

**2017 INTER-AMERICAN HUMAN RIGHTS  
MOOT COURT COMPETITION**

***Case of Ricardo Madeira et al.  
v. Republic of Zircondia***

**I. Background on the Republic of Zircondia**

1. Zircondia is a republic with a population of approximately 22 million, and its territory covers some 900,000 square kilometers. It is a federal State whose capital is Antara. It is divided into five provinces that have gone through economic expansion and varying economic development opportunities since gaining independence in 1847. On its southern border is the Republic of Rosetta; to the north, a small kingdom called Minepolis; to the west lies Perselandia; and finally, to the east, Zircondia has access to the sea.

2. The first decades following its independence passed in relative peace. Zircondia enjoyed a certain degree of prosperity, and developed advantageous trade relations with neighboring countries.

3. In the 1960s, the tranquility of the country began to be affected by the fluctuations in world trends concerning certain raw materials, and the emergence of a dominant economic class that also began to assert itself on the political scene.

4. Against this backdrop, Prof. Luis Román, who belonged to that favored class and obtained his university education abroad, founded the “Alternative for Zircondia” Party in 1986. After spending a decade in the opposition, he became president in 1998.

5. For some years now, there has nevertheless been widespread discontent among the nation’s inhabitants. In addition to the increasingly difficult economic conditions in some parts of the country, a number of President Román’s close associates have been accused of nepotism, corruption, and the squandering of public funds. Certain media outlets have also reported that some Cabinet Ministers own luxurious properties in the neighboring State of Rosetta, where they spend family vacations.

6. Román is about to complete his second five-year term as president of Zircondia, and it is suspected that he intends to carry out a constitutional coup d’état to stay in power for a third term. It should be noted that Román failed to obtain a majority of the popular vote in the last election, but won thanks to the indirect voting system—although there were various accusations of fraud.

7. Zircondia is a land of contrasts. On one hand, the northern Province of Filipolandia (named in honor of one of the country’s Founding Fathers, Filipo Ranieri) is undoubtedly the richest

region. It possesses vast reserves of rare earth, which is sold abroad particularly to companies operating in fields that use state-of-the-art technology, such as aeronautics, information technology, and military defense. By contrast, the Province of Serena is quite underdeveloped and is plagued by criminal gangs.

8. Zircondia is monist State. Article 18 of its Constitution provides that duly ratified treaties are directly applicable by the courts and superior to the national laws, having the force of constitutional law.

9. In spite of everything, from its founding Zircondia has been a good member of the international community. A member of the UN and the OAS, it has ratified several human rights and international humanitarian law treaties, including: the American Convention on Human Rights (in force for the State since 1999); the four Geneva Conventions (in force since 1981), as well as the two Additional Protocols of 1977 (in force since 2001); the Inter-American Convention to Prevent and Punish Torture (in force since 2002); and the Convention for the Protection of Cultural Property in the Event of Armed Conflict (in force since 1981). It has also recognized the jurisdiction of the Inter-American Court of Human Rights since 2002.

## **II. The situation in Filipolandia**

10. On February 4, 2006, an armed movement emerged in Filipolandia, headed by Orlando Monteverde, a former General in the National Army who had retired two years earlier. His aspirations appeared to be more economic than political, for the time being. In a speech delivered to his sympathizers in the town square of the province's main city (and quickly disseminated via Internet), he asserted that Filipolandia, with its wealth, had been the engine of the country for too many years, and that the rest of the provinces had been "unfairly riding its coattails." He argued that "the time has come for it to free itself of the yoke of the other provinces that appear to have no near-term prospects for getting out of poverty." He christened his movement the Front for a New Beginning [*Frente para un Nuevo Comienzo*] – the FNC.

11. After three months, Monteverde managed to assemble a force of some 3,000 men and women, to whom he promised prosperity upon the withdrawal of the foreign companies that exploit the rare earth mines, as well as an oilfield whose reserves may be sufficient to meet Zircondia's needs for the next 250 years. The group controls 70% of the country's territory (Filipolandia covers an area of 58,000 km<sup>2</sup>), and its members receive a weekly 2-hour training in firearms handling and war tactics.

12. Some newspapers soon revealed the existence of a sophisticated system for the supply of high-powered firearms like AR-15s and AK-47s, grenade launchers, and submachine guns, as well as long-range missiles, which appeared to come over the border that General Monteverde and his followers now control. Foreign support is suspected, most likely from the neighboring State of Rosetta, with whose authorities Monteverde has maintained good relations since prior to his

retirement. Some Zircondians in the villages on the border have told NGOs working in the area that army tanks from Rosetta have in fact made incursions into Zircondia's national territory. Some newspapers speculate that, in the medium-term, Monteverde could seek to annex Filipolandia to Rosetta.

13. For more than six months, there have been ongoing confrontations between the partisans of Monteverde and the soldiers of the National Army, but rarely have civilian populations been involved. Although the Army managed to recover territory on some occasions, these advances have not been significant.

14. Taking advantage of the situation, an armed criminal group that calls itself "The Terror Squad" has emerged, and is operating in an area that includes three towns of Filipolandia where the principal rare earth deposits are located. Its members have managed to take possession of several shipments leaving the mining sites, which they seek to sell to the highest bidder on the black market, and they are terrorizing the inhabitants in order to consolidate their control over the region. Both the Army and FNC members are present in the area, but neither of the two has really wanted to confront the Terror Squad. In addition, some foreign newspaper correspondents have presented evidence, in their articles about the situation in Filipolandia, of ties between various members of the Squad and members of the provincial police forces, alleging that they provide each other with mutual support to conduct illegal activities.

15. In one of the three towns mentioned, known as "El Paraíso," two workers from the company Samarium International, Ricardo Madeira and Milena Reyes, were caught by surprise on a dirt road by a group of six members of the Terror Squad in September 2006. Their belongings were confiscated, including their computers and cell phones, and both were taken to a clandestine jail, where they were not allowed to have any outside contact. From the time of their capture, they were subjected to harsh treatment: being chained by their hands and feet (alternatingly), monitored at all times by a closed-circuit camera, and given food that did not appear fit for human consumption. At times, they were interrogated for more than four hours at a time by different leaders of the criminal group, who sought to obtain additional information about the routes along which the next rare earth shipments would be made, using methods such as submerging their heads in a basin of freezing water.

16. After eight days in captivity, Milena Reyes managed to escape while being transferred to another facility, and made her way to Antara, where she went to the Office of the Ombudsman to report what had happened. She explained to the authorities that she suspected that Ricardo Madeira had been executed by the Terror Squad, given that she had not seen him during the last two days of her detention, and had heard one of his captors—who was referred to by his comrades as "Timo"—bragging about having "gotten rid of that asshole who didn't want to talk."

17. On November 19, 2006, at 3:00 a.m., an unmanned aircraft controlled and directed by staff members of the private security company Coltech, legally headquartered in Zircondia, attacked

the Provincial Museum of Hipólito, located in central Filipolandia, where the Army had knowledge (through intelligence reports) that the FNC was storing military materiel. With the backing of senior legal advisors from the Army, the soldiers present in the area had announced, throughout the day, throughout the town, using megaphones, that the attack was imminent. The attack destroyed much of the museum, killing two people who were in the building, including the museum's curator, Reynaldo Restrepo. Spent ammunition, unexploded antipersonnel mines, and components of long weapons were found in the rubble.

18. The facts surrounding the capture and detention of Ricardo Madeira were reported by his brother Gerardo in a letter sent to the Minister of Justice, and a formal complaint was filed with the Office of the Special Human Rights Prosecutor, on October 11, 2006.

19. Consequently, criminal case 2006/212 was opened, and the investigating judge traveled to the town of San Fermín, the place from which Milena Reyes had escaped. During this proceeding, the judge found an empty house that showed signs of having been quickly abandoned by its residents.

20. Based on an anonymous email sent to a local newspaper, probably by a repentant member of the Terror Squad, the coordinates of a mass grave potentially containing the remains of the disappeared man were obtained, and Timoteo Anaya was accused of murder. The investigating judge requested the exhumation of the buried bodies. DNA analyses confirmed that Madeira's body was indeed located in the grave, and it was determined that his death was caused by close-range gunshot wounds.

21. The "Madeira Matter" attracted considerable media attention, and was condemned by the Zircondian Association of PhDs in Law as emblematic of the current violence in the region, which most likely facilitated the capture of Anaya and the speedy prosecution of the case. Murder charges were filed against Anaya. At the end of his trial, which lasted two and a half months, the defendant was convicted and sentenced to 12 years in prison, a medium-length sentence (between the shortest and longest sentences provided for in the Federal Criminal Code of Zircondia for this offense). The attorneys for the Madeira family appealed the judgment, which was affirmed by the appeals court. A panel of judges from Zircondia's Supreme Court of Cassation dismissed the request for reconsideration of the judgment.

22. The State deemed the case concluded with this penalty, and offered the Madeira family US \$50,000 in compensation, which they accepted on the recommendation of their attorney.

### **III. The situation in Serena**

23. Things are also complicated for President Román in the northern province of Serena. According to the World Bank, 63% of the population of this province lives in poverty, and in rural areas six of every 10 households live in extreme poverty. This means that Serena has one of the

highest rates of economic inequality in Latin America, which presents a complicated scenario for providing development opportunities for its inhabitants. As if that were not enough, the rice harvest—which the inhabitants depend on in large measure for their survival—has been particularly bad for the last three years in the province, due to frequent storms that have caused flooding.

24. To make matters worse, Serena is also one of the most violent regions in the world. One of the consequences of this is the constant movement of people (in August 2006, the government of Zircondia acknowledged the existence of 28,000 internally displaced persons due to the violence in 14 municipalities of the province), including unaccompanied minors that certain criminal groups are trying to recruit, as well as entire families who are being subjected to threats by these groups.

25. Since 2001, two gangs (“los Locos” and “los Duros”) have been engaging in confrontations with each other and with the authorities, seeking to expand their areas of influence. This has caused the violence to become more widespread, now affecting ordinary citizens who are increasingly the victims of kidnappings, extortion, and murder—to the point that the provincial Minister of the Interior stated in a press conference that the safety and protection of large segments of the population is in jeopardy.

26. The State has published a report showing that there have been several confrontations per week between 2001 and 2006. Most of them involved firearms, sometimes high-caliber weapons; there were 42,562 deaths recorded as a result of those confrontations during the period examined, including 3,238 members of the National Police and the Army, which has been called in to provide support in maintaining public order.

27. The gangs have a similar structure and *modus operandi*. Their members have specific duties assigned to them, and killing is an activity that is expected of all members; there are no “armed wings” as such. The gangs are generally well-organized, with a national leader and various local leaders, all of whom can impose general disciplinary rules that the members of the gang must respect.

28. The national leader has an identified successor, prepared to take his position in the event of his inability to continue his duties as leader (generally understood to mean in the event of his death).

29. From their inception, both gangs have taken part in a variety of relatively complex criminal activities, such as the systematic extortion of businesses, drug trafficking, human trafficking, and money laundering, and they have managed to strengthen those activities. They also have a substantial arsenal that includes weapons whose use is restricted to the official use of the armed forces of the State, as well as explosives, including hand grenades.

30. On January 5, 2007, a march was held that was organized by peasant farmers, parents, and opposition parties exasperated by the situation they were experiencing and the indifference

shown by President Román and the provincial authorities toward the agriculture and education sectors; they also wished to see him leave office at the end of his constitutional term. It is estimated that some 28,000 people took part.

31. The members of military Battalion 22, composed of various soldiers who were recent recruits, but who had graduated at the top of their class, were assigned to supervise the march. At a certain point, one of the soldiers managed to identify Esteban Martínez, one of the leaders of “los Locos,” in the midst of the demonstrators. His mobile phone was under surveillance, and it was known that he was close to launching an attack on government institutions.

32. An operation to apprehend him was improvised at that time. To this end, the authorities used megaphones and loudspeakers to ask the demonstrators to disperse. However, that call was taken as a provocation, and the protests intensified and turned more violent. Around 70 participants managed to enter government buildings, and severely beat some public servants who were inside; later, three vehicles identified with government license plates were set on fire. Martínez was one of those participants, and he tried to blend into the crowd to avoid capture.

33. The State agents initially used tear gas, tanks equipped with water cannons, and rubber bullets. However, upon receiving a report that Martínez and other members of “los Locos” were armed, and that he had taken the employees inside one of the buildings hostage (releasing them after half an hour) and fired shots at the soldiers, the order was given to shoot real bullets.

34. At the end of the operation, the federal Minister of the Interior stated that 12 people had been killed and 14 had been injured (none of whom were members of law enforcement), but representatives of the International Human Rights Alliance indicated that the death toll probably exceeded 20. The process of verifying and identifying the victims was complicated by the fact that the authorities had posted security officers at the entrances to the morgues and the forensic medical departments.

35. The 22 individuals who were arrested, including Esteban Martínez, were taken to a maximum security jail, due to the danger they were believed to present to society.

36. On January 11, the friends and relatives of 14 of the detainees jointly filed a writ of *habeas corpus* with the Office of the Special Human Rights Prosecutor, since their attorneys advised them that this would be the proper remedy to seek the whereabouts of individuals allegedly detained by the authorities, and if appropriate, to determine whether they had been arrested in accordance with the law. The lack of a response to the writ led the petitioners to request in a letter dated January 16 that the Attorney General of the Republic open an investigation.

37. In the jail, the detainees were locked up in cells measuring 12 m<sup>2</sup> (three detainees of the same sex per cell), and only allowed to go out in the fresh air for two hours a day. Some complained of the lack of privacy in the bathrooms, and of the fact that the detainees were forced to eat in their

cells. Soon, six inmates went on a hunger strike, and after 27 days, two of them were in critical condition (due to preexisting medical conditions), which caused even more restlessness inside the detention center. The Warden sent a document to the Office of the Special Human Rights Prosecutor, requesting the intervention of the National Police in order to guarantee the safety of a medical team that was going to force-feed the hunger strikers.

38. At the end of the force-feeding procedure, which took place on February 7, one of the doctors was taken hostage by an inmate who had managed to secretly make a bladed weapon. After more than five hours of negotiating without being able to reach a concrete solution, the Warden authorized an operation by a tactical team that resulted in the doctor's rescue and in the death of three inmates, including Esteban Martínez. The relatives of the deceased inmates were notified by letter of the deaths.

39. In keeping with the national law, Esteban Martínez's sister Blanca condemned the acts in a letter addressed to the Attorney General of the Republic, following up on the letter of January 16. On February 28, Blanca was informed through an official letter that, after an internal investigation conducted by the Office of the Inspector General of the National Police, it was determined that no criminal charges would be brought against the officer who shot and killed her brother, but that he had been discharged from service.

40. Given the pressure from human rights defense organizations and from the governments of some neighboring States, the Federal Minister of the Interior announced on March 4 the creation of an Investigation Commission tasked with establishing the facts of what happened during the march and at the jail. The Commission is headed by a former member of the country's Supreme Court of Cassation, an internationally renowned jurist who has been identified with President Roman's party for a number of years. The Commission heard from witnesses and experts from several countries with regard to the use of force, but to date has not issued its annual report.

#### **IV. Proceedings before the Inter-American System**

41. On May 21, 2008, the Zircondian Association of PhDs in Law filed a petition with the Inter-American Commission on Human Rights, alleging the violation of the rights contained in Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) of the American Convention on Human Rights, all in relation to the obligation to respect and guarantee rights enshrined in Article 1.1 thereof, to the detriment of Ricardo Madeira, and the alleged violation of the rights contained in Articles 5 and 7 to the detriment of Milena Reyes. The Association also alleged the violation of Article 4 with respect to Reynaldo Restrepo, one of the two fatal victims of the drone attack. Finally, with respect to Esteban Martínez, it alleged the violation of Articles 4, 5, and 7.

42. On June 28, 2008, the Commission began processing the petition, forwarding the pertinent parts to the State of Zircondia and granting it the period of established in the Rules of

Procedure for the submission of its reply. In a communication dated July 14, Zircondia refused to acknowledge any conduct that violated its obligations under the American Convention in relation to the events recounted in the petition of the Zircondian Association of PhDs in Law. In the same letter, which was properly forwarded to the petitioners, it clarified that it was not willing to participate in any friendly settlement procedures, confident that, if the case were to be submitted to the Inter-American Court, it would detail its arguments at that time and its position would prevail. In the specific case of Reynaldo Restrepo, it indicated that the Military Intelligence Services had him fully identified as a member of the FNC, and he was therefore a “legitimate target of attack.”

43. In view of the State’s reply, the Inter-American Commission, in keeping with its Rules of Procedure and the American Convention, adopted a report declaring the case admissible, and found violations of Articles 4, 5, and 7 of the American Convention, all in relation to Article 1.1 thereof, to the detriment of Ricardo Madeira, Milena Reyes, Reynaldo Restrepo, and Esteban Martínez. In that document, the IACHR asked the State to implement its recommendations.

44. Once the deadline and the requirements set forth in the American Convention and the Rules of Procedure of the Commission had been met, and because Zircondia did not find it necessary to implement any of the recommendations made by the Commission, on October 4, 2016, the case was submitted to the Inter-American Court of Human Rights for adjudication. It alleged the violation of the same articles specified in the Commission’s report on the merits.