

**Inter-American Human Rights Moot Court 2007
Hypothetical Case: Rosa Luna vs. Republic of Azar**

CLARIFICATION QUESTIONS

1. What is the domestic legal status of International Human Rights Treaties in the Republic of Azar?

According to paragraph 1 of the Hypo, the Republic of Azar adopted a democratic system of government in 1993. Since then, with the constitutional reform that gave international human rights treaties and agreements constitutional status, a process of institutional reform and greater openness to the international community was initiated. Thus, first, the Constitution and international human rights treaties prevail over the rest of the legal rules; in second place, statutes; in third place, other legal provisions.

2. What is the definition of “torture” under the State of Azar’s legislation?

According to paragraph 21 of the Hypo, the Criminal Code of Azar defines torture under Title II “Crimes against liberty.” Article 100 of the Criminal Code establishes that any public official who tortures a person deprived of his or her liberty shall be punished by a term of imprisonment of two months to six years. This is the only legal provision with respect to this issue.

3. Did Rosa Luna and/or her attorney exhaust all internal legal remedies of the Republic of Azar?

Yes, Rosa Luna exhausted all internal legal remedies of the Republic of Azar. Appeals were filed (see detail in Paragraphs 26 and 27 of the hypothetical case) the last sentence being the one issued by the Court of Criminal Appeals. This decision was made final September 18, 2006.

4. What were the size, layout, lighting, plumbing, and provisions (i.e. blankets) available to Ms. Luna within the holding cell at the detention facility?

Rosa Luna was detained in a cold, damp cell of approximately 7m², without natural light, with only a very dim light bulb and no sink or toilets. At the time of her arrival at the Detention Center, the prison guards provided her with a twin-size mattress and blanket.

5. Was Rosa Luna given food and water the first weekend of her detention?

According to Paragraph 7, during the first weekend of her detention, the prison guards gave Rosa Luna food and water.

6. Does the state of Azar have any legal provision authorizing the military to conduct interrogations in the case of a crime of terrorism?

No, the Azarian legal system does not have any legal provision authorizing the military to conduct interrogations in the case of terrorism crimes.

7. Under what conditions may a case be dismissed under the legal system of the State of Azar, and under which did Rosa Luna fall?

According to Paragraph 18 of the hypothetical case, on June 26, 2003 Rosa Luna was summoned for the first time to appear before the judge in charge of the case in which she was being

investigated for her supposed

14. What is the maximum pre-trial detention period under the Azarian legal system?
Under the Azarian legal system the maximum pre-trial detention period is 2 years.

15. On the basis of what international instrument(s) was Prof. Guer

presumed ties to the terrorist group UNO. Later, on July 28, 2003, she was definitively dismissed due to insufficient proof and freed immediately.

23. What does “the State *strongly questioned* the interpretation of the scope of the American Convention on Human Rights” mean?

According to paragraph 30 of the Hypo, the State of Azar strongly questioned the interpretation of the scope of the American Convention on Human Rights. “Strongly questioned” means that the State alleged that the acts did not constitute violations of personal integrity, personal liberty, judicial protection or the general obligation to guarantee rights under the terms of the American Convention on Human Rights, nor did the acts constitute the crime of torture under the Inter-American Convention to Prevent and Punish Torture.

24. What is the gender of the people in charge of the guard and care of Rosa Luna?

The people in charge of the guarding and care of Rosa Luna were males.

25. According to the legislation of the Republic of Azar, what is understood by tortures and humiliations?

Refer to the answer of question 2.

26. Was the interrogation in which the student Josué Guevara denounced Rosa Luna carried out under the same guidelines of the memorandum composed by Professor Gabriel Guerra?

The interrogation to which the student Josué Guevara was subjected and in which he denounced Rosa Luna was carried out under the same guidelines contained in the memorandum composed by Profesor Gabriel Guerra.

27. Was there any legal provision under the Azarian legal system passed before the detention of Rosa Luna that established exceptional treatments, such as preventive detention or solitary confinement, for suspects of the crime of terrorism?

At the time of the detention of Rosa Luna, the Criminal Code of Azar contained a provision that prohibited the release of perpetrators or participants in crimes of terrorism in view of the possibility of collusion with other alleged members of the criminal organization (see paragraph 13 of the Hypo).

28. Paragraph 31 of the Hypothetical Case Rosa Luna v. Republic of Azar, in each of the languages in which it was drafted, says the following:

Portuguese version: “[...] O Estado negou-se a cumprir as recomendações da Comissão Interamericana, alegando que havia obstáculos legais incontornáveis – que o obrigariam a violar os direitos dos que tiveram seus processos penais **extintos sem julgamento do mérito** – para poder cumprir a decisão do órgão de proteção.”

Spanish version: “[...] El Estado se rehusó a cumplir con las recomendaciones de la Comisión Interamericana para lo cual alegó que existían obstáculos legales insalvables que lo obligarían a violar los derechos de los **sobreseídos penalmente** para cumplir con la decisión del órgano de protección.”

English version: “[...] The State refused to comply with the recommendations of the Inter-American Commission, alleging the existence of insurmountable legal obstacles that would require it to violate the rights of the **acquitted individuals** in order to comply with the Commission’s decision”.

The Portuguese version of the hypothetical case asserts that if the State were to comply with the resolution of the Inter-American Commission on Human Rights, it would violate the right of those individuals that had their cases dismissed without judgment on the merits. In the Spanish version, on the other hand, it asserts that these cases were only suspended. And for its part, the English version asserts that those same individuals were acquitted and, therefore, these cases had been judged on the merits. So, there remains a clear contradiction existing between the three versions. Which of them should be adopted by the teams?

This question refers to a problem of translation, for which we recommend that you consider the original Spanish text for the purposes of interpreting the facts of the hypothetical case. (The English version should have been translated as “dismissed” not “acquitted” (Spanish: “sobreséido). The same translation correction applies to Paragraph 18 of the hypothetical case.)

29. Paragraph 12 of the Hypo refers to the dates of "Tuesday the 17th and Friday the 20th of June." Paragraph 14 refers to "Wednesday the 20th" as the date of the change in the methods of interrogation. Were the methods changed on Wednesday the 18th (so the method referenced in Para. 12 actually occurred on only one day -- Tuesday the 17th) or Friday the 20th (so that the week referenced in Para. 14, during which Ms. Luna "had only one meal a day," actually lasted only one day, before Ms. Luna underwent psychological techniques on the 21 [Para. 15])?

This question refers to a translation problem in the English version of the Hypo. According to Par. 14 of the original Spanish version, the date of the change in the methods of interrogation was Friday the 20th.

30. Paragraph 6 states that Luna was taken to the women's detention center which was "attached" to Azar maximum security jail. Does this imply that the detention center is "part of" the prison, because it is "attached" to it?

The women’s detention center is part of the Azar maximum security jail.

31. Does Ms. Luna have children? Had she ever expressed a wish to have them?

Ms. Luna does not have children. She publicly held that maternity was not what defined a woman and that penguins had a better distribution of roles between mates. We do not know whether she had ever expressed a wish to have children.

32. In the Azarian legal system, what type of rule is, and what is the hierarchy of, the ministerial directive approved by the Ministers of the Interior, Justice, and Defense on techniques of interrogation?

It is an administrative act that mandates the officials in charge of conducting interrogations of alleged terrorists. The ministerial order is mandatory. The directives emanated from the Minister

of the Interior and later were approved by the Ministers of Justice and Defense. The Ministers are part of the Executive branch and are under the authority of the President.

33. Rosa Luna was arrested for thirteen days before being taken before a judge. What kind of appeal did Maria Chumbipa, her attorney, file when it is said that the attorney requested the release of her client? Was it a writ of Habeas Corpus?

Rosa Luna's attorney did not file a writ of Habeas Corpus. Rosa Luna's attorney requested the release of her client, which denied by the judge.

34. The Inter-American Court of Human Rights has binding jurisdiction over the Republic of Azar in regards to what international conventions?

Azar has accepted the binding jurisdiction of the Inter-American Court of Human Rights over all the international inter-American agreements ratified that as indicated in paragraph 2 of the Hypo.

35. Which is superior: international treaties or the Constitution of the country?

According to paragraph 1 of the hypothetical case, the constitutional reform carried forth in the Republic of Azar after the year 1993 gave constitutional status to the international human rights agreements and treaties establishing the preference to the positive law of Azar. So, in first place one finds the Constitution and the international agreements to protect human rights; in second place, statutes, and finally, other legal provisions.

36. Does joint responsibility exist for the crime of torture even if one is not a public official?

According to paragraph 21 of the Hypo, the Criminal Code of Azar in its article 100 defines the crime of torture stipulating that only public officials may be perpetrators of this kind of crime. Those who are not public officials may be involved in others ways in the crime.

37. What recommendations did the Inter-American Commission make that the State refused to comply with?

According to paragraph 31 of the Hypo, the Inter-American Commission of Human Rights issued the report provided for in Article 50 of the American Convention where it made several recommendations to the State of Azar.

Based on the analysis and conclusions of the report, the Commission recommended that the State:

1. Publicly recognize its international responsibility for all the human rights violations that the Inter-American Commission found in the report and that it commit to preventing these types of cases from happening again in the future.
2. Effectively investigate the human rights violations analyzed in the report with the aim of identifying, judging and sanctioning the culpable parties.
3. Wholly compensate Rosa Luna and her relatives as much for the material damages as for the moral damages. Said compensation should include an indemnification to be paid by the State of Azar, which should be calculated according to international parameters, and should be for a sufficient amount to compensate as much for the material damages as for the moral damages suffered with regards to the human rights violations that the report refers to.

4. Pay the victim the reasonable legal costs and expenditures that were incurred in the domestic case and in the present international process before the inter-American system for the protection of human rights.

38. How is the crime of terrorism described in the penal code of the Republic of Azar?

For the purpose of the analysis of the facts of the hypothetical case, the definition of the crime of terrorism under Azar's code is irrelevant.

39. What are the rest of the accepted techniques contained in the memoranda for conducting interrogations en the area of national security?

In paragraph 23 of the hypothetical case the parts of the memorandum transcribed contain the description of the accepted techniques for the interrogation of Rosa Luna. The rest of the techniques were not quoted, and have no relation to the specific facts of the case.

40. Was there some measure of compensation for the damages suffered by Rosa Luna in the cases and later sentences that the Azarian agents involved in the crimes of torture of which the named victim was the object?

The State of Azar did not adopt any measure of compensation in favor of Rosa Luna for the harms suffered during the period in which she was imprisoned. Neither was she compensated in the setting of the cases and later sentences in which the agents of Azar involved in the crimes of torture complained by the victim were judged.

41. What was the proportion of the female population of the personnel of the prison center where Rosa Luna was detained in 2003?

At the time Rosa Luna entered the Women's Detention Center, the proportion of the female population in the prison was 30%.

42. Was the psychiatrist Libero Carnelutti present during the interrogations of Rosa Luna on Friday the 20th and Saturday the 21st of June, 2003?

According to paragraph 11 of the hypothetical case, the psychiatrist Libero Carnelutti was present during all the interrogation sessions to which Rosa Luna was submitted. He also advised all the employees responsible for the interrogation, directing each of the stages of the interrogation and recording at all time the reaction of Rosa Luna to the employed techniques.

43. What are the implications or legal effects of incorporating (and not ratifying) an international treaty to the legal system of the State of Azar?

According to paragraph 2 of the hypothetical case, the State of Azar ratified and incorporated into its positive law all the international agreements quoted in the referred paragraph.

44. Why was the confidential memorandum about the interrogation guidelines entrusted to Professor Guerra during Rosa Luna's criminal trial?

The referred to memorandum contained guidelines for the conduct of interrogations in the cases where national security was at stake, and, in this sense, the crime of terrorism for which Rosa Luna was investigated fit into this category.

45. Does the jurisdiction of Azar anticipate the intervention of the military in interrogations of civilians, because of the crimes which Rosa Luna was accused of (attempted robbery of a military warehouse and co-responsibility en the crime of terrorism)?

There is no norm whatsoever in the State of Azar that allows military intervention in civilian interrogations with respect to the crimes of which Rosa Luna was accused.

46. According to the domestic legislation of the State of Azar, what are the conditions, in respect to the period and the crimes for which it occurs, of solitary confinement?

The legislation of the State of Azar does not contain any norm that regulates solitary confinement—neither periods nor conditions—to which detainees may be submitted.

47. How does the State of Azar typify the crime of torture?

Refer to the answer of question 2.

48. What normative hierarchy in the domestic law of the State of Azar does the ministerial order, the law and the Constitution have?

According to paragraph 1 of the hypothetical case, the Republic of Azar adopted the democratic system of government in 1993. Since then it initiated a series of institutional reforms, including the constitutional reform that gave constitutional status to international human rights agreements and treaties and established the order of preference of the positive law of Azar. So, you find in first place the Constitution and the international human rights agreements; in second place the laws dictated by Congress; in third place, the regulatory decrees of the law; in fourth place, are ministerial acts that give guidelines for the implementation of certain policies of the State and

According to the facts of the hypothetical case, Juan Sol and Rosa Luna are a pair. They are not legally married.

How did the legislators of Azar describe the type of criminal terrorism that Rosa Luna was accused of being a co-conspirator?

Refer to the answer of question 38.

55. What acts of corruption did Azar commit that provoked Rosa Luna to invoke an

In the Azarian legal system, international human rights treaties ratified by Azar protect the rights of acquitted individuals, according to paragraph 2 of the Hypo.

62. Are the circumstances of the detention (the same conditions, interview regimen, etc.) shown in legislative terms, laws or ministerial orders, other than the confidential memorandum?

In the Republic of Azar there is no specific legislation that regulates the detention of prisoners. Neither is there regulation concerning the conditions that should maintain and respect detention centers as far as the interview regime, alimentation, hygiene, and other situations common to this type of institution.

63. What character does the confidential memorandum have on the basis of which the interrogations of Rosa Luna took place? What is its hierarchy?

The confidential memo that was considered in the interrogations by those who interrogated Rosa Luna was drafted by the Professor Guerra for the Minister of the Interior and later formed part of a ministerial order from that authority. The guidelines contained in the memorandum were later approved also by the Minister of Defense and the Minister of Justice. It concerns an administrative act emanating from a ministerial level that minds the official charged with implementing the interrogations.

64. Did the State of Azar adopt policy measures against the State ministers that approved the guidelines in the confidential memorandum?

The State of Azar did not adopt any policy measure against the State ministers that approved the guidelines contained in the confidential memorandum.

65. Concerning the dismissal decreed on the 28th of June of the year 2003 en the case brought against Rosa Luna, was it a temporary or definite dismissal? And, what were the reasons considered by the judge to decree said dismissal?

According to paragraph 18 of the hypothetical case, Rosa Luna's case was dismissed and she was freed on July 28, 2003. The dismissal was definitive and the judge considered that there was insufficient proof against her.

66. Paragraph 5 says that Rosa Luna was detained on Friday June 13, 2003, the police that carried out the capture counted on an order, the question is what type of authority, administrative or judicial gave it to them?

Rosa Luna was detained on June 13, 2003 by virtue of an arrest order emanating from a judicial authority of the State of Azar.

67. What was the specific motive or aim that brought the accused to commit the acts of torture and/or mistreatment against Rosa Luna?

Rosa Luna was interrogated by Azarian public officials that sought to obtain information about the participation of the victim en activities of the group UNO, among others the attempted robbery of a military warehouse. Also, they tried to retrieve whatever type of information about the group.

68. Upon what proof, other than the declaration of José Guevara, was Rosa Luna's detention based?

The Azarian authorities understood that the declaration of Josué Guevara was sufficient proof to proceed with the detention of Rosa Luna, especially considering that the declared facts referred to a crime that put Azar's national security at stake, without the necessity of relying on any other proof.

69. What does Azarian legislation say about the presence of lawyers during interrogations?

Azarian legislation does not have a specific norm that makes reference to the presence of lawyers in interrogations of detainees, other than that which is derived from international human rights treaties.

70. During the domestic litigation, did Rosa Luna ask for indemnification?

Rosa Luna did not present any request that the State of Azar indemnify her for the crimes committed against her within the framework of the trials and later sentences in which the Azarian agents involved in the crimes of torture were judged. Neither did the State of Azar adopt any measure of compensation in favor of Ms. Luna.

71. What recommendations did the Inter-American Commission on Human Rights send to the State of Azar?

Refer to the answer of question 37.

72. How does Azar distribute income/admission ("ingreso") for the detention centers?

The question is not understood. We don't know if it refers to the percentage of the national budget of Azar designated to the detention center 44 p08 osi.1 0.15 te pr5 TmiT1 1h]TJ8 0 Tdmu.15nf0bi5 Oy /T

77. Conforming with the penal code of the Republic of Azar, what is the maximum period that “the initial interrogation period” can last such as it is mentioned in paragraph 10 of the hypothetical case?

The Code of Criminal Procedure of the State of Azar does not establish a maximum nor minimum length of time expressly anticipated for the initial stage of investigation of the crimes defined in its criminal codes. The judges fix the time of initial investigation according to their criteria.

78. What is the extent of contact that Guevara and Luna have had—inside and outside of the classroom setting—that led Guevara to implicate Luna and constitute the factual basis that prompted the state to arrest her?

Josué Guevara and Rosa Luna had only an academic relationship. They would meet at facilities of the Catholic University of Azar where Rosa Luna was a professor and Josué Guevara a student.

79. What if any medical records or other forms of documentation link the general health problems, pain, and humiliation, physical and psychological consequences enumerated in paragraphs 19, 20, and 25 to the conditions of her detainment?

The medical records that inform about Rosa Luna’s health condition as a result of the way she was treated during the time she was arrested –listed in paragraphs 19, 20 and 25 of the Hypo-, were made by independent doctors linked to Rosa Luna and documented through medical certificates.

80. What is the distribution of confirmed or suspected members of UNO or Foundation for the Poor who are isolated versus integrated with the general prison population at the Azar Women’s Detention Center during all or part of the time frame beginning June 13, 2003 and extended to July 28, 2003?

Rosa Luna was the only woman that was detained at the Azar Detention Center who was being investigated for her alleged link to the Group UNO.

81. ¿How does the Republic of Azar define the crime of terrorism?

Refer to the answer of question 38.

82. In paragraph 21 of the hypothetical case it is suggested that in the Criminal Code of the Republic of Azar the crime of torture is defined. So, what conduct is included in said definition as constituting the crime of torture?

Refer to the answer of question 2.

83. According to the Azarian legal system, what are the criteria and under which crimes is it possible to hold a detainee in solitary confinement?

Refer to the answer of question 46.

84. ¿Does the writ of Habeas Corpus exist in the Republic of Azar?

The Azarian Constitution contemplates the writ of Habeas Corpus and it is regulated by a special rule.

reenviar los artículos tipificados por los cuales la señora denuncia de haber sido infringido por el gobierno de Azar en la querrela que realiza contra los que la torturaron?”

The question is not understood.

93. Is there any specific article that refers to the crime of torture in the Criminal Code of Azar? Which article is it? What conception of terrorism do we have to use according to the context?

Refer to the answers of questions 2 and 38.

94. Location of the Nueva Armenia military detachment, the judge who presided over the case, what was his jurisdiction and competency, and where was his court located in the territory of Azar, and was the Court of Criminal Appeals the supreme court of Azar with national jurisdiction?

The judge who presided over the case had jurisdiction to hear the lawsuit filed by Rosa Luna for the crimes committed against her. According to paragraph 28, the decision of the Court of Criminal Appeals was final as of September 18, 2006.

95. What does the Azarian legal system say with regard to admissibility requirements, periods and conditions during preventive/pretrial detention in the case of the crime of terrorism?

The Azarian legal system does not regulate the requirements, lengths or conditions that have to be taken into account when imposing a preventive/pretrial detention in cases of terrorism. The rules to follow are those contemplated in the Criminal Procedure Code of Azar.

96. What evidence did the Office of the Public Prosecutor rely upon in order to charge Sergeant Fortunato, Colonels Lona and Jundia, the Minister of the Interior, the Minister of Defense and the Minister of Justice?

According to paragraph 24, the Office of the Public Prosecutor charged Sergeant Fortunato, Colonels Lola and Jundia, the Minister of the Interior, the Minister of Defense and the Minister of Justice for their participation in the crime of torture as principals and accessories. The evidence the Office of the Public Prosecutor relied upon was the medical records provided by doctors close to Rosa Luna.

97. Was the doctor and the psychiatrist or the psychologist present during the interrogations of Rosa Luna on June 20 and 21?

According to paragraphs 9 and 11 of the Hypo, Rosa Luna met with psychologist Luciano Duche who informed her that the purpose of the interview was to establish her state of mind at the time of her arrest. Psychiatrist Libero Canelutti was present in every interrogation of Rosa Luna to assist the people in charge of the interrogation.

98. It is mentioned in the facts of the case (part A) that Rosa Luna was accused of involvement in the crime of terrorism, but no definition of that crime is given. What is the description of the crime of terrorism?

Refer to the answer of question 38.

The Women's Detention Center of Azar can hold 90 women and it maintains a permanent group of 30 guards. The Center had 85 female detainees at the time the facts of the Hypo happened.

105. On what basis did the judge dismiss the case and order the release of Rosa Luna?

According to paragraph 18, on July 28, 2003, the judge presiding over the case acquitted and ordered the release of Ms. Rosa Luna because of the lack of enough evidence against her.

106. On the basis of what arguments did the guards not allow Rosa Luna's attorney to see and speak with her?

According to Paragraph 6 of the hypothetical case, Rosa Luna was able to speak with her attorney for the first time at the moment in which she entered the Women's Detention Center. From that point on and during the entire time in which she was deprived of liberty, she was able to maintain formal access to her representative.