

### **III Inter-American Human Rights Moot Court Competition 1998 Hypothetical Case Problem**

#### ***Rómulo Estrada v. Ithaka***

#### **History and General Background**

The Republic of Ithaka is a member state of the Organization of American States and became party to the American Convention on Human Rights on April 14, 1986. In its instrument of ratification, the State of Ithaca declared that it recognized as binding the competence of the Inter-American Court with respect to all cases concerning the interpretation and application of the Convention pursuant to Article 62. The constitutional reform that took place in 1987 accorded the American Convention on Human Rights constitutional rank.

Ithaka is also party to the Inter-American Convention to Prevent and Punish Torture, ratified on June 22, 1987, and the Inter-American Convention on Forced Disappearance of Persons, ratified on February 28, 1996.

In addition, Ithaka ratified the United Nations Covenant on Civil and Political Rights on June 19, 1986, and on October 10 of the same year the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Ithaka was discovered in 1539 by Don Hernando López “El Desafortunado”, who had strayed from a Spanish expedition in search of “Eldorado,” the legendary city of gold. The country was known as “Eldorado” until its independence in 1825, when General Ulysses Gómez Prado, who led the colony’s independence movement, changed the country’s name to that of the island-kingdom of his homonym in the Odyssey. The country’s history can be summarized as an alternation between democratic governments, dominated by the country’s extremely influential elite, and a number of short-lived military governments led by various populist military leaders.

For many centuries the country’s economy was based on mining and the production of different tropical goods such as sugar, cotton and coffee. Until 1880, Ithaka’s economy relied partly on slave labor and partly on the cheap labor provided by its indigenous population. In 1880, slavery was abolished and, after passing through a phase of stagnation at the end of the century, the country embarked on a period of rapid industrialization in the 20th century.

Ithaka has one of the world’s worst land distributions and is deeply marked by the division between its peasants, known as the “Choclos,” and the rest of the population. The Choclos account for over 35 percent of the population and are sometimes seen as a marginalized people. In fact, the word Choclo is applied indiscriminately to all decedents of the country’s indigenous population, former African slaves and anyone considered to be of “mixed” descent. The Choclo population is amongst the country’s poorest and has been constantly frustrated in their struggle for a more just distribution of land.

In the early 1970's the Choclos, under the influence of Father Albino Marín, a charismatic religious leader, began to carry out a series of peaceful land occupations. This provoked bitter resentment and a generalized fear among the country's landowners.

On May 30, 1975, General Sófoles César Valencia led a military coup which ousted the civilian government of President Aquiles Losada. A state of emergency was declared, civil liberties suspended, and a military junta temporarily installed. General Valencia declared that there would be no persecutions and that the military would leave peacefully as soon as they had restored order.

The military immediately began to reinstate ousted landowners by arresting and killing the Choclos who had occupied land. Father Albino called on his followers to resist and formed the Ithakian Movement for the Liberation of the Land (IMLL).

Within a year, almost all of the peasants, most of whom had originally been an unarmed group unprepared for armed resistance, had been arrested, executed or disappeared. Nonetheless, the IMLL, isolated in the most remote areas of the country, resisted and were even able to seize control parts of the country. The movement became known for its ruthless violence against all of those who did not show their unconditional support for its policies.

In 1976, the junta named General Hermes Valenzuela as President. On the day he took office, General Valenzuela declared that the army would wage a merciless war on the IMLL and all of its supporters. The army then began a brutal repression which was to affect the whole of the Choclo community. Tens of thousands of persons were allegedly killed or disappeared and the Choclos lost almost all of the land they had ever occupied. In 1979, Father Albino Marín was surrounded by the army at Tuiaquira and died in controversial circumstances. The army claimed that he had committed suicide while the Choclos affirmed that he had been executed in cold blood. His body was never recovered.

In 1980, General Valenzuela proclaimed that the war against terrorism had been won and, under pressure from the his rivals in the army, passed the presidency on to General Juan Ulysses Gómez Mena, a descendant of the country's liberator. General Gómez declared that he would lead the country back towards a more democratic mode of government. He proclaimed a general amnesty, promised that the next president would be elected by Congress and legalized a few opposition parties. General Gómez spent most of his term in office promoting the memory of his ancestor by supporting the publication of various biographies and offering horsed statues of General Ulysses Gómez Prado to neighboring countries.

In 1984, Congress prepared for the election of Ithaka's next president. The military named General Aristótle Paz, a "moderate" member of the army, as a candidate while the opposition converged around the figure of Héctor Ortíz Cruz, a politician who had become known for his firm opposition to the military regime. To everyone's astonishment, the opposition won the elections and, after a period of hesitation and intensive negotiations, the military accepted their defeat and declared that they would transfer power to a civilian government, as promised, by the end of the year. In private, many accused General Gómez of gross incompetence.

President Ortiz took office on January 1, 1985. One month later, to the surprise of many, he issued a presidential decree creating a national Truth Commission to investigate all serious human rights violations that had taken place during the military regime. The army, surprised at the President's action, protested but were firmly told to maintain discipline.

From the beginning, the Truth Commission stirred up much controversy within Ithakian society. Some of the Choclos declared that they would have nothing to do with the white man's investigation, while others expressed doubts that it would adequately report the massacre of the Choclos, hinting that it would probably concentrate on the white, upper middle class victims of the repression in the urban centers. After much negotiation, an agreement was reached and certain of the members of the Truth Commission were chosen in close consultation with the Choclo leaders who then declared that they would cooperate with the Commission's investigation.

The Truth Commission's report was made public at the end of the year and deeply shocked Ithakian society. Over 2,000 persons were reported to have been either executed or disappeared in the country's urban centers. Moreover, the investigation revealed an astounding number of deaths in the Choclo community. The report concluded that at least 130,000 Choclos had either been executed or disappeared during the military regime. Following the publication of the report, Choclo leaders declared that the numbers were probably much higher and accused the military of genocide.

President Ortiz issued an official apology to the victims and their families and promised that reparations would be made. To the Choclo people, he promised that the government would undertake a serious land reform program to be completed within the next 15 years.

In 1990, President Ortiz was elected to a second term. He was succeeded by a candidate from his own party, President Asdrúbal Menendez, on January 1, 1995.

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

In the month of January 1995, certain sectors of Ithakian society were shaken by the rumor that Dona Isolda Bonaventura was about to publish her memoirs. For many years Doña Isolda moved in the highest circles of Ithakian society and was reported to have been intimate with several of its most prominent political figures.

In February 1995, two journalists, the brothers Rómulo and Rémulo Estrada, declared that they had obtained exclusive interviews with several unidentified persons whom they claimed to have been close to some of the most influential personalities of the military regime. These interviews were to be published in the form of articles in the brothers' newly created weekly magazine "Cronos," under the title "Private Talks." The magazine was to run the series of interviews for a period of three months in what the journalists described as "an investigation into the hidden truth, as opposed to the official truth, of the country's recent history." The first interview, of a certain lady (who most took to be Doña Isolda), revealed many "unknown aspects of the private lives of

our politicians”. The second interview, of a high ranking military officer closely involved in the campaign against the Choclos, included “disturbing claims and revelations of hidden aspects of the Choclo war and the peace that followed.” The brothers announced that articles containing surprising and disturbing revelations would follow.

The first article, based on the interview of the unidentified lady, was published on February 26, 1995, and contained a number of confusing and sometimes contradictory allegations. The lady claimed to have been intimate with both General Valenzuela and General Gómez, among many others, and to have knowledge of many facts that had been hidden from the public. She defended both generals warmly, affirming that they were true patriots. In particular, she claimed that General Gómez had been unfairly treated by the media. To illustrate the General’s worth, she described how he averted a post-election catastrophe by thwarting an alleged plot to stage a military-coup. Fortunately, she commented, he promptly imposed discipline on the troops. The journalists claimed that she had provided them with the plans of the coup including confidential documents of the Ministry of Defense and the Ministry of the Interior containing information on the number and location of the country’s secret military bases and detailed lists of the names of the country’s intelligence agents, the majority of whom were still in active service in the country and abroad. The brothers announced that the documents would be published at a later date.

Following the publication of the first article, General Gómez broke his silence to deny that he had ever had any kind of relationship with the lady in question, declared that he was outraged, and affirmed that he would take all steps necessary to protect his honor. Many persons mentioned in the interview made similar declarations. From Paris, Doña Isolda Bonaventura confirmed that she had given an interview to Rómulo Estrada, but declared that most of what had been published was a fabrication. She denied having had affairs with either General Valenzuela or General Gómez, “both of whom had always been good friends.” She also denied ever having confidential government documents in her possession.

The second interview, published on March 5, 1995, was even more controversial. In it, an unidentified high-ranking military officer made many serious allegations. The military officer declared that the Choclos were a lazy and treacherous people, and that the military campaign against the IMLL had been much aided by the fact they had always been ready to betray their own. He gave the name of Father Albino as an example of their treachery, affirming that he had been an army agent and had betrayed the IMLL.

The unidentified officer claimed that the number of dead among the Choclos was much lower than those published in the Truth Commission’s Report and that former President Ortiz had deliberately inflated the numbers so as to justify his agrarian reform program. President Ortiz was supposedly working with “foreign interests” who would later step-in to buy the land from the Choclos, all of whom were “ignorant and lazy animals by nature and incapable of farming the land.” He cited statistics that supposedly demonstrated that Choclo farmers had lower production levels than the non-Choclo and usually sold any land they had acquired through the Agrarian Reform program after two or three years. Landowners and true patriots, he declared, should take up arms to preserve the country from ruin.

The unidentified officer also declared that former president Ortiz was a liar and a hypocrite for having proposed a program that would ruin the country's rural production and that the whole government had been based on similar populist proposals. The officer concluded with the declaration that the former President's benevolent posturing was only a smokescreen that hid a cynical and ambitious man who would do anything to further his personal aims.

After the second interview many of the country's land-owners began to demand that the numbers of the disappeared be revised and the agrarian reform suspended until the truth of the matter was cleared up.

The article led the Choclo to the brink of revolt. Their leaders declared that it was a conspiracy to degrade Father Albino, abdicate responsibility for the massacre they had suffered, and halt the reparations scheme. The Choclo Movement for Peace and Land (CMPL), a grassroots agricultural movement to help organize the Choclo, declared that it would resort to any and all means necessary to ensure that the truth, both about Father Albino and the massacre of the Choclos, was re-established. The CMPL demanded that the government take action to combat the many racist remarks made in the press. Demonstrations were planned and a number of illegal land occupations announced.

The third article of the series "Private Talks" appeared on March 12, 1995 and contained a debate on the reports that foreign interests were involved in an international conspiracy to acquire Ithakian land. Several prominent politicians and political analysts were consulted, and the country's capacity to defend itself was the subject of lengthy arguments. These discussions included reference to the supposedly confidential government documents.

The brothers also stated in the article that the articles published so far, the result of interviews with persons with credible inside information, showed just how mistaken the country had been in its judgement of former President Ortiz. He has shown himself, they stated, to be at the very least a cynical, manipulative man ready to do and say anything, even things that were clearly illegal and immoral, for his own personal aims.

The brothers concluded with the announcement that the next article, to be published on March 19, 1995, would contain more illuminating information on the country's history. This article would broach the question of the truth about Father Albino and his work as an undercover government agent, clarify many questions of the opposition's negotiations with the military after the elections, and tell the truth about the planned military coup. It would include a list of the country's intelligence agents and the location of the country's military bases.

On the following day the Ithakian Congress launched an independent investigation into the Truth Commission's Report that, in practice, suspended the land reform program until the conclusion of the investigation. On, March 14 1995 former President Ortiz initiated criminal proceedings for defamation against the Estrada brothers.

During the week that followed the Choclo, illegally occupied several farms and promoted numerous demonstrations. Three followers of Father Albino committed suicide by setting fire to

their homes in order to clear his name. They once more demanded that all racist attacks by the press cease, that the truth of the massacres be re-established, and that the Government continue the reparations scheme.

On March 17, 1995, after a series of increasingly violent demonstrations by the Choclo, the Ministry of the Interior declared that the publication of “Cronos” with the announced article would be banned because of, 1) the great unrest created by the articles within the Choclo community, and 2) the grave security problems that would arise upon publication of confidential government documents that included the list of intelligence agents and the location of secret military bases. The Government ordered, by presidential decree, that all existing copies of upcoming issue of the magazine “Cronos” containing the announced article be seized. The Ministry of Interior based the censorship decree on Nation’s Security Law 2001 and made direct reference to Articles 13 and 32.2 of the American Convention on Human Rights.

The Government also declared that measures would be taken to clarify all doubts as to the number of dead during the military regime and to prove that all allegations that the Government had tampered with the evidence collected by the Truth Commission were unfounded. The Government also reassured the Choclos that the land reform program would go on as planned.

On March 21, 1995 the brothers Estrada filed a writ of “amparo” against the decree before the First Federal Court of Ithaka.

### **Proceedings concerning the writ of Amparo**

Under Article 8 of the Constitution, Law 2001 defines the President’s power to guarantee internal security. The law allows that, among other acts, the Executive is authorized through its National Police, in accordance with the faculties and powers granted the President by the Constitution, to prohibit the publication and order the seizure or confiscation of material, whether in written, film, video, audio or in any other form, that:

- 1) would gravely imperil the Nation’s Security;
- 2) have the intention to disseminate to a large number of persons expressions or statements, threatening, insulting, or degrading a group of person on account of their race color, national or ethnic origin or belief, when such material is deemed responsible for creating a state of grave unrest and imperil public order.

The law also specifies that an appeal from such a decision is possible through a writ of amparo to the First Federal Court of Ithaka and that, if no such appeal is made, the Supreme Court has jurisdiction to review the legality of the measure within 30 days.

The brothers argued that most of the information in their articles was of general public interest and involved public figures. They stated that to censure the upcoming article would only deprive the public of information necessary to an balanced debate. Finally, they argued that the

Government's decision constituted prior censorship and infringed the constitutional protection of freedom of expression contained in Article 13 of the American Convention on Human Rights, creating a dangerous precedent.

On May 14, 1995 the Court denied the writ of amparo and upheld the Government's decision to ban the article. The Court declared that the articles would in effect, 1) create grave disturbances to public order and that their contents incited racial hatred and lawless action against the Choclo, and 2) gravely imperil the Nation's Security. The Court further stated that the possibility of such a limitation is inherent to Article 13 of the American Convention and that the instrument as a whole must be interpreted in the light of Article 32.2, even if the Article itself already contains specific limitations. The Estrada brothers appealed to the Supreme Court but the decision was affirmed on August 11, 1995.

### **Criminal Proceedings**

According to the Ithakian Penal Code, defamation is defined as:

“ To make before others accusations of dishonest behavior or of behavior contrary to good morals; or the attribution of any behavior which affect a person's reputation or holds him or her up to ridicule or shame in the eyes of the community. Persons accused of defamation will not be punished if it is shown that the allegations are true.

1) The offence is aggravated if it is committed in print or broadcast or otherwise in such a manner that the defamation becomes accessible to a broad public.

2) Those who publish or reproduce defamatory statements made by other unidentified sources will be prosecuted as the author of the offense.

Defamation will be punished by the imposition of a fine of up to 500,000 Ulysses or prison sentences of up to two years.”

### **The Ortiz Case**

Former President Ortiz initiated criminal proceedings against the Estrada brothers for defamation in reaction to the allegations he had tampered with the Truth Commission's statistics and the abusive language used in referring to his person contained in the articles published on March 5, and March 12, under the title, “Private Talk”.

The Estrada brothers refused to reveal the name of their second source. As to the remarks made by their source about former President Ortiz, the brothers claimed that, as a public figure, he was open to such attacks, as all government action was of general interest to the nation and should be open to public debate without interference. Finally, they concluded that many of the comments

they themselves had made were only value judgements, made in good faith, based on the facts presented to them by reliable sources.

On April 18, 1995, the Lower Court found the brothers guilty as charged of defamation and fined them an amount of 500,000 Ulysses (\$100,000US). The court found that brothers had failed to ascertain the veracity of the contents of the published materials. The court also ruled that many of the personal remarks aimed at the former President by the unidentified military officer and by Rémulo and Rómulo Estrada, being based on unverified and unproven facts, were insulting and defamatory. The Court of Appeals affirmed this decision on July 30, 1995. Seven days later, the Supreme Court declined to hear the case on appeal.

After the sentence, Rémulo Estrada gave an interview to the press. He lamented the Court's decision but promised to continue his research into the facts so as to clarify all of the remaining doubts. Former President Ortiz made comments in public that a new truth commission might be needed to settle all questions raised.

### **The Proceedings before the Ithakian Press Association**

On August 1, 1995, after confirmation of the criminal sentence for defamation against Rómulo and Rémulo Estrada, the Ithakian Press Association initiated a professional ethics proceedings against the brothers. The Association is a professional body created by law to supervise the application of the Press Code of Ethics. Compliance with the code is supervised by a panel of three persons chosen by the Association's assembly, one each from television, radio, and the print media for a term of 5 years. During the panel's proceedings, the brothers were assisted by legal counsel. One of the tribunal members was the brother-in-law of former President Ortiz. The law did not make allowances for legal action in opposition to the decisions of the Association.

On August 15, 1995, the Ithakian Press Association voted to suspend the brothers for unethical conduct. Although suspension, and even expulsion, from the Association has no official consequence, in practice, due to the Association's prestige, it is very difficult for a non-member to find work in the majority of the country's newspapers.

### **Death of Rémulo Estrada**

The conclusion of these different proceedings did not end the controversy created by the articles.

In early July 1995, Rémulo Estrada filed requested police protection because he had received numerous anonymous threats from persons demanding that he end his research. The government replied that this was not surprising, as many persons had been deeply offended by his articles. Nevertheless, they assigned Rémulo Estrada a police escort.

A few weeks later, Rémulo Estrada complained that the police escort intruded on his private life, hampered his research, and requested that it be suspended. On August 22, 1995, the country was



once more shaken by an unexpected development. The body of Rémulo Estrada, with six gunshot wounds, was found in a vacant lot in the outskirts of the country's capital. His brother Rómulo declared that on the previous night he had received a telephone call from Rémulo a few minutes after 9:00 pm. Rémulo Estrada had wanted to discuss something urgently and asked if they could meet that evening. Rómulo agreed to meet his brother, and though he waited until well after midnight, Rémulo never arrived.

The preliminary investigation took testimony from four homeless men who had been sleeping in the street in front of Rémulo Estrada's home; they affirmed that on the night in question, at about 10:00 p.m., they had seen five men drive up in a dark car and force another man, who had just come out of the home, into the car. They recognized this man as Rémulo Estrada. The men then drove off in the direction of the city's downtown.

On August 30, two policemen and two ex-soldiers were arrested under suspicion of having participated in the murder of Rémulo Estrada.

However, in September 1995, Ramón Angenor, an ex-policeman turned private security guard, confessed to killing Rémulo Estrada. He declared that, on the night of August 21 at a little after 10:00 pm, he saw Rémulo Estrada, whom he knew slightly, while making one of his rounds in the neighborhood. Rémulo asked for a ride into town as his car had broken down. Once inside the car, Rémulo allegedly began to act strangely, spoke of some great secret, and said that he was fearful for his life. He then pulled out a gun and said he had decided to kill himself. Ramón Angenor declared that he had tried to take away the weapon and accidentally shot Rémulo in the struggle that followed. Afraid of the consequences, he had then taken the body to a secluded place and shot several bullets into Rémulo's body to make it seem like an execution.

He denied having been accompanied by anyone else on the night of the crime. When asked why he had come forward, Ramón Angenor declared that he had recently re-converted to Christianity and wanted to make peace with God.

The prosecution chose to accept Ramón Angenor's statement in spite of many contradictions between his statement and those of other witnesses, and the repeated declarations by Rómulo that his brother had never possessed a gun and had acted perfectly normal. The prosecution established that the statements made by the homeless were unreliable and rejected their use in this criminal action. On September 16, 1995, all other suspects were released and the cases against them dismissed.

On January 10, 1996, Ramón Angenor was convicted and sentenced to a two-year suspended sentence. As allowed in the code of Criminal Procedure, an appeal was filed, and on February 2, 1996 the Appeals Court affirmed the Lower Court's ruling. Three days later, the Supreme Court declined to hear the case on appeal.

On February 7, 1996, Rómulo Estrada submitted a petition to the Inter-American Commission on Human Rights on his and his brother's behalf claiming violations of Articles 2, 4, 8, 13, 25, and 1.1 of the American Convention on Human Rights.

On February 2, 1998, the Commission adopted its preliminary report in accordance with Article 50 of the Convention. On February 8th, the Commission referred the report to the Government of Ithaka.

On April 3, 1998, the Government of Ithaka wrote the Commission to inform it that new facts had been brought to the attention of the prosecutor who had re-opened investigations into the death of Rémulo Estrada. The Government also announced that negotiations with the petitioner had begun once more and requested that the Commission to suspend the delay established in Article 51 to give it time to reach an friendly settlement and comply with the Commission's recommendations.

On May 4, 1998, Rómulo Estrada informed the Commission that he had been unable to reach an agreement with the Government. On May 8, 1998, the Commission referred the case to the Inter-American Court of Human Rights.