelan society was barred from knowing what others were expressing and imparting through NTN24. They add that the right to freedom of expression is fully applicable to communications, ideas and information imparted and accessed through the Internet. In this connection, they note that this right covers not only access to the Internet but also the right not to have the Internet itself arbitrarily blocked or interrupted and not to have online voices and content reduced as a result of changes made to the Internet.²⁶ The authors accordingly consider that the measures to block web domains should have been justified on the basis of article 19 (3) of the Covenant,²⁷ but were not. The authors maintain that the State party's legislation does not clearly establish the possibility of imposing such restrictions, given the broad wording of the Social Responsibility in Radio, Television and Electronic Media Act; that the State party did not show that the restrictions were being imposed for a legitimate

²² See [A/HRC/17/27](#).

²³ The "Estamos en Línea" news portal.

²⁴ The Zello application.

²⁵ The authors mention the blocking of the news portals Almomento360, Globovisión and Infobae and the official website of the Organization of American States. The authors also mention Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, "Office of the Special Rapporteur expresses concern over the situation of the freedom of expression in Venezuela", press release R 107/14, 22 September 2014, available at <https://www.oas.org/en/iachr/expression/showarticle.asp?IID=1&artID=961>. In this press release, the authorities are called upon to "investigate the cause of the blocking of the web portals and applications of media outlets and adopt the necessary measures to reestablish access, in accordance with international obligations regarding Internet, and to avoid using direct or indirect methods to prevent the publication of critical opinions or complaints against public officials".

²⁶ They refer to Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Freedom of expression and the Internet*, OEA/Ser.L/V/II, 31 December 2013, paras. 49 and 19, respectively, and to document [A/HRC/17/27](#), para. 31, which outlines the conditions under which blocking of the Internet could be justified, including the need for such restrictions to be established in law and the need for intervention by an independent judicial body, among others.

²⁷ They refer to Human Rights Council resolution 38/7 and to Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Freedom of expression and the Internet*, OEA/Ser.L/V/II, 31 December 2013.

purpose; that the restrictions were not justified as being necessary; that they were disproportionate; and that there was no intervention on the part of a judicial authority.

3.3 The authors claim that the State party's legislation on media regulation, in particular the Social Responsibility in Radio, Television and Electronic Media Act, and its enforcement in this case are not compatible with article 19 of the Covenant.²⁸ They also state that the acts that gave rise to the present communication took place in a context of intimidation meant to curtail freedom of expression and of retaliation against news outlets that did not support government policies, leading to self-censorship, which had the effect of reducing or even stopping the broad, pluralistic exchange of information required in any democratic society²⁹ and creating a media monopoly in favour of the State.³⁰ This intimidation originated from the country's highest authorities, including the President. The authors state that the National Telecommunications Commission's actions to suspend the NTN24 signal and to block its web page domains were taken pursuant to a decision by the President that was clearly in retaliation for the news channel's coverage of the anti-Government protests and the hospital crisis.

3.4 The authors also claim that the measures against NTN24 and, therefore, the restrictions on freedom of expression were also, in practice, a violation of their right to take part in public affairs under article 25 of the Covenant. At the time the communication was submitted, the absence of the NTN24 channel and its web portals continued to undermine the authors' participation in public affairs by arbitrarily limiting: (a) the possibility of exercising social oversight of State governance through that medium, which in itself was a means of taking part in matters of public concern, thus hindering the ability to make value judgments and take action with regard to the conduct of public officials, and (b) the ability to organize social actors to take part in public affairs and, moreover, to take sound and informed decisions, since access to information likely to be useful or valuable for these purposes was restricted. The authors add that these measures undermined their essential role as "public watchdogs"; that is, as active members of civil society organizations closely linked to freedom of expression and information in the State party.³¹ Specifically, their role was affected because they could not use NTN24 to provide full and timely reporting on the events of the 2014 protests or, at present, on other matters of public concern for the benefit of Venezuelan society.

3.5 In relation to articles 2 (3) and 14 of the Covenant, the authors argue that the measures in question were taken without any prior court order and that there was no possibility of judicial review of their legality. Moreover, the National Telecommunications Commission's decision was not taken in the context of administrative proceedings for imposing sanctions,

²⁸ See [CCPR/C/VEN/CO/4](#).

²⁹ Human Rights Committee, general comment No. 25 (1996), para. 25; general comment No. 34 (2011), para. 13; and several cases adjudicated by the Inter-American Court of Human Rights: *Case of Perozo et al. v. Venezuela*, judgment of 28 January 2009, para. 116; *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*, judgment of 5 February 2001, paras. 64–73; and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, judgment of 22 June 2015. The authors note that in this last case, the Inter-American Court of Human Rights held that the violation (closure of the channel Radio Caracas Televisión) had an impact not only on the freedom of expression of the executives and employees of the channel, but also on the social dimension of this right; that is, "on the population that was deprived of access to the editorial line that [Radio Caracas Televisión] represented. Indeed, the real purpose sought was to silence voices that were critical of the [G]overnment, which constitute, together with pluralism, tolerance and the spirit of openness, the requirements for a democratic debate" (para. 198).

³⁰ European Court of Human Rights, *Manole and Others v. Moldova*, judgment, 17 December 2009, application No. 13936/02, paras. 95–102, among others. The authors indicate that the authorities have a position of dominance over the audiovisual media, which has gradually extended to the written press, the Internet and radio through the National Telecommunications Commission and other restrictive strategies such as limitations on access to paper.

³¹ European Court of Human Rights, *Österreichische Vereinigung zur Erhaltung et al. v. Austria*, judgment, application No. 39534/07, 28 November 2013, para. 41. The authors point out that, although this decision refers to access to information, it applies to the present case because this jurisprudence covers all situations involving matters of public concern. They refer as well to *Társaság a Szabadságjogokért v. Hungary*, judgment, 14 April 2009, para. 38.

as prescribed by the Social Responsibility in Radio, Television and Electronic Media Act,³² to the detriment of the authors' rights and those of Venezuelan society as a whole, members of which could have intervened in such proceedings as third parties or interested parties. The authors indicate that, given the deterioration of freedom of expression, all safeguards, including those set out in the Social Responsibility in Radio, Television and Electronic Media Act in respect of sanctions procedures, should have been observed, including the stages at which the right to a defence is ensured in both administrative and judicial proceedings, especially as the Director of the Commission cited the violation of article 27 of the Act as grounds for suspending the signal of NTN24.

3.6 The authors also indicate that even though they filed, in July 2015, an application for the protection of diffuse interests with suspension of effects by way of interim relief, which by law was to have been addressed expeditiously,³³ as of the time of submission of the communication no judicial action had been taken on the application, nor had it been accepted for consideration. The authors maintain that this omission by the judicial authorities constitutes a denial of justice, given that the application was not addressed within a reasonable period of time. The authors refer to the jurisprudence of the inter-American human rights system to the effect that, in order to determine whether the time is reasonable, account must be taken of the complexity of the matter, the procedural activity of the interested party, the conduct of the judicial authorities and the adverse effect on the judicial situation of the person involved in the proceedings.³⁴ In the authors' view, none of these criteria were met in the present case: the matter was not complex because it did not require further investigation or production of evidence, the applicants did not obstruct the proceedings in any way, the conduct of the judicial authorities was manifestly negligent, and the authors' situation was seriously affected, given the deterioration of freedom of expression in the State party. The circumstances thus meet the condition laid down in article 5 (2) (b) of the Optional Protocol for an exception to be made to the rule of exhaustion of domestic remedies, and amount to a violation of article 2 (3) of the Covenant.

3.7 In relation to article 2 (1) and (2) of the Covenant, the authors claim that the National Telecommunications Commission's measure against NTN24 was based on article 27 of the Social Responsibility in Radio, Television and Electronic Media Act, which establishes broad and overly discretionary grounds conducive to the discriminatory and abusive application of such measures by the Commission, as occurred in the present case, in violation of the right to freedom of expression. The authors also refer to article 20 of the Act, under which the

³² They refer to the Social Responsibility in Radio, Television and Electronic Media Act, arts. 27 and 33, under which the National Telecommunications Commission may adopt an "ad hoc precautionary decision" only in the framework of a sanctions procedure. Article 33 of the Act provides as follows: "During the sanctions or other procedure, ... the National Telecommunications Commission may, either *proprio motu* or at the request of a party, take ... ad hoc precautionary measures to protect the rights of users of radio, television, subscription and electronic media services ... Any precautionary measure shall be taken by means of a reasoned decision and shall be notified to the alleged violator ... the National Telecommunications Commission ... shall weigh the interests involved, taking into account the harm that could be caused to the alleged violator and the harm that could be caused to the complainant, the user or the community affected by the conduct or omission of the alleged violator ... Should such a measure be challenged, the alleged violator shall have five working days in which to make such claims and arguments as it deems appropriate for its defence, and five working days in which to adduce evidence. Once this period has elapsed, the National Telecommunications Commission shall take action by means of a reasoned decision within the following eight working days, which may be extended for the same period."

³³ The authors refer to article 27 of the Constitution, under which "[e]veryone has the right to protection by the courts in the enjoyment and exercise of constitutional rights and guarantees ... Constitutional *amparo* proceedings shall be oral, public, expeditious, free of charge and not subject to formal requirements, and the competent judicial authority shall be empowered to immediately restore as nearly as possible the legal situation that existed prior to the violation. Applications may be filed at any time in respect of such matters, which shall take precedence over all other matters dealt with by the court ...". They also refer to Supreme Court of Justice, Organic Act on *Amparo* in respect of Constitutional Rights and Guarantees, art. 26, which refers to the time limits that must be observed by judges in taking decisions on *amparo* applications.

³⁴ Inter-American Court of Human Rights, *Case of Valle Jaramillo et al. v. Colombia*, judgment of 27 November 2008, para. 155.

Social Responsibility Board, which can take decisions on telecommunications matters, consists of the Director of the Commission and representatives of three ministries. This is tantamount to saying that the five members of the Board are directly responsible to the executive branch, in violation of the principles of independence and impartiality in decision-making on issues concerning freedom of expression.

3.8 Regarding admissibility, the authors reiterate that the application for the protection of diffuse interests with suspension of effects by way of interim relief has not been an effective remedy, since it has been unreasonably prolonged. They add that the State party has no other domestic remedy for challenging any action or decision by the Constitutional Chamber of the Supreme Court, since it is the highest judicial body in the domestic constitutional system.

3.9 The authors have submitted the communication on their own behalf and as members and legal representatives of the civil society association Espacio Público, the National Association of Journalists and the civil society association Expresión Libre, respectively. As active members of these associations, which are closely linked to freedom of expression and information, they have been directly affected, and their Covenant rights have been violated, by the State party's measures against NTN24.

State party's observations on admissibility

4.1 The State party submitted its observations on admissibility on 1 February 2017, indicating that it considers the communication to be inadmissible because domestic remedies have not been exhausted and the authors do not have the status of victims.

4.2 With regard to the first argument, the State party indicates that the authors have failed to exhaust available remedies, which were effective in relation to the present case. The State party refers to the rules relating to the exhaustion of domestic remedies, especially articles 2 and 5 (2) (b) of the Optional Protocol, article 41 of the Covenant and rule 78 of the Committee's rules of procedure, and notes that the remedy filed by the authors, i.e. the application filed with the Constitutional Chamber of the Supreme Court for the protection of diffuse interests with suspension of effects by way of interim relief, was not an appropriate remedy.³⁵ The State party indicates that, as the National Telecommunications Commission's measure ordering the suspension of the NTN24 signal was taken on the basis of article 27 of the Social Responsibility in Radio, Television and Electronic Media Act, the appropriate remedy was the one established in that law, i.e. administrative proceedings. The State party adds that, under the Act, the decisions of the Social Responsibility Board are final administrative decisions; the authors therefore should have appealed first to the Administrative Court and, at second instance, to the Supreme Court, which they failed to do.

4.3 The State party further indicates that the authors also should have exhausted the remedy of *amparo*, which was available as well. The State party refers to article 27 of the Constitution (see para. 3.6), which states that everyone has the right to protection by the courts in the enjoyment and exercise of constitutional rights and guarantees through constitutional *amparo* proceedings, which are oral, public, expeditious, free of charge and not subject to formal requirements. The State party indicates that the remedy of *amparo* was a suitable and effective means of redress, as its purpose is to restore constitutional rights and guarantees that have been violated or threatened, but none of the authors made use of it.

4.4 In addition, the State party argues that the authors were not the alleged victims of the violations claimed and that the communication is therefore not in compliance with the Committee's rules of procedure regarding authors' status as victims.

Authors' comments on the State party's observations on admissibility

5.1 On 17 April 2017, the authors submitted their comments on the State party's observations. The authors consider that the State party is under a misconception as to who may be victims of violations of Covenant rights and on whose behalf an individual

³⁵ The State party refers to the Committee's jurisprudence on the exhaustion of domestic remedies, for example *Boisvert v. Canada* (CCPR/C/98/D/1747/2008) and *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003).

communication may be submitted to the Committee. In the present case, this misconception is based on the assumption that the only possible victims are persons linked to the television channel NTN24. In the authors' view, not only those persons, but also persons not linked to that media outlet, may be regarded as victims. The authors state that they, as members of civil society who moreover play a key role in organizations defending the right to freedom of expression in the State party, can be considered victims of the retaliatory censorship imposed on NTN24. This is because the authors were deprived of access to the information provided by that media outlet and were therefore unable to discharge their duties in full, in violation of their rights as members of civil society, especially considering the social dimension of the right to freedom of expression; this also had an impact on their ability to avail themselves of appropriate and effective remedies.

5.2 As to the State party's argument that they have not complied with the rule of exhaustion of domestic remedies, the authors contend that the State party, as a result of the aforementioned misconception, also misstates the domestic remedies available to civil society victims, since administrative remedies were available only to "alleged violators" of the Social Responsibility in Radio, Television and Electronic Media Act, as prescribed by that Act.³⁶ Consequently, the authors indicate that these remedies were available only to persons linked to NTN24, in its capacity as an "alleged violator" sanctioned by the National Telecommunications Commission. Administrative remedies were thus not available to the authors, as members of civil society. The authors add that another reason why those remedies do not apply to the present case is that they require the existence of an administrative decision, whereas no such decision is involved; the order to suspend the NTN24 signal was a decision taken *de facto* by the President of the Republic, in violation of due process.

5.3 The authors reiterate that the only remedy that was available, suitable and effective was the application for the protection of diffuse interests with suspension of effects by way of interim relief, which they filed with the Constitutional Chamber of the Supreme Court and in which they requested the Court to end the censorship of NTN24 and allow cable channels to broadcast its signal, given the violation of their rights to freedom of expression and due process, among others. The authors add that the State party did not explain why that remedy was not suitable, effective and available in this case, given that the authors have submitted the communication as members of civil society. On the contrary, the State party focused on defending the appropriateness and effectiveness of other remedies that do not apply to the present case, as explained above.

5.4 The authors also state that a ruling on the remedy that they consider to be the only suitable and effective one in their case, namely the application for the protection of diffuse interests with suspension of effects by way of interim relief, has been unreasonably delayed. The authors state that, even though they filed the application on 28 July 2015 and petitioned the Supreme Court for a ruling on 4 August 2015; 28 January, 13 July and 3 November 2016; and 28 March 2017, as of the date of submission of their comments, the only action on record was the appointment of a reporting judge, notwithstanding the domestic legal requirement that the matter be decided within five days. The authors refer to the Committee's jurisprudence on the reasonableness of any delay³⁷ and reiterate that there is no justification for a delay of one year and eight months to rule on an application. They thus consider that the condition for an exception to be made to the rule on exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol has been met and reiterate that their right to an effective remedy under article 2 (3) of the Covenant has been violated.

³⁶ The authors refer to article 35 of the Act, under which: "... The decisions of the Social Responsibility Board ... are final administrative decisions and may be appealed within 45 working days of their notification, first before the Administrative Court and, at second instance, before the Political and Administrative Chamber of the Supreme Court of Justice".

³⁷ They mention the criterion of complexity of the matter and refer to the arguments set forth in the communication.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the case is admissible under the Optional Protocol.

6.2 The Committee takes note of the State party's argument that the authors were not the alleged victims of the violations claimed and that the communication is therefore not in compliance with rule 99 (b) of the Committee's rules of procedure. The Committee also takes note of the authors' claim that they have submitted the communication on their own behalf and as members and legal representatives of associations working in defence of human rights, in particular issues related to freedom of expression, and that, as active members of these associations, they have been directly affected, and their Covenant rights have been violated, by the State party's measures against NTN24. The Committee also notes the authors' claim that their watchdog role as members of these associations was undermined by the measures taken against NTN24, as they were deprived of access to the information provided by that media outlet and were therefore unable to discharge their duties in full, especially considering the social dimension of the right to freedom of expression.

6.3 The Committee further notes the authors' claims that the context in which the events related to the communication took place was marked by a gradual deterioration in freedom of expression in the State party owing to several factors, including intimidating official statements against the media and journalists; the authorities' political control over the media through the National Telecommunications Commission and enforcement of the Social Responsibility in Radio, Television and Electronic Media Act, which allegedly created a tendency towards self-censorship among the media because the broadly worded provisions of the Act could result in disproportionate sanctions; and a series of moves by the Government that amounted to an information blackout in relation to the 2014 protests, allegedly aimed at curbing access to information critical of the Government, including the blocking of news portals, radio stations and Internet applications. The Committee observes that, given the circumstances of the case, the authors – as members of civil society associations dedicated to monitoring the authorities' actions, especially in relation to issues concerning freedom of expression, which was the core focus of the associations' activities – may have been deprived of access to information of value for the discharge of their functions as a result of the suspension of the NTN24 signal and its blockage on the Internet.³⁸

6.4 The Committee refers to article 1 of the Optional Protocol and rule 99 (b) of its current rules of procedure, which reflects the content of rule 96 (b) of the previous rules of procedure cited by the State party. Pursuant to those provisions, the Committee must ascertain that the individual submitting a communication claims, in a manner sufficiently substantiated, to be a victim of a violation by that State party of any of the rights set forth in the Covenant. In this connection, the Committee recalls its jurisprudence to the effect that any person claiming to be a victim of a violation of a right protected by the Covenant must show either that an act or an omission by a State party has already adversely affected his or her enjoyment of such right, or that such an effect is imminent, for example on the basis of existing law and/or

³⁸ Inter-American Commission on Human Rights, *Annual Report 2014*, vol. II, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, pp. 302 ff. Available at <http://www.oas.org/en/iachr/expression/docs/reports/annual/annual%20report%202014.pdf>. According to this report, the Inter-American Commission on Human Rights received reports pointing to a pattern of stigmatization, arrests, physical attacks, threats, harassment and property theft against journalists and media workers who attempted to cover the protests of February 2014, in a context of self-censorship by the media, which could not openly report on the demonstrations for fear of reprisals by the National Telecommunications Commission. See also Human Rights Watch, *World Report 2015: Venezuela*, available at <https://www.hrw.org/world-report/2015/country-chapters/world-report-2015-venezuela>; and Instituto Prensa y Sociedad de Venezuela, "Periodismo en arenas movedizas: Censura y autocensura en periodistas y medios de comunicación en Venezuela, Estudio 2015" (Journalism on shifting sands: Censorship and self-censorship among journalists and media in Venezuela, 2015 study), Caracas.

judicial or administrative decision or practice.³⁹ The Committee also refers to its jurisprudence indicating that, under the Optional Protocol, no person may challenge a State party's law or legal practice in theoretical terms and by *actio popularis*.⁴⁰

6.5 In relation to the press and the media, the Committee also recalls its position on the right of media actors to have access to information on public affairs⁴¹ and the right of the general public to receive media output.⁴² The Committee reiterates that the creation of forums for public debate and the forming of public or individual opinions on matters of legitimate public concern are not limited to the media or professional journalists, but can also be carried out by, for example, public associations or private individuals.⁴³ The Committee observes that in the present case the authors are members of civil society associations dedicated to monitoring the authorities' actions, especially in relation to freedom of expression, and as such may be considered to play a special watchdog role on matters of public concern.⁴⁴ Accordingly, and taking into account the State party's failure to explain why the authors are allegedly without standing to submit the communication, the Committee finds that there is no obstacle to the admissibility of the communication under article 1 of the Optional Protocol.

6.6 The Committee takes note of the authors' argument that the only remedy that was available, suitable and effective was the application for the protection of diffuse interests with suspension of effects by way of interim relief which they filed with the Constitutional Chamber of the Supreme Court, given their status as victims in their capacity as members of civil society who play a key role in organizations defending the right to freedom of expression. The Committee also takes note of the State party's argument that the authors should have exhausted the remedy of *amparo*, which is enshrined in the Constitution and was available to them, since this remedy is open to any person whose rights have been violated or threatened and its purpose is to restore constitutional rights and guarantees, making it a suitable and effective remedy.

6.7 The Committee takes note of article 27 of the Constitution, which states that everyone has the right to protection by the courts in the enjoyment and exercise of constitutional rights and guarantees. It also notes that, according to that provision, constitutional *amparo* proceedings are oral, public, expeditious, free of charge and not subject to formal requirements, and that the competent judicial authority is empowered to immediately restore as nearly as possible the legal situation that existed prior to the violation. The Committee further notes that *amparo* applications may be filed at any time, that they take precedence over all other matters dealt with by the courts and that this remedy may not be restricted under any circumstances, including states of emergency and the restriction of constitutional guarantees. The Committee observes that no application for *amparo* was filed by any of the authors, either on their own behalf or as members of civil society playing a special watchdog role on matters of public concern, which is the capacity in which they submitted the communication. Yet the remedy in question, under the above-cited constitutional provision, was available to any person who believed himself or herself to be a victim of a violation of constitutional rights, including the rights to freedom of expression and to take part in public affairs. The Committee also observes that the authors did not comment on the State party's argument that the remedy of *amparo* was a suitable and effective remedy in the present case. The Committee considers that, in the absence of any explanation from the authors and in the light of the State party's arguments and the above-cited constitutional provision, the remedy of *amparo* was a suitable and effective remedy in relation to the facts that gave rise to the present communication. The Committee therefore finds that the authors have failed to exhaust domestic remedies in relation to the alleged violation of article 2, paragraphs 1, 2

³⁹ For example, *Aalbersberg et al. v. Netherlands* (CCPR/C/87/D/1440/2005), para. 6.3; and *Beydon et al. v. France* (CCPR/C/85/D/1400/2005), para. 4.3.

⁴⁰ For example, *Andersen v. Denmark* (CCPR/C/99/D/1868/2009), para. 6.4; *Verlinden v. Netherlands* (CCPR/C/88/D/1187/2003), para. 7.4; and *Brun v. France* (CCPR/C/88/D/1453/2006), para. 6.3.

⁴¹ *Gauthier v. Canada* (CCPR/C/65/D/633/1995), para. 13.4.

⁴² *Mavlonov and Sa'di v. Uzbekistan* (CCPR/C/95/D/1334/2004), para. 8.4.

⁴³ *Toktakunov v. Kyrgyzstan* (CCPR/C/101/D/1470/2006 and CCPR/C/101/D/1470/2006/Corr.1), para. 6.3.

⁴⁴ *Correa Barros et al. v. Bolivarian Republic of Venezuela* (CCPR/C/131/D/2652/2015), para. 7.3.

and 3 – this last paragraph read in conjunction with article 14 – and articles 19 and 25 of the Covenant.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;
 - (b) That the present decision shall be transmitted to the State party and to the authors.
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