

Clarification Questions and Answers for the Twenty-Second Inter-American Human Rights Moot Court Competition of the Academy on Human Rights and Humanitarian Law

- 1. Concerning the drone attack on the museum: was the army involved in the attack or was it only aware of its imminence?**

The attack was planned and ordered by the Army.

- 2. Did the "state agents" mentioned in paragraph 33 include other agents than the members of the military Battalion 22?**

No, "State agents" refers only to the members of Battalion 22.

- 3. On what domestic legal basis did the State decide to offer the Madeira family 50.000\$ in compensation, rather than ordering the killer to compensate the family?**

Zircondia's domestic law allows the State to grant compensation directly to a crime victim.

- 4. Was an investigation currently being undertaken to find and subsequently punish the members of the Terror Squad who captured Ricardo Madeira and Milena Reyes and subsequently subjected them to harsh treatment?**

Yes, the competent authorities continued to investigate the facts even after Timoteo Anaya was convicted, with a view to finding other perpetrators.

- 5. Was Esteban Martinez one of the six inmates who went on hunger strike and was subsequently force-fed?**

Yes.

- 6. What was the manner of force feeding used by the authorities?**

They used parenteral nutrition (intravenous feeding), which the medical team considered appropriate, to address the inmates' situation at that time; they did not rule out the possibility of using other measures later, depending on any developments in the inmates' health status.

- 7. Were other measures taken, in addition to the ones mentioned, to investigate the acts carried out by the Terror Squad against the employees of Samrium International? (paragraphs 18-20)**

See the answer to question 4.

- 8. When was the warrant issued for the wiretap on Esteban Martínez's mobile phone? (paragraph 31)**

The warrant was requested from and issued by the National Security Court in October 2006, and was valid for one year.

- 9. How did the State find out about the attack that the private company "Coltech" reportedly launched against the Provincial Museum of San Hipólito on November 19, 2016? (paragraph 17)**

See the answer to question 1.

10. What is the connection between the Terror Squad and the Police Forces?

Some members of the Police Forces have agreed to turn a blind eye to the criminal activities of the Terror Squad in exchange for financial compensation; in some cases, police give the Terror Squad advance notice of operations planned against it. On rare occasions, some police officers have helped the Squad identify potential victims and carry out kidnappings.

11. What proceedings and investigations were conducted after Reynaldo Restrepo's death?

Three days after the attack, the Army conducted the expert work that made it possible to identify Restrepo's remains. It was not possible to determine the identity of the other person who died as a result of the attack.

12. Was Esteban Martínez one of the 14 detainees named in the writ of habeas corpus that was filed on their behalf?

Yes.

13. Did Zircondia notify the security general that it was derogating from Art.7 of the American Convention of Human Rights?

In view of the urgent threat to the country's public order and national security, the President of Zircondia addressed a communication to the Secretary General of the OAS on August 18, 2006, informing him that he believed that a "broad and general" suspension of the obligations assumed under the American Convention was necessary in Zircondian territory for a period of six months; the President further indicated in that letter that he reserved the right to extend the measure at the end of the six-month term.

14. Is Battalion 22 a part of the National Army?

Yes. The Battalion is part of Zircondia's Army.

15. Did anyone from the Federal government authorize Coltech's attack?

See the answer to question 1.

16. Paragraph 16 states that Milena Reyes escaped "while being transferred to another facility". Paragraph 19 states that she escaped in San Fermin. Did she escape as her and her captors were vacating San Fermin, or was San Fermin a stop on their journey to the next facility?

Milena Reyes escaped when her captors left the town of San Fermín, where the clandestine jail was located.

17. Paragraph 17 states that the Army had knowledge the FNC was storing military materiel at the Provincial Museum of Hipolito. Is there evidence that the Army also had knowledge, including intelligence reports, that people were inside the museum at the time of the attack?

There is no information in this regard.

- 18. Paragraph 36 states that friends and relatives of 14 of the detainees filed a writ of habeas corpus. Was Esteban Martinez one of those 14 detainees?**

See the answer to question 12.

- 19. When was the Military Intelligence Service able to fully identify Reynaldo Restrepo as a member of the FNC?**

See the answer to question 41.

- 20. When did the State of Zircondia find out about the detention of Ricardo Madeira and Milena Reyes by the Terror Squad, and what actions did the state take during the first eight days of their detention?**

Company executives were informed of the kidnapping the following day by eyewitnesses. First, they sought to make contact with the Squad in order to negotiate the release of their employees through an intermediary. After three days of unsuccessful attempts, they decided to notify the local and federal authorities who, with the support of the Army detachment stationed in the area, launched an exhaustive operation to find the kidnap victims.

- 21. After his arrest, was Esteban Martinez promptly brought before a judicial authority?**

No; during declared states of emergency, Zircondian national law allows the authorities to have an extended period of 40 days to conduct certain proceedings.

- 22. What was the relationship between Coltech (private security company) and the government/Army of Zircondia?**

Coltech is a company that has been hired by the State of Zircondia to assist with tasks supporting the national Army.

- 23. Was any judicial or investigative proceeding conducted with respect to the allegations made by Milena Reyes?**

The information available on this matter is limited to that provided in the hypothetical case.

- 24. Was Esteban Martínez convicted or subject to any criminal proceeding while he was detained?**

No. See the answer to question 21.

- 25. What is the legal status of the individuals who died in the events but were not mentioned in the petition before the IAHR (the other victim who died in the attack on the museum in Filipolandia and the rest of the detainees in Serena)?**

Regarding the events that took place in Filipolandia, see the answer to question 11. With respect to the events in Serena, there are no updates.

- 26. Was the other victim of the attack on the museum in Filipolandia part of the FNC movement like Reynaldo Restrepo, the museum's curator?**

See the answer to question 11.

27. **On what basis did the National Police decline to press criminal charges against the officer who shot and killed Esteban Martínez (p. 39 of the hypothetical case)?**

There is no information about this matter.

28. **The date given in the last paragraph of the hypothetical case, 44th para; i.e. “October 4, 2016” seems to be a typographical error. Cause, as per the facts of the case and the coherence shown in the previous dates, the date should be “October 4, 2008”. This is owing to the fact that as per the procedure of the Inter-American court the time given between communication of submission of the reply to the actual submission of the entire case to the court should be 3 months, and October 4, 2016 makes it 8 years, thereby, not making sense to the chronological dates of the case. Please clarify.**

As is clear from the most recent cases adjudicated by the Inter-American Court, processing times vary widely. In the hypothetical case, the dates of each intermediate stage between the filing of the petition and the submission of the case to the Court were omitted because they are irrelevant to the adjudication of the case.

29. **Is Zirconia a sovereign state? Please clarify.**

See paragraphs 1 and 2 of the hypothetical case.

30. **On what date was the last final and unappealable court decision handed down in Zirconia before the Zircondian Association of PhDs in Law filed the petition with the Inter-American Commission on Human Rights? To which of the victims did it refer, and what were the legal bases for it?**

See the answer to question 23. The decision of the Supreme Court of Cassation was dated February 26, 2008.

31. **Was the private security company Coltech hired to carry out the drone attack on the museum? If so, who hired it? If not, what were the company’s reasons for the attack?**

See the answer to question 1.

32. **Can it be said with certainty that the detainee who took one of the doctors hostage was Esteban Martínez? If not, why was he executed with the others?**

Yes.

33. **Was Esteban Martínez one of the hunger strikers mentioned in paragraphs 37 and 38 who was force-fed? If so, what method was used?**

Yes, he was one of the inmates subject to the measure. See the answer to question 6.

34. **What exactly is the outside help that the Front for a New Beginning receives from the Republic of Roseta (mentioned in paragraph 12)?**

The support is mainly financial: the sale of weapons and provisions at low cost; sometimes those deliveries are made according to a deferred payment scheme.

35. Did the State present any preliminary objections before the Inter-American Commission on Human Rights? If so, what were they?

No.

36. In light of the facts stated in paragraph 17, clarification is needed about the subsequent domestic investigations (and their timeline: start, end, and/or duration) conducted by the Zircondian authorities with respect to the consequences of the military attack that destroyed a large part of the Provincial Museum of San Hipólito and killed two people, including Reynaldo Restrepo.

See the answer to question 11.

37. Paragraph 16 states that a complaint was filed with the Office of the Ombudsman in relation to the violations committed by members of the “Terror Squad” against Milena Reyes and Ricardo Madeira. However, the judicial proceedings to investigate the disappearance/death of Roberto Madeira were opened based on the complaint filed by his brother (paragraph 18) with the Office of the Special Human Rights Prosecutor. Therefore, clarification is needed regarding the timing (exact date) and scope (whether it also applies to Milena Reyes) of the decision of Zircondia’s Supreme Court of Cassation, which dismissed the request for reconsideration of the judgment sentencing Timóteo Anaya to 12 years in prison (paragraph 21).

See the answer to question 23.

38. Paragraph 41 of the hypothetical case mentions the petition filed by the Zircondian Association of PhDs in Law with the Inter-American Commission, which cites Articles 4, 5, and 7 in relation to Ricardo Madeira; Articles 5 and 7 in relation to Milena Reyes; and Article 4 in relation to Reynaldo Restrepo – all in conjunction with Article 1.1 of the ACHR. However, paragraph 43 states that the Commission found the violation of Articles 4, 5, and 7 in relation to all of the victims without distinction. Clarification is required about the possible contradiction between the two paragraphs – especially with regard to the condemnation of the State of Zircondia based on Article 4 in relation to Milena Reyes and Articles 5 and 7 in relation to Reynaldo Restrepo.

See the answers provided throughout this document, especially the answer to question 23.

39. Are the two Samarium International employees, Ricardo Madeira and Milena Reyes, Zircondian nationals or foreigners?

Both are Zircondian nationals.

40. Paragraphs 7 and 23 of the hypothetical case state that Filipolandia and Serena are both northern provinces. Why, then, does it say that Filipolandia wants to annex Rosetta when that republic is on the southern border?

Filipolandia is a *southern* province of Zircondia, located to the north of Rosetta.

41. On what criteria or evidence did the Military Intelligence Services base its assessment that Reynaldo Restrepo was a member of the FNC, and when did they first identify him as such?

There are photographs in which he appears on at least three different occasions with high-ranking leaders of the FNC, as well as reports from state agents who infiltrated the FNC, confirming that those meetings had taken place since at least July 2006.

42. What domestic proceedings were conducted with respect to the complaints alleging the kidnapping of Milena Reyes?

See the answer to question 23.

43. How was the police operation at the jail that resulted in the death of two detainees and Esteban Martínez conducted?

The six hunger strikers were cared for in two groups in the infirmary. The first group received its treatment without incident. The second group, which included Esteban Martínez, took the doctor hostage. It bears noting that, given the dangerousness of the situation, the medical team had been sent from the Army and therefore had basic training to act in combat situations.

Notified of the hostage situation, and in anticipation of a potential intervention, the tactical team on duty conducted a few drills in scenarios that replicated the jail as closely as possible. The drills were carried out at the National Police Academy. When the team entered the infirmary, the doctor managed to break free from his captor. In the ensuing confusion, the other two inmates made aggressive gestures aimed at regaining control over the doctor, and were taken down.

44. Were the six hunger-striking inmates being cared for at the same time in the same cell when they took the doctor hostage, and did the police intervene?

See the answer to question 43.

45. According to paragraph 14 of the facts of the case, both the Army and the Front for a New Beginning (FNC) have a presence in the zone controlled by the armed criminal group known as the Terror Squad. Nevertheless, neither of the two has “really” confronted the Terror Squad. In that regard, what should be understood by “really” with respect to the actions of the Army and the FNC against the Terror Squad?

The State has made specific and ongoing efforts to confront, to the extent possible, the threat that the Terror Squad poses to the private citizens who live in the region. The Army and the Police have concentrated more on the protection of the population than on attempts to defeat the Terror Squad. The FNC has taken some isolated actions against the Squad when its activities have been in conflict with FNC operations.

46. According to paragraph 17 of the facts of the case, an unmanned aircraft controlled and directed by a private security company carried out the attack on the Museum. What were the technical features of the unmanned aircraft?

The main features of the drone, a “Hawk 11” as described in the manufacturer’s catalog, are as follows: it is an aircraft equipped to fly at medium altitudes, at a cruising speed of 280 km/h, with up to 8 hours of autonomous flight, and the capacity to carry two BB-9 missiles that can be launched from a distance of up to six kilometers.

47. According to the facts of the case stated in paragraphs 30-36, Esteban Martínez and 21 other people were detained on January 5, 2006. What measures did the State take with respect to these people’s arrest at the time of their apprehension and on January 11, 2006 (i.e., presentation before the competent authorities, assignment of a defense attorney)?

There is no information about this matter. See the answer to question 21.

48. Does Zircondia's criminal law provide for the offense of murder *criminis causa*?

No.

49. What are the penalties under the criminal law of Zircondia for the offense of torture?

A term of imprisonment from three to eight years, and 80 to 300 day-fines.

50. Has Filipolandia and/or Serena declared a state of emergency?

See the answer to question 13.

51. Did the drone used in the museum attack have the capacity to detect the people moving inside the museum and differentiate whether they had assumed a hostile stance?

The unmanned aircraft used for the operation did not have that function.

52. In what way were the hunger strikers forced to eat?

See the answer to question 6.

53. What actions were taken by Zircondia to punish the masterminds and direct perpetrators, and to provide reparations to victims Ricardo Madeira, Milena Reyes, Reynaldo Restrepo, and Esteban Martínez and their relatives?

All of the available information is provided in the hypothetical case and the answers to the clarification questions.

54. What were the arguments supporting the appeal and request for reconsideration filed by the attorneys for Ricardo Madeira's family, as well as the decisions of the Appeals Court and the Supreme Court of Cassation for dismissing those petitions?

The attorneys for the Madeira family sought to have a more severe sentence imposed upon Timoteo Anaya, based principally on the mistreatment to which Madeira had been subjected. At both levels of appeal, the judges reached the conclusion that the lower court judge had properly considered all relevant aspects of the case to determine the sentence imposed.

55. How did the Office of the Attorney General of the Republic, the Office of the Special Human Rights Prosecutor, and the Investigation Commission exercise their respective duties in the case of the detainees in the maximum security jail referred to in paragraphs 35 - 40 of the facts of the case?

All of the available information is provided in the hypothetical case and the answers to the clarification questions.

56. (Paragraph 33) How credible is the information provided by the State agents about Martinez?

Highly credible.

57. (Paragraph 7) How would the annexation of Filipolandia be carried out, considering that it is located in the northern part of the State of Zircondia, and Rosetta is to the south (that is, without borders)?

See the answer to question 40.

- 58. According to paragraph 39 of the case, what was the evidence that came to light in the investigation into Esteban Martínez's death that led to the decision not to bring criminal charges [against the officer responsible] for his death?**

See the answer to question 27.

- 59. What complaints were filed with respect to what happened to Milena Reyes and Reynaldo Restrepo?**

In the case of Milena Reyes, See the answer to question 23; in the case of Reynaldo Restrepo, all of the available information is provided in the hypothetical case and the answers to the clarification questions.

- 60. According to paragraph 40 of the case, what specific work is being done by the Investigation Commission in charge of establishing the facts of the events that took place during the march and in the jail?**

There is no more information than what is provided in paragraph 40.

- 61. Was there any assistance, judicial proceeding, and/or redress for Milena Reyes after she escaped from her captors?**

See the answer to question 23.

- 62. Which of the 3 inmates took part in the negotiation with State agents referred to in paragraph 38 of the facts?**

See the answer to question 43.

- 63. Were the military intelligence reports mentioned in paragraph 17 of the facts made public, or were they kept confidential?**

At the time of the attack, none of the information contained in the reports was in the public domain.

- 64. What is the highest ranking court in the State that citizens can access?**

The Supreme Court of Cassation.

- 65. On what date did the last court case related to the legal status of Timoteo Anaya end?**

See the answer to question 30.

- 66. Does the Office of the Special Human Rights Prosecutor of the State of Zircondia have plaintiff's standing to represent and defend potential victims of human rights violations before the different courts?**

No.

- 67. Has any State or international body pronounced on whether the conflicts in Zircondia with the FNC, The Terror Squad or the two gangs constituted a situation of international armed conflict or non-international armed conflict?**

The situations that arose in Filipolandia and Serena have led to some studies, mostly from the academic world, that arrive at different conclusions. No statements have been issued by foreign governments or international bodies.

- 68. Has the government of Zircondia informed the Secretary General under Article 27(3) of the American Convention of a declaration of a State of emergency in Zircondia or any part thereof and the suspension of specific guarantees under the Convention?**

See the answer to question 13.

- 69. In paragraph 17 of the hypothetical, what were the reactions of the civilians including those who were killed, to the sounding of the alarm?**

Civilians heeded the warnings, which explains why only two people died in the attack. It is not known specifically how the deceased individuals reacted when they found out that the attack was imminent.

- 70. What was the occupation of the second person who died in the drone attack on the Provincial Museum of San Hipólito, located in central Filipolandia, where military materiel was being stored? Why was that person's case not examined by the IACHR, if he or she died under the same circumstances as Reynaldo Restrepo?**

See the answer to question 11.

- 71. What was the reasoning behind the State's decision not to bring criminal charges against the officer who shot Esteban Martínez?**

See the answer to question 27.

- 72. When did the Judiciary begin monitoring the activities of the criminal gang "Los Locos," including its leader Esteban Martínez?**

The Judiciary (Judicial Branch) was not monitoring the activities of "Los Locos" *per se*; the group was the object of study and surveillance by the competent local and federal authorities from the time the group's creation was detected in 2001.

- 73. Did the government of Zircondia investigate and prosecute the individuals involved in the capture of Milena Reyes and what prior knowledge did it have about the Terror Squad detention facilities?**

See the answer to question 23. There were rumors about detention sites where members of the Squad would keep kidnap victims while they waited for the ransom to be paid.

- 74. Did the Attorney General open an investigation into whether Esteban Martinez was brought before a judge prior to his detention and with regards to the lack of response to the writ of habeas corpus?**

See the answer to question 21.

- 75. In respect to paragraph 14, what is the evidence of ties between the State organs and the Terror Squad and the nature of their illegal activities?**

See the answer to question 10.

76. What are the appropriate remedies in Zircondia that Milena Reyes must exhaust?

See the answer to question 23.

77. What actions does the Terror Squad take to “terrorize” the inhabitants of Filipolandia?

It is mainly involved in extorting merchants and kidnapping businesspeople and members of wealthy families.

78. What is the domestic legal framework available in Zircondia for the investigation of the acts that were perpetrated against the alleged victims?

All of the available information is provided in the hypothetical case and the answers to the clarification questions.

79. With respect to paragraph 21, what was the basis for the medium-length sentence imposed against Timoteo Anaya?

The judgment handed down by the judge has not been made public.

80. With respect to paragraphs 17 and 42, what was the evidence to support the conclusion of the Military Intelligence Services that Reynaldo Restrepo was part of the FNC?

See the answer to question 41.

81. With respect to paragraph 38, under what circumstances were the other two detainees executed, in addition to the fact that they had a bladed weapon?

See the answer to question 43.

82. Is there any additional information about the accusation of mutual support between the Terror Squad and the Police Forces of Zircondia mentioned in paragraph 14 of the hypothetical case? Is there any evidence of the participation of State agents in the crimes against Ricardo Madeira and Milena Reyes?

With respect to the first part of the question, see the answer to question 10; with respect to the second part, all of the available information is provided in the hypothetical case and the answers to the clarification questions.

83. Is there any domestic law in Zircondia that regulates the action of private security companies and the use of drones in armed conflicts?

No.

84. Is there any additional information about the manner of execution or motivation for the attack allegedly planned by the group Los Locos, mentioned in paragraph 31?

The authorities have not publicly released this information.