

## IV Inter-American Human Rights Moot Court Competition 1999 Hypothetical Case Problem

### Alejandro Pérez (“Alejandro Mayta”) v. the Republic of Miranda

#### History and General Background

1. The Republic of Miranda is one of the original 21 member states of the Organization of American States (OAS), and it became a party to the American Convention on Human Rights on June 3, 1989 when it ratified the treaty without reservation. In its instrument of ratification, it declared that it recognized the jurisdiction of the Inter-American Court over those cases regarding the interpretation and application of the Convention. Miranda is also a party to the United Nations International Covenant on Civil and Political Rights, as well as to the first Optional Protocol, both of which it ratified on June 15, 1989.
2. Miranda was liberated from Spain in 1815 by the legendary South American hero, Simón Bolívar, who renamed the territory "Miranda," which had been known as “Nuevo Leon” under the Spaniards. During the last decade of the 18<sup>th</sup> Century, London had become the hub of Spanish American revolutionaries. Simón Bolívar, an admirer of Francisco de Miranda, the great Precursor, attended many political meetings organized by Miranda in London, and was motivated to return to the Americas to lead the independence struggle of Nuevo Leon against the Spaniards. Once having declared independence, Bolívar proclaimed a Bill of Rights for the inhabitants of this new country. The French Revolution and the French *Declaration of the Rights of Man* had imbued the Spanish American revolutionaries with new ideas about popular sovereignty and natural rights. One idea was that the dignity of the citizens lay in political activity and the other was that if the citizens of a state no longer approved of the existing political arrangement, they could alter or replace it. In order to prepare the inhabitants of this new country for their role as citizens, the Bill of Rights of Miranda was the first document in the Americas to enshrine the right to free primary, secondary and university education and the right of all citizens to free health care.
3. The history of Miranda, like that of its neighbors, is a history of democratic governments interrupted by military coups. In 1972, the military overthrew the democratically-elected, radical socialist government of the Nobel Prize-winning author-turned-president, Gabriel Pérez Casanova. President Pérez had been elected president in October 1969, although he had never before held an elected office, because he was the best-known and most popular figure in the country, and the populace was fed up with the corruption of the Christian Republicans, historically, the dominant political party in the country.
4. Miranda is an underpopulated country of approximately 30 million inhabitants. During the past half century, Miranda’s economy has been based on tin and petroleum. At its peak, Miranda produced over 30 percent of the world’s supply of tin which accounted for 70 percent of its export earnings. The tin barons of Miranda were among the richest men in South America. Families such as Nariño and de la Puente were as famous as

Rothschild for their immense fortunes.

5. President Pérez Casanova had been elected president of Miranda in October 1969 on a socialist/nationalist platform that called for the nationalization of the tin mines and the petroleum industry, the initiation of a sweeping agrarian reform program and a generalized redistribution of wealth. Upon assuming office in January 1970, he expropriated the tin mines and, in lieu of compensating the owners, he charged them with having made "excess profits." He claimed that the mines were part of the national patrimony and should benefit all the inhabitants of Miranda. The owners of the tin mines began to conspire with the military to have President Pérez Casanova removed from office. However, the working class, and especially the miners, who considered him their authentic president and certain supporters of the President began to fear that a military coup was imminent. President Pérez' attempt to redistribute wealth in Miranda led to ever increasing social confrontation and a sense of incipient class warfare. The military was concerned that certain sectors of the population that the militant students and the miners were arming themselves. Evidence that the population was being armed was never produced; nevertheless, the military, in a preemptive action, staged a coup on June 22, 1972.
  
6. The Presidential Palace was bombed at 8 a.m. the morning of the coup, while President Pérez Casanova was in his office. He was killed instantly, as were the 53 people who were in the Presidential Palace. Thousands of his supporters were rounded up and detained in the Sports Stadium in downtown Florencia, the capital of Miranda. Survivors among those detained at the Sports Stadium emerged to whisper about horrendous cases of torture. Omar Pizarro, a well-known folksinger, survived but had his fingers crushed so that he could never play the guitar again. Many of the supporters of President Pérez Casanova were tried for subversion by military courts and sentenced to 30-year prison terms with the state providing no pretense of due process. The "dirty war" between the military and the supporters of President Pérez for the fate of the nation lasted 14 years and cost some 30,000 lives and forced one million people to flee from their homes. By 1983, the military had managed to gain almost complete control by means of a state of terror. On June 22, 1986, the military government passed Decree Law No. 999, an Amnesty Law that foresaw the investigation and prosecution of crimes that had been committed by state agents during the dirty war (from 1972-1986).
  
7. Decree Law No. 999, the Amnesty Law, provided that: "all military, police and civilian officials shall benefit from amnesty for any act perpetrated during the period June 22, 1972 until June 22, 1986, originating from, or as a consequence of, the fight against subversion that may have been committed individually or in a group, provided that the person has first been investigated, tried, and convicted by any court." Article 3 of the Amnesty Law provided that: "the facts or the crimes covered by this amnesty shall be subject to investigation, prosecution, and a finding of guilt of the accused if so determined". The trials were to be conducted in ordinary civilian tribunals pursuant to due process guarantees. The amnesty, which was made subject to a referendum, passed with 90 percent approval of the voters, also provided that a final report be issued with the

names of the perpetrators, as well as a summary of the investigations, charges, and results of the trials. A system of reparations also was established for the victims of repression. Families of the victims insisted that the government did not go far enough and the perpetrators of the crimes should be in jail. The military defended its promulgation of the amnesty law by stating that it was designed to be a means of pacification. The military had restored order in Miranda and was now turning the government back to civilian rule.

8. Three months after the coup, the military returned the tin mines and the petroleum industry to private owners. A period of short-lived prosperity returned for some. The glittering years came to an end in October 1985, when the London Tin Council halved the price of tin virtually overnight. The 22-nation International Metal Association announced that it could no longer support the price of tin since it was bankrupt, and by May 1984, the price of tin plummeted from US\$ 8,000 per ton to US\$ 3,400. The consequences for Miranda's miners were grim, and the state mining company, Comiranda, fired 160,000 of its 270,000 workers in that year. Despite hunger strikes, marches and mine occupations by the militant miner's federation, by 1995, the number of miners had shrunk to just under 20,000. The International Balance of Payments Fund (IBPF), in 1995, imposed on Miranda to sell Comiranda's corroding tin assets, if it could find a buyer. The mines that are working are operating at a fraction of their potential. The key issue is payments to laid off workers. To reach an agreement, Comiranda bypassed the miners' leaders and held direct talks with the rank and file. The workers would be able to continue to work under temporary contracts until the actual date of privatization, and the new owners would be able to sign up only as many workers as they consider necessary.
9. The rise of petroleum prices in the 1960s and especially 1970s brought about the creation of a middle-class in Miranda, which accounted for 45 percent of the population. By 1992, the middle-class had shrunk to 15 percent because the bubble of the oil boom could not be sustained when oil prices stagnated and then fell. By 1998, 75 percent of Miranda's population were in poverty and 45 percent were living in extreme poverty.
10. The military allowed free elections to be held in October 1987, which brought the current head of state, President Antonio Cruz, a Christian Republican, to power in January 1988 for a six-year term. Many supporters of former President Pérez returned to Miranda from exile or from the underground in 1987 when General Alvarez allowed free elections. The parents and other relatives of those who had been killed during the dirty war demanded "justice" and demanded that those responsible for the atrocities be jailed.
11. President Cruz' first act as president was to reestablish the Constitution of 1959 with Congressional approval. Article 134 of the Constitution states that active service members of the military shall be tried in military courts for the crimes committed while in service, and that civilians shall not be subject to military tribunals except in the interest of national security. Article 135 of the Constitution provides that the death penalty shall only be imposed for the most serious crimes. He was re-elected for a second six-year term in October 1993.

12. During 1993, in reaction to the decline in living standards and the disillusionment with President Cruz, a guerrilla organization which called itself the Frente Patriótico Francisco de Miranda (FPFM) was created by students. They were faced with newly imposed and rapidly rising school and university fees, and had seen their peaceful demands ignored by the university authorities. The FPFM initiated its campaign against a democratically elected government. Overtime, the students established contacts with the mineworkers who had been discharged from their state jobs or had their salaries slashed, and as a consequence, lost their job security and health care. Pensioners in enterprises that had been privatized also supported their cause since following privatization they saw their pensions slashed to 10 percent of what they had expected to receive. The FPFM named itself after the Precursor, because they identified as theirs his claim of the basic rights of free education and health care, which they demanded as the birthright of any person born in Miranda.
13. The founder of the FPFM was a formerly middle-class philosophy professor named Arturo González, who left his bourgeois life-style, and it is said, his wife and three children, to become a guerrilla leader. He joined forces with Alejandro Pérez Fortín, nephew of the former President, whose *nom de guerre* was "Alejandro Mayta," borrowed from the name of a character in one of his uncle's novels. Arturo and Alejandro met at Tussex College in England in 1971, where they were both received a degree in politics, philosophy and economics. In the 1970s, both Pérez and González believed that they had to take action against the military regime in power, and in 1976 González decided to take up arms and go underground, leaving his wife, Maria Consuelo, with whom he had been unable to share any of his revolutionary ideas.
14. In 1996, the private owners of the tin mines began bribing what remained of the union leadership. The workers, who were suffering an ever declining standard of living, renewed calls for strikes for better salaries, working conditions and free health care and education for themselves and their children. Several union leaders who had been known not to accept bribes from the owners were found shot to death. The owners ended all negotiations with the union.
15. Following the killing of several union leaders, the FPFM began to organize the workers and formed an alliance of convenience with the union. Some unemployed miners even left the unions and joined the FPFM. On September 15, 1996, the FPFM declared war on the Government of Miranda in order to seek better conditions for the working people. That day they set off a number of explosions in downtown Florencia. One explosive device was set off at the Ministry of Labor, and 13 people were killed. President Cruz, hoping to stem the terrorism, issued on October 1, 1996, Decree Law No. 100, entitled "Treason to the Democratic State." Nevertheless, things escalated quickly thereafter and explosions were set off around the country. There were at least 10 explosions a day--in bus stations, shopping malls, even schools--causing tremendous property and infrastructure destruction resulting in the death of more than 1000 persons in a one-month period. The government of President Antonio Cruz was in crisis and responded to this threat on November 1, 1996, by declaring a national state of emergency for six

months. In announcing the state of emergency, the President stated that the country could not afford another 14-year war and that the crisis must be brought to an end quickly. For this reason, the President delegated certain powers regarding the restoration of internal order to the military. The conduct of the "war" was turned over to General César Alvarez, who quickly brought in the 50,000-man military. The "war" lasted only four months. The cities and production facilities were militarized, tanks were brought into the cities and troops were everywhere to be seen. A curfew was in force between 10 p.m. and 6 a.m. daily. On May 1, 1997, the state of emergency was renewed for another six months. The population was relieved that the President had managed to bring an end to the crisis.

16. By January 15, 1997, the war ended, the FPFM was destroyed. Its members were either dead, in hiding or in custody. Although public opinion speculated that the FPFM comprised thousands of combatants, in fact there were only 200 to 300 armed militants who identified themselves as FPFM members and an unknown number of sympathizers. Most observers stated that the level of violence, which resulted in 2,500 deaths during the war, was greater than could ever have been produced by a group so few people. However, no proof ever materialized to implicate either the government or other entities.

### **The facts of the case**

17. On December 1, 1996 while residing in a safe house in downtown Florencia, Arturo González and Alejandro Pérez, with 15 other suspected leaders of the FPFM were attacked by a military commando raid. Alejandro Pérez was unarmed and shot in the back of the leg during the attack and Arturo González, also unarmed, received a bullet wound which entered the back of his neck and exited at the throat. González died of his injuries during his second day in custody. Pérez and the other 15 suspected leaders managed to escape. The day after the raid, the **police** held a press conference at the safe house in Florencia and made public the arsenal of weapons (300 machine guns, 50 pistols, 2,000 rounds of ammunition, grenades, dynamite, etc.) it claimed to have uncovered. Pérez and the others went into hiding only to be captured three months later on March 1 and charged with "Treason to the Democratic State."
18. Decree Law No. 100 provides that the crime of "Treason to the Democratic State" is committed by: a) anyone who belongs to the leadership of a terrorist organization be it as leader, head, chief or another equivalent; b) anyone who belongs to an armed group which is dedicated to the destruction of the state or the physical elimination of persons; c) anyone who publishes information or propaganda in the media supporting the activities of a terrorist organization. A writ of *habeas corpus* cannot be presented on behalf of a person detained under this law, for national security reasons.
19. Decree Law No. 101, also issued on October 1, 1996, provided the procedure for the trials under the "Treason to the Democratic State" law. Any trial would take place in Superior Court of Florencia before three judges, a civilian judge accompanied by two military judges trained in law and licensed to practice in Miranda. A conviction would require the vote of two of the three judges. The accused would be provided with a

military court-appointed lawyer if he did not have his own counsel. The defense attorney would only be permitted to consult the file (but not copy it) in order to apprise himself of the charges and evidence against his client. The court would apply civilian rules of criminal procedure and evidentiary rules, except where the rule is contrary to procedural provisions of Decree Law No. 101. The three judges are to sit behind a colored glass window so that the accused and his lawyer could not identify them. This provision was designed to guarantee the security and safety of the judges, many of whom, in the past, had received death threats and feared for their lives. In the interest of a speedy trial, the government could take no more than two weeks to present its case, and the defense also was granted an equal amount of time. The judges may, in the interest of protecting the well-being of individuals, strike names and other sensitive information from documents on file, and mandate video depositions of witness. As to the weight of the evidence any reasonable doubt will be resolved in light of the democratic ideals of the new Miranda. A decision can be appealed to the Supreme Court of Miranda, which would be able to review issues of law, but not facts.

20. During the trial, information was published in the press that Alejandro Pérez had renounced his Mirandan nationality while a student in England and had become a British national. His lawyer, Mario Mendoza, argued before the press that a foreigner could not be tried for the crime of "Treason to the Democratic State." The President of Miranda made declarations to the press to the effect that someone born in Miranda could lose his "title of nationality" but never his nationality. The President still considered Pérez to be a national of Miranda even though he had renounced his passport and citizenship.
21. After five days in the detention, Mario Mendoza brought a writ of *habeas corpus* before the Criminal Court of First Instance of Florencia for illegal detention, arguing that a military court did not have competence over a civilian and Pérez and the other detainees had been tortured. The Court of First Instance dismissed the writ, reasoning that Decree Law No. 100 prohibited the presentation of a writ of *habeas corpus* for persons detained under this law, and that Decree Law No. 101 gave adequate protection under the circumstances. On March 30, 1997, after a month in the police detention center, during which time they had limited access to their families, legal counsel, or consular officers, Alejandro Pérez and the 15 other arrested leaders of the FPFM were tried for the crime of "Treason to the Democratic State." Each of the 16 individuals had confessed to planting explosives throughout the country and signed a statement, allegedly prepared under torture, regarding his/her involvement in the crimes for which they were accused, and this statement became the basis of the prosecution and evidence against them. The 16 individuals were brought before the press and proudly affirmed that while they were FPFM members that they had been fighting for the liberation of their country and the vindication of Miranda's ideals. They also stated that they had renounced the use of violence as of January 1, 1997. Despite this fact, there continued to be occasional violent actions that resulted in deaths until the end of the war. The President, in response to criticism in the media, denied that there existed a "systematic practice of torture" in Miranda. He defended the proceedings stating that such crimes were not entitled to the ordinary civil proceedings, because the civil courts would release these criminals on technicalities and the chaos would continue. The solution to domestic

situations of violence was a strong hand and swift and rapid action. Only states that had suffered the same events would be able to understand this, but since Miranda was now in control of the situation, it did not have to make excuses to anyone. In addition, he added that **no** one had been tortured, but rather the 16 had proudly confessed to their involvement in attempting to destroy the nation..

22. Decree Law No. 102, issued on October 1, 1996, allowed for the imposition of the death penalty for those convicted for the crime of "Treason to the Democratic State." On January 1, 1997, Decree Law No. 103 extended Decree Law No. 999 of June 22, 1986 extending the amnesty to cover military and police officials involved in the "four-month war." In extending the Amnesty Law, President Cruz stated that he was doing so in the spirit of national reconciliation and pursuant to general principles of international law. In support thereof, he cited article 6 of the Protocol II to the Geneva Conventions which provides that "at the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict." President Cruz stated that Miranda, unlike its neighbors, would never have to negotiate peace treaties with terrorists. By the swift and judicious use of force for a short period of time, the government was able to eliminate the problem of terrorism and make the country safe once again for the population. Miranda would not tolerate a state of insecurity of another fourteen-year war, as other countries had. Freedom from fear, he reiterated, should be the first human right of the people of Miranda.
23. On May 30, 1997, the judges unanimously found all 16 members of the FPFM guilty of the crime of "Treason to the Democratic State" based on their statements which their lawyers stated to the press had been obtained under torture while they were in police detention. On June 6, 1997, Alejandro Pérez, Leandro de Leon and Alfredo Villán were sentenced to death and the other 13 to life imprisonment. The President stated to the press that the death penalty had been applied only to those who committed the most heinous crimes. Individuals who had killed scores of innocent people did not deserve to be rehabilitated and must be punished. It was not more [humane] to keep such people alive only to give them the hope that someday they would be released and would be free to kill again in furtherance of their deranged ideas. The public opinion polls indicated that the great majority of the population (87 percent) supported this point of view.
24. The executions were to be carried out on July 14, 1997. Pérez and the others appealed to the Supreme Court of Miranda stating that, pursuant to article 134 of the Constitution, civilians could not be tried in military courts, their rights had not been guaranteed, and that the judgment relied on statements derived under torture. However, on June 27, this tribunal ruled that, notwithstanding the alleged torture, there were sufficient proven facts on the record to sustain the finding of Treason, that the procedures were adequate to protect their fundamental rights.
25. Freedom International of Paris petitioned the Inter-American Commission on Human Rights on July 10, 1997, challenging the extension of death penalty in Miranda to the crime of "Treason against the Democratic State," and requested the Commission to issue precautionary measures on behalf of Pérez, de Leon and Villán, and for the Government

of Miranda to stay the execution of these individuals until such time as the Commission has had the opportunity to decide their cases. The Commission on July 11, 1997, requested the state to stay the executions. The state responded that it was unable to grant this request for a stay of execution since a democratically elected government had reestablished the Constitution which allowed for circumscribed application of the death penalty, these three individuals all had had fair trials and were guaranteed due process. Furthermore, the American Convention did not outlaw the death penalty, and consequently the Commission, by means of interpretation, could not make it illegal. In the view of the state, to stay their executions would be to thwart the will of the people and be in contradiction with the guarantees of the Constitution of Miranda, which guaranteed a speedy trial and prompt compliance with the laws. The state also pointed out that countries that still retained the death penalty actually executed only a small number of criminals each year, whereas many countries that had abolished the death penalty were guilty of many more extrajudicial executions and that human rights organizations should spend their scarce resources worrying about those problems instead, rather than trying to change the customs of law-abiding countries like Miranda. On July 12, the Commission requested the Inter-American Court to issue provisional measures to stay the executions of these three individuals while their cases were pending before the Commission. The President of the Court, in a Resolution dated July 13, 1997, ordered the stay "until the Commission and the Court had completed their examination and determinations in these cases." On July 13, at 6 p.m. the state of Miranda granted the stay of execution.

26. On September 1, 1997, the Government of Miranda issued its final report under the Amnesty provisions of Decree 103. In that report the government discussed the investigation and trial of the killers of Mr. González. It noted that the death was caused by an over-zealous army captain. However, due to his otherwise honorable service in the fight against the FPFM and his cooperation with the investigation, the Court declined to rule on his culpability. Mrs. González was deeply upset at this verdict, because the facts showed that Mr. González had been killed at close range and that he had been unarmed.
27. On January 2, 1998, Alejandro Pérez, with the assistance of Mario Mendoza, filed a petition with the Inter-American Commission on Human Rights together with de Leon and Villán, in which they requested that they be named as co-petitioners in the death penalty case that had been presented on their behalf by Freedom International. In their petition, they alleged that their rights to a fair trial and due process before an impartial and independent tribunal had been violated. In addition, they alleged that they had been brutally tortured by the army in order to sign statements which had been fabricated and which they declared were lies. They also alleged that the Court's reliance on testimony obtained through torture represented the worst kind of judicial error imaginable, and sought reasonable compensation. They joined their action to that of Mrs. González, who sought a sentence declaratory of culpability against the army captain and compensation. They alleged that the state of Miranda was responsible for violations of articles 1.1, 4, 5, 7, 8, 10, 25, and 27 of the Convention.

28. On October 10, 1998, the Commission adopted its preliminary report in accordance with article 50 of the American Convention and, on October 15, referred the report to the Government of Miranda. The 60-day period given to the Government of Miranda to adopt the Commission's recommendations lapsed without action. The Commission decided to refer the case to the Inter-American Court of Human Rights.
29. On December 20, 1998, the attorneys for Alejandro Pérez were named as legal advisers to the Inter-American Commission on Human Rights to assist the Commission in the presentation of the case to the Inter-American Court.