

2009 Inter-American Human Rights Moot Court Competition
Hypothetical Case: Rosalie Fournier and Bruno Tamba v. Tynalandia

A. The Republic of Evaristo

1. The Republic of Evaristo (officially *République Évariste*) is a representative democracy and former French colony. It was the third country in the Americas to declare its independence, which it did in 1805. In 1979, the Republic of Evaristo adopted a new Constitution, became a member of the Organization of American States (OAS) and ratified the main human rights treaties of the United Nations and the OAS, including the American Convention on Human Rightsⁱ.

2. The Republic of Evaristo is a small developing country with a land area of 43,200 km² and a population of over nine million inhabitants. According to the last national census, taken in 2002, 96% of Evaristans are of African descent and the remaining 4% consists of whites and *mestizos* [people of mixed race]. French is one of the two official languages, but it is spoken by only part of the population. Nearly all Evaristans speak kreyòl (or Evaristan creole), the country's other official language. Only 52.9% of the population is literate.

3. The Republic of Evaristo has the lowest *per capita* income in the entire Western Hemisphere. Approximately 75% of the population lives in poverty, and nearly 80% depend on agriculture, primarily small-scale subsistence agriculture. Remittances from Evaristans working abroad have grown annually; they now account for 6% of the national GDP and are one of the country's main sources of foreign exchange.

4. Since the 1970s, social and economic indicators have placed Evaristo at the bottom of the rankings, behind other developing countries with low incomes. Political instability and several natural disasters have caused the Republic of Evaristo to remain submerged in an economic crisis for the last 40 years. This has resulted in the migration of many Evaristans to Tynalandia, mainly to that country's coastal cities. It is estimated that some 80% of Evaristans with high levels of education have emigrated in search of other alternatives. The economic instability has also led the few companies investing foreign capital in the country to withdraw from the market.

5. Women did not have property rights or the right to travel without the consent of their husbands until 1979, when the fourteenth Constitution of the Republic of Evaristo was ratified. Although women achieved equality under the law at that time, their opportunities have continued to be very limited and inequality is persistent. Due to the lack of educational programs and services to support their integration, 70% of economically active women are part of the informal market and their incomes continue to be much lower than men's. It is also common for Evaristan women to face a disproportionate burden in terms of family obligations, given that men refuse to assume an equal distribution of domestic labor.

6. On March 22, 1981, the Republic of Evaristo was devastated by Hurricane Sandy, which caused major flooding and landslides, mainly on the country's west coast. It is estimated that the hurricane resulted in over 2800 deaths and caused more than 300 million dollars in property damage—a figure that represents 7% of the GNP of the Republic of Evaristo. Inflation climbed to over 100% that year.

C. The Republic of Tynalandia

7. Tynalandia is a democratic republic whose official language is Spanish. It has been a member of the Organization of American States since 1948, and has ratified the main human rights instruments of the United Nations and the OAS, including the American Convention on Human Rightsⁱⁱ.

8. Tynalandia has been able to combine free market activity and state intervention in a manner that has resulted in the well-being of its population. It has the largest national GDP in the Americas. Its economy benefits from its great wealth and variety of natural resources, a population with a good level of education, and an agricultural system and an industrial base that are among the most advanced in the world. Currently, the largest industry is the services sector, in which three-fourths of the residents are employed. The average human development indices, *per capita* income, economic growth levels and quality of life of its inhabitants are among the highest in the Americas.

9. In 2007, the Tynalandia Census Bureau estimated that the country's population had reached 200,000,000. This figure included 7 million illegal immigrants. Approximately 90% of the population of Tynalandia is of European descent—mainly Spaniards and then Italians—while 56% have at least one indigenous ancestor. The immigrants come mainly from the countries to the south, with which they share a common language and culture.

10. Thousands of immigrants from the Republic of Evaristo began arriving in Tynalandia in the 1970s. In the eighties, the flow of migrants from the Republic of Evaristo to Tynalandia tripled as compared to the previous decade. This is explained by the economic crisis and the natural disasters that affected that small country. To date, it is estimated that some 2.3 million Evaristan immigrants reside in Tynalandia, mainly in the large metropolitan areas on the west coast. Most of them have not legalized their immigration status.

11. In 1991, a major stock market crisis adversely affected Tynalandia's economy, resulting in enormous economic losses and a recession in the job market. From that point forward, the citizens of Tynalandia began to demand that the government take tougher measures toward immigration, maintaining that the immigrants were taking their jobs and, in many cases, accepting lower wages because of their irregular status.

12. In 1992, the unemployment rate grew 13%, reaching the highest ever in the history of Tynalandia. 31,000 factory jobs were cut; 49,000 jobs were lost in the construction industry; and

24,000 jobs were lost in the retail sector. In 1992 and 1993 some violent events took place in two cities in western Tynalandia, in which 42 Evaristans lost their lives. Investigations were initiated to determine whether racial hatred was the motive in some of these acts of violence.

13. In response to the economic crisis and the increase in illegal immigration, Tynalandia's legislative body passed Law 24.326, the "Immigration Legalization Act", in March of 1994. This Act prescribed severe financial penalties for the employers of illegal immigrants. In addition, Law 24.326 classified the offenses of prostitution, theft, murder, rape, sexual abuse of minors, espionage, tax evasion and other offenses as aggravated federal offenses. Under the Act, those immigrants who commit or have committed aggravated federal offenses are subject, without exception, to mandatory deportation and are prohibited from returning. It is estimated that some 1.1 million immigrants, 65% of whom are Evaristans, have been deported pursuant to Law 24.326.

D. Situation of Rosalie Fournier

14. Rosalie Fournier, a citizen of the Republic of Evaristo, was 17 years old when her parents, both of African descent, died as a result of Hurricane Sandy in 1981. Rosalie stayed for two and a half months at a shelter together with thousands of people who had lost their homes and were displaced. Her city lacked the basic infrastructure necessary to get rid of the mud and contaminated waters from the floods, and the economy came to a virtual standstill. Famine began to spread, with no response from the international community. Rosalie Fournier made several attempts to find a job, but the opportunities for women were scarce and she had no work experience.

15. One morning a foreign couple visited the shelter where the displaced people were located. They approached several young women, including Rosalie Fournier, and offered to take them to Tynalandia, telling them they could find better employment opportunities there. The couple assured them that they would take care of the arrangements for the trip from Evaristo to Tynalandia, give them work for one year on a broccoli plantation, and get them legal papers while they worked. Rosalie Fournier had heard stories of Evaristans who earned a lot of money in Tynalandia, so she accepted the offer without a second thought.

16. On June 17, 1981, Rosalie Fournier and ten other women arrived in Tynalandia aboard a small boat, and walked for 12 days until they arrived to a small town in search of a better life. They were transported daily from the town with a group of approximately 80 people to a nearby plantation where they worked excessively long days in the broccoli harvest. They were not allowed to take breaks during the hours they were at the plantation, nor did they receive pay. They worked in exchange for food and a place to sleep. They were told that this was the price they had to pay for having entered Tynalandia without visas, and to legalize their status there. However, Rosalie Fournier spoke with other people there who, like her, were working at the

plantation under conditions of semi-slavery. Some of the people had been there for more than three years without having been given papers to legalize their immigration status in Tynalandia.

17. Rosalie Fournier managed to escape on January 1, 1982 by taking advantage of the fact that some of the guards failed to show up for work at the plantation. Undocumented, unable to speak Spanish, and with no other work experience, Rosalie began working at a bar as a prostitute. She worked there until April 22, 1982, when area police carried out a raid on the bar that resulted in the detention of 23 people.

18. Rosalie remained in custody overnight, and was brought before a judge on April 23. The judge took into account her lack of any criminal record and the short period of time she was engaged in prostitution, and released her with a \$500 fine and six months of probation. Rosalie Fournier found work at a poultry plant located in the same town, paid the fine within the established time period, and never committed any offenses during the time she was on probation.

19. In November of 1989 Rosalie Fournier gave birth to her son Bruno. The child's father was Marco Tamba, a citizen of Tynalandia with whom she had an open relationship that ended shortly after Bruno's birth. The relationship ended mainly due to communication problems, since Rosalie still had difficulty with the Spanish language. In 1992 Rosalie decided to move to one of the big cities on the coast so her son could get a better education. The child's father continued to live two and a half hours away, and because of this his visits became increasingly sporadic.

20. During the years she lived in the city, Rosalie Fournier worked mornings as a housekeeper at a hotel and cleaned offices at night in order to pay her expenses and her son Bruno's. Rosalie always paid her taxes and had no more trouble with the law. Every weekend, Rosalie Fournier went to the main square downtown, where she and other Evaristan women gave performances of traditional Evaristan dance in order to promote their culture in Tynalandia and try to change Tynalandian citizens' negative perception of immigrants from the Republic of Evaristo. Her dance partners practically became her family in Tynalandia.

21. On May 27, 2003, when Rosalie Fournier arrived to her job at the hotel, her supervisor took her to an office where she was told that the police were questioning some people from the cleaning service in connection with the theft of two computers the previous day. While Rosalie was waiting, she noticed that all of the people being questioned were, like her, of African descent. When it was her turn, the police asked for her documents. Rosalie handed over her driver's license and explained that she had been working for the hotel for over ten years and that her honesty had never been questioned. The police officer asked her if she had a criminal record, and Rosalie Fournier said that she had not had any trouble with the law since nearly twenty years ago, when she was detained for one night following a raid on a place where she had had to work as a prostitute. The officer then asked her whether she was a citizen of Tynalandia, and Rosalie Fournier answered that she was not.

22. Rosalie Fournier was immediately taken to the nearest police station, where she was informed that she would remain in custody until the immigration authorities made a determination with regard to the possible enforcement of Law 24.326 in her case. Rosalie explained to them that it was getting late, that her son was waiting for her to pick him up from school, and that she was expected to go to work that night at the Bancosox offices. The officer told her that she could make some phone calls to resolve these situations, and that she should bear in mind that she would probably have to spend the night at the police station.

23. The next morning an immigration official went to the police station to question Rosalie Fournier about the months during which she worked as a prostitute, and also about her entry into the country and her current immigration status. At no time did they question her again about the theft of the computers at the hotel. In spite of her nervousness and limited Spanish, Rosalie Fournier was cooperative and answered all of the questions truthfully. The interview lasted four and a half hours. When it was over, the immigration official explained to Rosalie that, under Law 24.326, prostitution is an aggravated offense and that she would have to be taken to an immigrant detention center to wait for a deportation hearing. She was also told that, because her son was a citizen of Tynalandia, efforts had already been made to locate his father, who would take Bruno until a judge could make a decision in her case.

24. That same night, Rosalie Fournier was transported in a patrol car to the Gándara immigrant detention center, located 13 hours away from the city. At that point Rosalie understood that neither her son nor her friends would have the means to visit her, and that she might not see them again. Rosalie was placed in a small room with six other female detainees, four of whom were from Evaristo. Rosalie Fournier was allowed to make a phone call three times a week, and would take that opportunity to speak with her son Bruno. More than 300 people were at Gándara waiting for immigration hearings.

25. Rosalie asked to speak with an attorney when she arrived at the Gándara immigrant detention center. The authorities at the detention center informed her that the State would not give her a court-appointed lawyer for a deportation case, but that she could hire a private attorney of her own choosing. They also provided her with a list of attorneys and organizations that offered free legal assistance, which she could call and ask if they would take her case.

26. On June 6, 2003 Rosalie Fournier had her first meeting with an attorney from the organization FALF (Foundation for Border Legal Assistance) who offered to defend her *pro bono* in her deportation proceedings. However, the attorney did not speak kreyòl, so the interview was conducted in Spanish.

27. During the interview, Rosalie Fournier stressed to her attorney that her detention was arbitrary, given that she was innocent and there was no reason for the hotel employees of African descent to be considered suspects in the alleged computer theft. Rosalie stated that she felt she had been discriminated against. Her attorney informed her that her detention was not related to

the robbery but rather to her immigration status. As such, his questions to Rosalie centered on her family situation and her conduct during the years she lived in Tynalandia.

28. Rosalie met with her attorney on three more occasions before appearing at a public hearing. The hearing took place on November 28, 2003, before the 3rd Immigration Judge of the Republic of Tynalandia. The entire hearing was conducted in Spanish, with the assistance of an interpreter.

29. During the hearing, the representative from the Census and Immigration Office of Tynalandia requested that the Judge proceed with Rosalie Fournier's deportation, considering that under Law 24.326, any person who commits crimes classified as aggravated federal offenses shall be subject to mandatory deportation and barred from returning to the country. In addition, he noted that Rosalie Fournier had entered the country illegally and to date had not legalized her status.

30. Rosalie Fournier's defense attorney highlighted the following points: the young age at which she had entered the country; the fact that she had complied with the penalty ordered by the Judge in 1982 upon her conviction for the offense of prostitution; that she had been living in Tynalandia longer than she had lived in Evaristo; that during her time in Tynalandia her conduct was impeccable; and that in spite of her irregular status she always paid her taxes. He also stressed her obligations as a single mother and her ties to the Evaristan community in Tynalandia. Rosalie Fournier's attorney also emphasized the difficult conditions that Rosalie would face if she returned to the Republic of Evaristo, given the economic crisis in that country and the real limitations there on women's abilities to attain a decent life.

31. In her testimony Rosalie Fournier asked that she not be separated from Bruno, saying that it was her obligation as a mother to be with him. She explained that he was a good son, a good student, and that Tynalandia was the only home he knew. She stated that her son did not speak kreyòl because she had not wanted to teach it to him so that he would not have to face the discrimination that she had experienced. She said that this would make it difficult for him to assimilate in the Republic of Evaristo, where they did not know anyone and would have to start from scratch.

32. On December 18, 2003, the 3rd Immigration Judge of the Republic of Tynalandia issued judgment, finding that the arguments put forth were not admissible defenses for a person who entered the country illegally and had been convicted of an aggravated offense. Therefore, in the strict enforcement of Law 24.326, the Court ruled that Rosalie Fournier must be deported immediately. The judgment also held that, according to the best interests of the child, Bruno Tamba, a citizen of Tynalandia, would remain in the country in the custody of his father. The judgment did not take into account factors such as: Rosalie Fournier's family relationships, the length of time she had lived in Tynalandia, her ties to the community or her lack of any ties to her country of origin.

33. On December 20, 2003, Rosalie Fournier's defense attorney informed her that she could appeal the decision of the 3rd Immigration Judge mainly because, in his opinion, the Court's decision violated her right to defend herself insofar as she was not permitted to assert any defense with respect to deportation as a penalty for having committed an aggravated offense. The attorney also explained to her that filing an appeal would mean that her detention would be prolonged by at least two more years, due to the backlog of cases in the Tynalandia Courts of Appeal. Her attorney further indicated that, to date, all appeals of cases involving the enforcement of Law 24.326 had been dismissed by the Courts of Appeals *in limine*, with no further discussion of the legal grounds, given that the Act does not provide the immigration judges with a wide margin of discretion.

34. Rosalie Fournier decided not to appeal, given that doing so would mean remaining under the same conditions of detention for several more years, and given that the practice of the Courts of Appeals had been consistent in finding inadmissible the appeals involving the commission of aggravated federal offenses by illegal immigrants.

35. On January 22, 2004, Rosalie Fournier was deported to the Republic of Evaristo, without having had the opportunity to say goodbye to Bruno. Two days later, Rosalie Fournier approached the Embassy of Tynalandia in the Republic of Evaristo to request advice with a view to obtaining family reunification with her son Bruno. It was explained to her at the Embassy that a family reunification case could not be opened because the deportation, by virtue of being associated with an aggravated offense, was a permanent bar to returning to Tynalandia.

E. Case before the Inter-American System

36. On July 10, 2004, the non-governmental organization *Fronteras* filed a complaint before the Inter-American Commission on Human Rights, alleging the responsibility of the Republic of Tynalandia for violations of the human rights of Rosalie Fournier and her son Bruno Tamba. The complaint specifically alleged the violation of those rights recognized in articles 7 (personal liberty), 8 (right to a fair trial), 9 (freedom from *ex post facto* laws), 11 (right to privacy), 17 (right of the family), 19 (rights of the child), 22 (freedom of movement and residence), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention, all in relation to the obligations set forth in articles 1.1 and 2 of the Convention.

37. On December 28, 2004, the Commission began processing the petition and communicated the relevant parts to the State, granting it two months in which to submit its answer. In its response dated February 18, 2005, Tynalandia argued that neither Rosalie Fournier nor Bruno Tamba's human rights had been violated because international human rights law recognizes that the privilege of a non-citizen to live in a country may be conditioned upon the obedience of that country's laws. As such, it asserted that the decision to deport Rosalie Fournier was a valid exercise of state power in the interest of the public policy and public safety of Tynalandia. It stressed that it had safeguarded the rights of Bruno Tamba, who lives in harmony

with his father and as a citizen of Tynalandia has access to the best free education and health care.

38. The Inter-American Commission decided to issue a report pursuant to article 37.3 of its Regulations, in which it declared the case admissible and found violations of all of the articles alleged by the representatives of the victims Rosalie Fournier and Bruno Tamba.

39. The established time period elapsed and the requirements set forth in the American Convention and the Regulations of the Commission were met, and considering that the State of Tynalandia failed to take any action to comply with the recommendations of the Commission, the case was submitted to the jurisdiction of the Inter-American Court of Human Rights on May 24, 2007. The case alleged the violation of 7 (personal liberty), 8 (right to a fair trial), 9 (freedom from *ex post facto* laws), 11 (right to privacy), 17 (right of the family), 19 (rights of the child), 22 (freedom of movement and residence), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention, all in relation to the obligations set forth in articles 1.1 and 2 of the Convention, in the case of Rosalie Fournier and her son Bruno Tamba. Rosalie Fournier's representatives stated before the Inter-American Court that they agreed with the Commission with respect to the articles alleged to have been violated.

ⁱ The Republic of Evaristo ratified the American Convention on Human Rights on February 3, 1981, and recognized the jurisdiction of the Inter-American Court of Human Rights on July 24, 1984; it also ratified the Additional Protocol to the American Convention on Human Rights ("Protocol of San Salvador") on October 22, 1992, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém Do Pará") on July 5, 1996.

ⁱⁱ The Republic of Tynalandia ratified the American Convention on Human Rights on August 12, 1977 and recognized the jurisdiction of the Inter-American Court of Human Rights on January 21, 1981; [it ratified the] Additional Protocol to the American Convention on Human Rights ("Protocol of San Salvador") on February 28, 1990 and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém Do Pará") on May 3, 1995.