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**IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
SAN JOSE, COSTA RICA**

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**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

**Petitioner**

**V.**

**REPUBLIC OF AZAR,**

**Respondent**

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*Case of Rosa Luna v. Republic of Azar  
(Torture Case)*

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**MEMORIAL FOR THE RESPONDENT**

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## STATEMENT OF FACTS

The Republic of Azar (hereinafter “Azar”) is a developing country. (Clarification Questions at ¶ 13, hereinafter “C.Q.”) In 1993 it adopted a democratic system, reformed its constitution and gave international human rights treaties and agreements constitutional status. (R. at ¶ 1.) Since 1893, the northern region has sought to gain its independence from Azar due to social and economic differences. (R. at ¶ 3.) The Luna family has been continuously linked to various organizations seeking to fulfill the aim of northern secession. (Id.) In 1950, Raúl Luna founded the Organization of National Unity (UNO) which has recently adopted a policy of “direct action.” (Id.) Their methods include sporadic armed action, assassination, kidnapping, bank robbery, and police and military warehouse robbery to deal symbolic blows to the government and to further fund its mission. (Id.) Specifically, members of the UNO are reported to have assassinated five security forces members, committed two bank robberies, ten robberies against police and military warehouses, and thirty-five kidnappings over the course of three years. (R. at ¶ 4.)

While the Luna family has tactically rejected the activities of the UNO, Rosa Luna (Luna) was implicated by Josué Guevara, who was one of the three members of the group apprehended during an attempted heist at the Nueva Armenia military supply warehouse. (R. at ¶ 4.) Luna is the niece of Raúl Luna. (Id.) The Catholic University of Azar where Luna is a professor – and where Guevara is a student – has also been linked to the UNO. (Id.)

The arresting officers obtained a warrant for Luna’s arrest prior to her detainment and took her into custody Friday, June 13, 2003. (R. at ¶ 5.) The arresting officers immediately informed Luna of the reason of her arrest and advised her of her rights. (Id.) She was accused of being a co-perpetrator of terrorism and of funding the UNO. (Id.) Upon arrival at the Woman’s

Detention Center, Luna called her attorney, María Chumbipa, and her partner, Juan Sol. (R. at ¶ 6.) Luna’s attorney did not file for a writ of habeas corpus at that time, but did request the release of her client before the Court on Duty, which denied her request as prohibited by law due to the fear of collusion among co-perpetrators of terrorism. (R. at ¶ 13; C.Q. at ¶ 18.) Luna resided in a twenty-three square-foot cell with bed, blanket, and dim lighting. (R. at ¶ 7.) The cell lacked a sink and toilet; however, those amenities were provided her with supervision. (Id.) That weekend, Luna unexpectedly began menstruating. (R. at ¶ 8.) Because the storage room was closed for the weekend, Luna received sanitary napkins in addition to a change of clean clothing after her medical exam on the morning of Monday, June 16. Luna was given sanitary napkins in abundance later that week. (R. at ¶¶ 9, 15.)

That same morning, Dr. Luciano Duche, Luna’s colleague at Catholic University, gave her a psychological exam to determine her health and emotional state at the time of her arrest and detention. (R. at ¶ 9.) He discovered she had a “fear of dirtiness,” illness, mistreatment, and violence. (Id.) Dr. Duche was hired by the Ministry of Justice to be in charge of medical attention for the detainees of the Women’s Detention Center. (C.Q. at ¶ 11.)

Later on Monday, Luna met with her attorney for fifteen minutes prior to the start of interrogation. (R. at ¶ 10.) The interrogation period lasted one week; from Monday, June 16 to Sunday, June 23 for approximately four to fourteen hours a day. (R. at ¶¶ 11, 12, 14, 18.) Sergeant Jorge Fortunato and Colonels Lino Lona and José Jundia conducted the interrogations. (R. at ¶¶ 11-12.) Dr. Líbero Carnelutti, a psychiatrist, was hired by the Ministry of the Interior to assist in the investigation of matters related to the national security of Azar. (R. at ¶ 11; C.Q. at ¶ 11.) Both Guevara’s and Luna’s interrogations were conducted according to national security interrogation guidelines established by a ministerial order prior to Luna’s arrest.

(R. at ¶ 23; C.Q. ¶ 26.) The guidelines were written by Red Cross consultant Professor Gabriel Guerra of the Private University of Azar at the behest of the Ministry. (Id.) The guidelines contained the following directives:

**Acceptable Techniques-** “[...] 3) Detainees may be interrogated for up to 20 continuous hours per day; 4) Detainees may be interrogated sitting down, standing with raised arms or lying down; 5) Detainees may be interrogated in the facilities available in the detention center where they are being held, or they may be taken to other facilities of the security forces; [...] 15) Detainees may be held in individual or group cells; 16) The cells may have artificial lighting during the entire day, and the light bulbs may be between 25 and 200 watts; and 17) Detainees may have a blanket and a Bible in their cell.”

**Control over interrogations-** “1) Interrogations must include psychological or psychiatric and medical advising to ensure the effective taking of statements and the well-being of the person being interrogated; 2) The information in the detainee’s clinical medical and psychological file shall be taken into account during interrogations [...].” (R. at 23).

Unbeknownst to the Ministry, Sergeant Fortunato derogated from the guidelines both Friday, June 20 and Saturday, June 21 by subjecting Luna to bright lights, recorded sounds of people screaming in pain, and threats that the same fate awaited her if she did not cooperate. (R. at ¶ 15.) These sessions lasted four hours each day. (R. at ¶ 14.) During those sessions, Sergeant Fortunato had Luna stand with her arms raised for forty-minute increments. (Id.)

On Saturday, June 21, Luna bathed, ate in the cafeteria, went out into the detention center’s yard, and interacted with other detainees. (R. at ¶ 15.) Fortunato returned to the original, approved interrogation methods on Sunday, June 22. (R. at ¶ 16.) All interrogations stopped on Monday, June 23. (R. at ¶ 18.) That day, Luna met with her partner for half an hour and later with her attorney for a private, unrestricted two-hour meeting. (R. at ¶ 17.) On Thursday, June 26, Luna appeared before the judge presiding over her case concerning her involvement with UNO. (R. at ¶ 18). She was acquitted on July 28, 2003 for lack of sufficient proof. (Id.)

Luna filed criminal charges with the Public Prosecutor against all of the people she considered involved in her interrogation. (R. at ¶ 20.) The Public Prosecutor charged Sergeant Fortunato, Colonels Lino Lona and José Jundia, the Minister of Justice, Minister of Defense, and the Minister of the Interior as principals and accessories to the crime of torture. (R. at ¶ 24.) The Public Prosecutor dropped the claims against Professor Guerra because he was not a public official and drafting the memorandum did not make him an accomplice or abettor in the crime of torture. (Id.) The charges against Dr. Duche and Dr. Carnelutti were also dropped for their roles as psychologist and psychiatrist, respectively, were not determinative in to the commission of torture. (Id.) The Criminal Trial Court dismissed the charges against Colonels Lino Lona and José Jundia, the Minister of Justice, Minister of Defense, and the Minister of the Interior due to their lack of direct involvement in the torture and principal of legality. (R. at ¶ 26.) The court sentenced Fortunato to four years of imprisonment finding that the physical and psychological consequences of his actions were consistent with the crime of torture in accordance with Article 100 of the Criminal Code of Azar. (R. at ¶ 25). The Criminal Code reads as follows:

**Title I “Crimes against the person,” Chapter II “Crimes of bodily harm,”**

**Article 72-** “[a]ny person who causes harm to another’s body or health that is not anticipated in another provision of this Code shall be sentenced to term of imprisonment of one month to one year;”

**Article 73-** “[a] term of imprisonment of one month to five years shall be imposed if the bodily harm results in the permanent debilitation of the victim’s health, a sense, an organ or a limb, or results in a permanent difficulty in speech, or if the victim’s life was placed in danger, or if the victim was incapacitated from work for more than one month”

**Article 74 states:** “[a] term of imprisonment of two months to six years shall be imposed if the bodily harm results in a physical or mental illness that is certainly or probably incurable, permanent incapacitation from work, the loss of a sense, of an organ, of a limb, of the use of an organ or limb, of speech or of the ability to procreate.”

**Title II “Crimes Against Liberty,” Chapter I “Crimes against individual liberty”**



**Article 100-** “Any public official who tortures a person deprived of his or her liberty shall be punished by a term of imprisonment of two months to six years.” (R. at 21.)

Subsequently, both Fortunato and the Officer of the Public Prosecutor appealed the decision. (R. at ¶ 27.) The Criminal Court of Appeals affirmed Fortunato’s conviction and the dismissal of the Ministry. However, the court sentenced Colonels Lino Lona and José Jundia to four years and one month imprisonment due to their immediate superiority to Fortunato and their direct involvement in the supervision of his tortuous acts. (R. at ¶ 27.)

Luna submitted the issue of Azar’s liability in her detention treatment before the Inter-American Commission on Human Rights. (R. at ¶ 29.) The Commission found Azar to be in derogation of its international duties and issued its recommendations. (R. at ¶ 31.) Upon the completion of the proceedings, the case was submitted to the jurisdiction of the Inter-American Court of Human Rights for the present adjudication. (R. at ¶ 32.)

## **LEGAL ANALYSIS**

### **I. STATEMENT OF JURISDICTION**

The Honorable Court has jurisdiction to hear this case. The Republic of Azar is a State-Party to the Organization of American States. The Republic of Azar accepted the binding jurisdiction of the Court in 1995, the same year it ratified the American Convention on Human Rights.<sup>1</sup> This Court is authorized to adjudicate matters concerning application and interpretation of the American Convention on Human Rights pursuant to Article 62 and 63 of the Convention. All domestic remedies were exhausted as Rosa Luna brought her case to the trial court on June 2, 2006 where the cases against Colonels Jundia and Lona and the Ministry were dismissed.<sup>2</sup> Rosa

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<sup>1</sup> R. at ¶ 2.

<sup>2</sup> R. at ¶¶ 25-26.

Luna appealed to the highest court of Azar, The Court of Criminal Appeals which reversed the case dismissals of Lona and Jundia and sentenced them to prison.<sup>3</sup> Its decision was final September 18, 2006. Rosa Luna timely filed her petition to the Inter-American Commission on Human Rights on December 5, 2006, which is within three months of the six months required under Article 32 of the Rules of Procedure of the Inter-American Commission on Human Rights. After the issue of its report, the Republic of Azar realized it could not comply with the Commission's recommendations. Upon the completion of the proceedings required under Articles 48 and 50 of the American Convention on Human Rights, the Commission submitted the case to the Inter-American Court pursuant to Article 61.<sup>4</sup>

**II. THE COURT SHOULD FIND THAT AZAR HAS FULFILLED ITS OBLIGATION TO PROTECT LUNA'S PERSONAL LIBERTIES, AND ENSURE JUDICIAL GUARANTEES AND PROTECTION BECAUSE SHE WAS LEGALLY DETAINED, INFORMED OF THE CHARGES, NEVER DEPRIVED RECOURSE TO A COMPETENT COURT AND RECEIVED A FAIR TRIAL.**

**A. Luna was not arbitrarily denied her right to personal liberty under Article 7 of the American Convention.**

Azar rejects Luna's claim that she was deprived of her personal liberty due to an arbitrary arrest or imprisonment. The American Convention on Human Rights (hereinafter "American Convention") provides that everyone has the right to personal liberty and security<sup>5</sup> and no one should be arbitrarily arrested or imprisoned.<sup>6</sup> The prohibition of arbitrary arrest and detention is cited in many international and regional conventions.<sup>7</sup> According to the House Committee,

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<sup>3</sup> R. at ¶ 27.

<sup>4</sup> R. at ¶ 32.

<sup>5</sup> American Convention on Human Rights, O.A.S. Off. Rec. OEA/Ser.L/V/II.23 doc. 21, rev. 6, art. 7(1) (1979)(hereinafter "Art.").

<sup>6</sup> Art. 7(3).

<sup>7</sup> Article 9 of the Universal Declaration, Article 9(1) of the ICCPR, Article 6 of the African Charter; Article XXV of the American Declaration, Articles 7(2) and 7(3) of the American Convention, Article 5(1) of the European Convention, Article 55(1)(d) of the ICC Statute.

“arbitrary” is equated with unlawfulness, inappropriateness, injustice and lack of predictability.<sup>8</sup>

The African Commission held that the mass arrests and detentions of office workers on suspicion that they had used office equipment for subversive ends were arbitrary.<sup>9</sup>

Prior to Luna’s arrest, Azar criminalized terrorist activity and prohibited the release of suspected terrorists during the interrogation period under its criminal code. The arrest was carried out in connection with a lawful inquiry accompanied by a judge issued warrant as a result of actual events, of which she was identified as a co-perpetrator. Unlike the frivolous charge of using office equipment for subversive ends, Luna was implicated for the more serious charge of funding terrorist activity through the “Foundation for the Poor” – a front for the UNO. Therefore, Luna’s arrest was not arbitrary where there was evidentiary support, and it was in accordance with previously established law.

Likewise, Luna’s pre-trial detention did not constitute arbitrary imprisonment. The House Committee requires pre-trial detentions to be necessary and reasonable under the circumstance.<sup>10</sup> Custody may be necessary to prevent flight, avert interference with witnesses and other evidence, or prevent the commission of other offences.<sup>11</sup> Moreover, a person may be detained when they constitute a clear and serious threat to society which cannot be contained by any other manner.<sup>12</sup> The European Court held that continued pre-trial detention is justified “if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.”<sup>13</sup>

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<sup>8</sup> *Albert Womah Mukong v. Cameroon*, (458/1991), 21 July 1994, UN Doc. CCPR/C/51/D/458/1991, p. 12.

<sup>9</sup> *Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera Chirwa) v. Malawi*, African Commission on Human and Peoples' Rights, Comm. Nos. 64/92, 68/92, and 78/92 (1995).

<sup>10</sup> *Van Alphen v. the Netherlands*, (305/1988), 23 July 1990, Report of the HRC Vol II, (A/45/40), 1990, at 115.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Van der Tang v. Spain*, (26/1994/473/554), 13 July 1993, para. 55.

The Criminal Code of Azar prohibits the release of pre-trial detainees only when the detention is in connection to national security. Luna's imprisonment was necessary to prevent the commission of other terrorists acts which Azar feared would have likely occurred if she was allowed contact with UNO members. In light of the recent kidnappings and assassinations, and bank and military warehouse robberies, the UNO had the finance and resources to pose a serious threat to national security. Luna was personally identified by a UNO member as a one of their financial backers, she was employed at a university known to have UNO connections, and she is of direct blood relation of the founder of the organization. It was in the public's interest to take precautions in the interest of national security, thus Luna's detention was reasonable and necessary.

In the *Suárez-Rosero* case, the court held Ecuador violated Article 7(2) and (3).<sup>14</sup> Since the suspect was not caught red-handed, a warrant issued by a competent judicial body was required for his arrest.<sup>15</sup> The first judicial proceeding relating to the detention occurred over a month after his arrest in violation of Ecuador's criminal code which prohibits *incommunicado* detentions to exceed twenty-four hours.<sup>16</sup> Also, Ecuador's actions warranted reprimand because the detainee was held in a police station.<sup>17</sup> Unlike *Suárez-Rosero*, there was a warrant for Luna's arrest and she was not held *incommunicado*. Therefore, the Court should find Luna was not arbitrarily deprived of her liberty.

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<sup>14</sup> *Suárez-Rosero Case*, Judgment November 12, 1997, Inter-Am. Ct. H.R. (Ser. C) No. 35 (1997).[hereinafter *Suárez-Rosero*]

<sup>15</sup> *Id.* at para. 44.

<sup>16</sup> *Id.* at para. 48.

<sup>17</sup> *Id.* at para.46.

**B. Luna was promptly notified of her reason for detention and charges, and brought before a judge.**

Although Luna only alleged a violation of Article 7(3) of the American Convention, the Commission determined that Azar was in violation of Article 7 without specifications. Azar maintains that Luna was not deprived of her personal liberty in violation of any other provision in Article 7. The American Convention requires that detainees are informed of the reason for their detention and “promptly notified of the charge or charges against him.”<sup>18</sup> The officers immediately advised Luna of her rights and informed her of the charges against her during her arrest in compliance with Article 7(4).

Article 7(5) requires States to ensure that detainees are brought “promptly before a judge” and “entitled to a trial within a reasonable time or released without prejudice to the continuation of the proceedings.” The term “promptness” is determined based on the “attendant circumstance[s]” surrounding the case.<sup>19</sup> In the *Castillo-Petruzzi* case, the court found a Peruvian law that permitted a person suspected of treason to be detained *incommunicado* for fifteen days with a possible fifteen-day extension without appearing before a judge violated the American Convention.<sup>20</sup> The decision hinged on the fact that the detainee was held thirty days *incommunicado* before hearing from a judge.<sup>21</sup> Presumably, the initial fifteen-day maximum was permissible as reasonable and prompt under the American Convention. Unlike *Castillo-Petruzzi*, the Petition was not held *incommunicado* for more than thirty days. Under Azar’s legal system, the initial interrogations period usually lasts one week during which, detainees are not allowed visitors outside of legal counsel. Luna appeared before a judge thirteen days after her

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<sup>18</sup> Art. 7(4).

<sup>19</sup> *Castillo-Petruzzi Case*, Judgment of May 30, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 52 (1999), para. 108 (citing *Cf. Eur. Ct. H.R., Brogan and Others Case*, decision of 23 March 1988 (Ser. A) No. 145-B, paras. 58-59, 61-62 (1998)).

<sup>20</sup> *Id.* at para. 110.

<sup>21</sup> *Id.*

arrest, which is far less than the thirty days endured in *Castillo-Petruzzi*. Upon these facts, Azar urges the Court to find that Azar's one-week interrogation period with limited visitation and prompt oversight of an impartial judge is in compliance with international standards.

**C. Luna was not deprived of recourse to a competent court under Articles 7(6) or 25 because neither she nor her attorney requested a review of the lawfulness of her detention or the legality of her treatment prior to trial.**

Luna failed to apply for a writ of *habeas corpus*, an opportunity guaranteed under Azar's laws. Article 7(6) states that those deprived of their liberty are "entitled to recourse from a competent court" to decide, without delay, the lawfulness of the detention and order the release of the unlawfully detained as a remedy. As stated above, Luna promptly appeared before a judge. The court was competent to hear her case as it was an independent judicial body rather than an *ad hoc* military tribunal. Luna appeared before the judge on June 26, 2003. She was acquitted and immediately released on July 28, 2003.

In *Suárez-Rosero*, Ecuador argued its constitution provided for *habeas corpus* and its code of criminal procedure allowed detainees to appeal to a higher court than the one in which issued their deprivation. Its constitution stipulated that upon receipt of the written request, the detainee shall be brought before the deciding judge. Despite having this remedy, there was no evidence that the plaintiff in *Suárez-Rosero* filed for *habeas corpus* prior to fourteen and a half months of detention.<sup>22</sup> Therefore, the remedy was not denied and the state did not violate Article 7(6).<sup>23</sup>

Azar provides the guarantee of a writ of *habeas corpus* in its domestic law. During her detention, neither Luna nor her attorney filed for a writ of *habeas corpus* either for herself or on

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<sup>22</sup> *Suárez-Rosero*, para. 60, 61.

<sup>23</sup> *Id.*

her behalf. Instead, her attorney appeared before the Court on Duty and merely presented an oral request for Luna's release. There was, ultimately, no need to file for a writ since Luna would appear before a judge within a reasonable time in order to review the lawfulness of her arrest. Nonetheless, as in *Suárez-Rosero*, the fact that Luna did not file for a writ of *habeas corpus* undermines any claim that she was in fact denied a judicial remedy.

In conjunction with Article 7(6), Luna was not denied the right to judicial protection of her judicial guarantees. Article 25(1) states:

“Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his *fundamental rights* recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.” (emphasis added).

The right to personal liberty and fair trial are not in themselves fundamental rights recognized in the American Convention under Article 27 except as far as they are needed to ensure the protection of identified fundamental rights. The only fundamental right the petition has alleged is the right to human treatment, which is discussed fully in subsequent sections. Under Article 25(2), Azar is required to undertake the following:

- a) “to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b) to develop the possibilities of judicial remedy; and
- c) to ensure that the competent authorities shall enforce such remedies when granted.”

As stated earlier, Luna did not file for a writ of *habeas corpus* to determine either the legality of her detention or the deprivation of her right to humane treatment. Essentially, Luna cannot now

claim she was denied a right she never asserted. Therefore, Azar did not deprive Luna of her personal liberty rights guaranteed under Article 7, 25, and 27 of the American Convention.

**D. Luna was not denied the right to a fair trial under Article 8 of the American Convention.**

Luna was given a hearing and trial with due guarantees in accordance with the American Convention. Article 8(1) of the American Convention states:

“Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

Luna had a hearing within a reasonable time. The hearing was on June 26, 2003 and her trial ended July 28, 2003 with dismissal of the charges and her immediate release.

*Suárez-Rosero* cited three factors to take into account in the determination of the presence of judicial guarantees.<sup>24</sup> They are the complexity of the case, the procedural activity of the interested party, and the conduct of the judicial authorities.<sup>25</sup> *Suárez-Rosero* involved individuals suspected of the serious crime of treason. In *Suárez-Rosero*, a fifty month preceding was deemed unreasonable despite the fact that the court found the plaintiff guilty. First, the hearing was conducted by an *ad hoc* military tribunal where the detainee appeared before a panel of hooded judges in violation of Article 8(1). Second, the detainee’s lengthy detention violated his presumption of innocence under Article 8(2). Lastly, his *incommunicado* detention for thirty-six days in a police station violated 8(2)(c)-(d) because it prevented him from adequately

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<sup>24</sup> *Suárez-Rosero*, at para. 72.

<sup>25</sup> *Id.*



preparing a defense and denied him the right to freely consult with his attorney.<sup>26</sup> The Court held that Ecuador violated Article 8 of the Convention under those circumstances.

*Suárez-Rosero* is clearly distinguishable from the current case. Here, Luna appeared before an impartial court, independent from the executive branch, previously established by law as competent to hear such cases. Furthermore, Luna was not denied the right to of presumed innocence. Luna was detained for only a little over a month during her trial which is far less than the five years endured in *Suárez-Rosero*. Unlike in *Suárez-Rosero*, Luna enjoyed unrestricted private consultation with her attorney which ensured adequate time and means to prepare her defense as evidenced by the fact that she won her case. Under these favorable circumstances, the court should find that there was no violation of Article 8 of the American Convention.

**E. Azar is not in violation of Article 1(1) and (2) because it has fulfilled all other duties imposed under the American Convention.**

Azar has fulfilled its duty to incorporate its international commitments into its new democratic regime. Article 1 of the American Convention requires states to respect the recognized rights and freedoms within the convention and ensure the free and full exercise of those rights and freedoms without discrimination. Azar recognized such rights as evidence by the fact that the petition was not deprived of the rights contained in Articles 7, 8, and 25.

Article 2 further requires States to adopt legislative or other necessary measures to effectuate those rights. Azar incorporated the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará) and FDP into its legal system which guarantee most of the rights recognized in the American Convention. Therefore, the court should find that the Republic of Azar has duly incorporated its international responsibilities into its newly-established democratic regime.

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<sup>26</sup> *Id.* at para. 79.

**III. THE COURT SHOULD FIND THAT AZAR HAS NOT VIOLATED ITS DUTIES UNDER THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE BECAUSE AZAR ENACTED A CRIMINAL CODE THAT PUNISHES TORTURE AND ADOPTED INTERROGATION GUIDELINES DESIGNED TO PREVENT TORTURE, DEGRADING AND INHUMANE TREATMENT.**

Azar's budding civil law system effectively criminalizes torture and other inhumane treatment of detainees. Article 26 of the American Convention recognizes the difficulty of full compliance soon after its ratification. It allows for progressive developments in state legal systems accounting for the deliberative legislative process. Although a developing nation, Azar has made notable efforts to drastically change its judicial system in order to fulfill its treaty obligations. Azar has incorporated various treaties into its constitution, adopted a comprehensive criminal code, and drafted interrogation guidelines, all in an effort to comply with international obligations.

**A. The criminal code effectively prevents and punishes torture and other cruel acts in compliance with Azar's regional and international obligations.**

Luna incorrectly asserts that Azar has not effectively addressed torture in its positive law. Article 6 of the Inter-American Convention to Prevent and Punish Torture (Torture Convention) requires States to take effective measures to prevent and punish torture within their jurisdiction. Article 6 of the Torture Convention requires that "all acts of torture and attempts to commit torture are offenses under criminal law . . . punishable by severe penalties." Azar has incorporated the Convention Against Torture (CAT) and the Torture Convention into its constitution. Also, Azar has enacted a criminal code which specifically prohibits and criminalizes the act of torture. Azar has implicitly adopted the definitions of "torture" set out in both the Torture Convention and the CAT,<sup>27</sup> rather than risking inadequacy by supplying its own

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<sup>27</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, at Art. 1 (Dec. 10, 1984).

restrictive definition. Azar effectively punishes “torture” and “bodily harm” by assigning various imprisonment sentences that accounts for the seriousness of the nature of the crime and the resulting harm. The severity of the criminal penalties for torture and bodily harm also serves as a deterrent. Individuals are less likely to engage in prohibited conduct when the penalty is severe. In addition to imposed penalties, Azar’s interrogation guidelines attempt to get to the root of the problem serving as an additional preventative measure.

**B. Azar’s interrogation guidelines prevent torture and other cruel acts in compliance with Azar’s regional and international obligations.**

Article 6 of the Torture Convention requires States to take effective measures to prevent and punish torture within their jurisdiction. Furthermore, it requires that “all acts of torture and attempts to commit torture are offenses under criminal law . . . punishable by severe penalties.” Article 7 of the Torture Convention specifically requires States to take measures to place special emphasis on the prohibition of the use of torture, cruel, inhuman, or degrading treatment or punishment in interrogation, detention, or arrest. States are required to prohibit torture, register detainees, train officials (provide interrogation guidelines) as well as document the detainees health and mental status upon entry through medical examinations.

Torture is not only criminal, but also against policy in Azar. Azar does not derogate from its commitment to its international and regional obligation to abstain from the use of torture even when dealing with terrorism. It is well known that torture is more likely committed during interrogation of detained terrorists. Azar has national guidelines for interrogating detainees suspected of committing crimes against national security which continues to prohibit the use of torture techniques. Officials are trained in accordance with these guidelines when dealing with terrorism. The interrogation guidelines were drafted by Professor Guerra in a memorandum at

the request of the Minister of Interior. Guerra is an expert in international criminal and human rights law. Additionally, he is a consultant to the Red Cross and as such is well versed in Azar's treaty obligations.

The guidelines only apply to situations where national security is at stake. Its purpose was to adapt interrogations to international obligations of the State including those arising under international criminal law. It was later approved by the Ministers of Interior, Defense, and Justice; all of which have no military or police connection. They are servants of the state who are designated with duty to protect the rights of their nationals.

Azar has complied with their obligation to document the detainees' health and mental status upon entry and provide medical examinations. The guideline section entitled "Control over Interrogations," requires medical examinations to document the detainee's health and well-being. Officials are required to give psychological or psychiatric and medical advising which are taken into account during interrogations.

The American Convention prohibits torture and bodily harm but does not identify specific techniques which have been shown to subject one to such torture or bodily harm. The "Acceptable Techniques" section allows detainees to be interrogated for up to 20 continuous hours a day, interrogation while the detainee is sitting down, standing with raised hands or lying down. The detainee may be held in the available detention center facilities, in individual or group cells with artificial lighting between 25 and 200 watts. This section should be read in conjunction with "Control over Interrogation" as well as the Criminal Code.

The acceptable interrogation technique is not uniformly applied to each detainee. Rather, they are dependent on the results of the individual's preliminary examination. Officials are reluctant to use any techniques that torture or are likely to cause the detainee serious bodily harm

due to the fact that they could be held individually liable under the Criminal Code. This is especially true since the seriousness of the injury is conversely proportionate to the length of imprisonment.

**IV. THE COURT SHOULD FIND THAT, UNDER ARTICLES 3 AND 7 OF THE TORTURE CONVENTION, THE CHARGES AGAINST DOCTORS LÍBERO CARNELUTTI, LUCIANO DUCHE AND PROFESSOR GABRIEL GUERRA WERE PROPERLY DROPPED AND THE CASES AGAINST MEMBERS OF THE MINISTRY WERE PROPERLY DISMISSED BECAUSE THOSE INDIVIDUALS DID NOT ORDER, INSTIGATE OR INDUCE THE FEW INCIDENTS OF TORTURE LUNA ENDURED.**

Luna continues her attempts to implicate the doctors, the professor and the Ministry in whatever torture or inhumane treatment she endured, but these claims have no basis. Article 3 and Article 7 of the Torture Convention control the issue of responsibility of public officials regarding torture:

Article 3:

- a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.
- b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

Article 7:

The State Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of torture in interrogation, detention, or arrest.

Contrary to her contentions, the medical personnel and Ministry involved in this case did not in their capacity, order, instigate, or induce any torture, inhumane or degrading treatment of Luna during her detention.

**A. Doctors Carnelluti and Duche did not order, instigate or induce use of torture in Luna's interrogations and were not in a position to have prevented it.**

Luna might argue that both doctors were hired to direct the course of her treatment while detained, and so were directly involved in or failed in their capacity to prevent her torture. This argument must be rejected as groundless. While Doctors Carnelutti and Duche were hired to monitor interrogations and the health of the detainees, they had no authority to intervene in the few instances of torture, thus their charges were dropped. Dr. Duche psychologically examined Luna's well-being during her detention as mandated by law. Doctor Carnelutti observed the interrogations, scrutinizing the effects they had on Luna. Luna may also allege that the doctors were hired, as often is the case in other jurisdictions, as "specialist personnel" to advise about torture that leaves the fewest macroscopic traces – physically or emotionally.<sup>28</sup> However, that is not the case here. Doctors Duche and Carnelutti were only in the position "to be in charge of medical attention" and "to assist in the investigation" respectively. Their involvement equated to the usefulness of a tent in a hailstorm – the doctors ardently guarded her mental and emotional well-being, but they were in no position to control the unauthorized actions of the military professionals who conducted the unlawful portions of the interrogations.

**B. Professor Guerra was a scholar-consultant who had no direct involvement in the few instances of torture that occurred.**

Luna may claim that Professor Guerra's involvement ordered, instigated or induced the limited torture or inhumane treatment she endured, but this argument is without merit. It was at the request of the Minister of the Interior that Professor Guerra of the Private University of Azar constructed guidelines for effective interrogation in cases involving national security. He was never present during interrogations. He simply proposed guidelines that the Ministry adopted. Furthermore, Professor Guerra is not a "public official" or "public servant," but rather a private

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<sup>28</sup> See Edward Peters, Torture: Expanded Edition 171 (1996).

consultant, so Articles 3 and 7 of the Torture Convention do not reach his actions or inaction. As an international law expert, and consultant to the Red Cross of Azar, the ministry trusted Professor Guerra's wisdom that the guidelines were harmonious with international obligations to prevent torture and inhumane treatment. In the past, this court has relied upon the opinions of scholars in its adjudications of human rights violations, so it is reasonable for the court to find that the ministry of Azar felt it was acting responsibly under international standards when it consulted Professor Guerra and relied on his expertise.<sup>29</sup> Therefore, this court should find that Professor Guerra's mere consultation did not amount to direct or indirect involvement in Luna's torture, and that the charges against him were properly dropped.

**C. The Ministers of Defense, Interior, and Justice did not order, instigate or induce Luna's torture.**

Luna argues that the Ministry was directly or indirectly responsible for her torture or that they failed to prevent it. However, this claim must also fail. The Ministers implicated in this case were far removed from the few instances of torture Luna endured. They were never present during interrogations. The interrogation guidelines established by ministerial order did not order "threats," which are deemed utilities of psychological torture.<sup>30</sup> On the contrary, the Ministry approved guidelines they felt were torture-free, yet still effective enough to counter the growing threat UNO's vicious regime poses to national security. Given the foregoing reasons, the Court should find that Professor Guerra, Doctors Duche and Carnelutti, and the Ministers of Defense, Interior, and Justice were not directly or indirectly responsible for any torture Luna underwent while detained, and that all persons responsible have been properly brought to justice domestically.

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<sup>29</sup> See *Loayza-Tamayo Case*, Judgment of September 17, 1997, Inter-Am. Ct. H.R. (Ser. C) No. 33, at paras. 45(h)-(j) (1997).

<sup>30</sup> See *Torture*, *supra*, note 24, at 169-71

**V. LUNA DID NOT SUFFER INHUMANE TREATMENT UNDER ARTICLE 5 OF THE AMERICAN CONVENTION BECAUSE SHE WAS AFFORDED SEPARATE TREATMENT RESPECTING HER UNCONVICTED STATUS WITH MORE THAN ADEQUATE DETENTION CONDITIONS AND WAS DILLIGENTLY EXAMINED FOR MENTAL AND EMOTIONAL HEALTH.**

**A. Detention conditions were more than adequate under the circumstances.**

Luna claims conditions of her detention amounted to inhumane or degrading treatment, but the court should find otherwise. Detention conditions were more than adequate under the circumstances. Azar recognizes that Article 5(4) of the American Convention demands:

Accused persons shall . . . be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

Also, this court has previously held that:

[A]ll persons detained have the right to live in prison conditions that are in keeping with personal dignity, and the State must guarantee their right to life and personal integrity. Consequently, the State, which is responsible for detention facilities, is the guarantor of these rights of detainees.<sup>31</sup>

Accordingly, Luna was placed in a private, twenty-three-foot-squared room and provided with bed and blanket in order to keep as warm and comfortable as possible. Although without toilet and sink inside her room, those amenities were made available to her when necessary. Luna claims that withholding bathroom privileges was a form of the inhumane treatment inflicted upon her; however, guards explained to her that authorized personnel sometimes were unavailable to escort her to the bathroom or shower given her rather late requests. This is far different from never being allowed to use the bathroom and cleanse oneself which this court has deemed inhumane.<sup>32</sup>

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<sup>31</sup> *Cantoral-Benavides Case*, Judgment of August 18, 2000, Inter-Am Ct. H.R. (Ser. C) No. 69, at para. 87 (Aug. 18, 2000).

<sup>32</sup> *See Case of the Miguel Castro Castro Prison v. Perú*, Judgment of Nov. 25 2006, Inter-Am. Ct. H.R. (Ser. C.) No. 160 (Nov. 25, 2006)[hereinafter *Castro Prison Case*].



Luna argues that her feminine needs were ignored. Conversely, the court should find that Luna actually received specialized attention to her situation as a woman. Azar understands it is settled law that adequate health care for female detainees is a must.<sup>33</sup> In the *Castro Prison Case*, the court has declared that a state must provide regular physiological care to its female prisoners, especially when they happen upon their periods.<sup>34</sup> Luna stipulates that she was given clean clothes, opportunities to bathe, and ample sanitary napkins when available. Thus, Azar prison officials afforded her the special attention this court requires as regards maintaining sanitary conditions for Luna's situation.

No international covenant imposes that governments recognize a woman's right to sanitary napkins, but the prison accommodated Luna's condition, respecting her personal integrity. This was in accordance with Article 5(2), demanding that "[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

**B. Azar respected Luna's physical, mental, and moral integrity.**

Azar made significant efforts to respect Luna's physical, mental, and moral integrity. The Azar "Acceptable Techniques" demand that "[i]nterrogations must include psychological or psychiatric and medical advising to ensure the effective taking of statements *and the well-being of the person being interrogated.*" (Emphasis added). Clearly, Azar contemplated the physical, mental, and moral well-being of its detainees in its anti-terrorism guidelines.

Historically, this court recognizes state violations of international norms where horrific treatment of female prisoners was present, which is certainly not the case here. In the *Loayza-*

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<sup>33</sup> *Caso Lori Berenson Mejía vs. Perú*, Sentencia de 25 de noviembre de 2004, Corte I.D.H., (Ser. C) No. 119 paras. 102-06 (2004).

<sup>34</sup> *Castro Prison Case*, *supra*, note 28, at para. 331

*Tamayo Case*, this court found that Perú had violated Article 5 of the American convention.<sup>35</sup> There, Ms. María Elena Loayza-Tamayo was a professor at a local university and denounced by a colleague as a member of a subversive unit associated with the alleged terrorist regime called the “peace accord.”<sup>36</sup> The court reasoned that allowing treatment “such as *incommunicado* detention, being exhibited through the media wearing a degrading garment, solitary confinement in a tiny cell with no natural light, blows and maltreatment, including total immersion in water, intimidation with threats of further violence, a restrictive visiting schedule [and alleged rapes which were unsubstantiated] . . . all constitute forms of cruel, inhuman or degrading treatment in the terms of Article 5(2) of the American Convention.”<sup>37</sup> The gravity of such behavior is not exhibited here.

This case is distinguished from the *Loayza-Tamayo Case*, demanding a different result. Like Ms. Loayza-Tamayo, Luna is a professor and was implicated in a terrorism investigation by a colleague. However, unlike incidents in the *Loayza-Tamayo Case*, Luna was given a twenty-three square foot cell, never struck, never submerged in water, and never raped. She was also not held *incommunicado* because she was able to call her attorney and partner on the night of her arrest, and able to meet with her attorney within three days of her arrest, which was the first available business day. In addition, the psychologist hired to examine her emotional state was in fact a colleague of hers from the Catholic University. Luna was surrounded by professionals willing to see her emerge from the interrogations with her physical, mental, and moral integrity in tact.

Therefore, despite the rogue actions of a few officials, who were sought out and punished domestically, the court should find that Azar took all preventive measures to ensure that Luna’s

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<sup>35</sup> *Loayza-Tamayo Case*, *supra*, note 24 at para. 58.

<sup>36</sup> *Id.* at para. 3(a)

<sup>37</sup> *Id.* at para. 58

physical, mental and moral integrity were respected as demanded in Article 5 of the American Convention. Azar should not be held in derogation of this international obligation.

**VI. THE COURT SHOULD FIND THAT, UNDER BELÉM DO PARÁ AND THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE AZAR HAS MAINTAINED AN INTERROGATION PROCEDURE THAT IS FREE OF TARGETED VIOLENCE AGAINST WOMEN BECAUSE THE CONDITIONS OF LUNA'S DETENTION WERE NOT OF THE HIGH GRAVITY THAT REQUIRE REPARATIONS IN THIS COURT.**

**A. Azar fulfilled its duties under the Inter-American Convention to Prevent and Punish Torture.**

The Torture Convention respects lawful means of investigation. Article 2 of the Torture Convention, defines torture as:

[...] any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

It further provides:

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures . . .

As previously stated, the interrogations were conducted according to procedures established by a ministerial order. The prison officials followed, for the most part, the lawful measures of interrogation identified in the Azar Code. Nonetheless, Azar punished the officials who were acting outside of the acceptable guidelines were responsible for the torturous actions in this case. Azar urges the court to note that Josué Guevara, the student who implicated Luna in terrorist activity was subject to the same guidelines for detention and interrogation, yet has not alleged personal injury against the State. Any harm Luna alleges derived from the acceptable course of

detention (i.e. dim lighting in the cell possibly causing her sensitivity to light) must be deemed “solely the consequence of lawful measures.”

**B. Azar fulfilled its duties under the Convention of Belém do Pará.**

Azar the rejects the claim that any lack of attention to her personal situation as a woman violated the States duties under the Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará). Azar has not violated its obligations under Articles 2 and 3 of the Convention of Belém do Pará. Article 2 states that “[v]iolence against women shall be understood to include physical, sexual and psychological violence” occurring either domestically, in the community, or “that is perpetrated or condoned by the state or its agents regardless of where it occurs.” Article 3 says that “[e]very woman has a right to be free from violence in both the public and private spheres.” Azar is dedicated to the principles advanced by these provisions.

There is no general practice of targeted violence against women in Azar’s interrogation regime. As evidence of the government’s intolerance of such deeds, the court can consider Azar’s performance in its domestic court, which found misconduct on behalf of three high-ranking State officials in Luna’s case.<sup>38</sup> Azar convicted and punished those responsible – action that is often lacking in the several human rights cases decided by this court.<sup>39</sup> Azar also maintains that all events Luna alleges were violations of provisions of the Convention of Belém do Pará do not rise to the level predetermined by this court to be actionable violence against women.

This court has considered cases involving violence against women where there was proof of “special contempt and extreme cruelty” against female prisoners in the context of Article 5 of

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<sup>38</sup> *Maritza Urrutia Case*, Judgment of November 27, 2003, Inter-Am. Ct. H.R. (Ser. C) No. 103, at para 96 (2003).

<sup>39</sup> *See, e.g., Castillo-Páez Case*, Judgment of November 3, 1997, Inter-Am. Ct. H.R. (Ser. C) No. 34 (1997).

the American Convention.<sup>40</sup> In the *Castro Prison Case*, prison officials conducted a massacre, on Mother's Day, upon two rebellious populations of the prison, one of which was the only female unit housing women accused of terrorism and treason.<sup>41</sup> Subsequently, the women were punished with solitary confinement, subjected to forced nudity, and not allowed to clean themselves or use the bathroom except by armed escort.<sup>42</sup> The Court noted that female prisoners had been "victims of a history of discrimination and exclusion due to their gender."<sup>43</sup> The court reasoned that the magnitude of the violence against women in Miguel Castro Prison compelled finding a violation of Article 5 of the American Convention, especially where the state failed to conduct "a serious investigation of the facts followed by prosecution of whoever appears as responsible for them."<sup>44</sup>

What Luna suffered does not rise to the level of harm exhibited in *Castro Prison Case*, thus it does not warrant international reprimand, especially where those responsible have already been punished. While the female prisoners in the *Castro Prison Case* were victims of a history of targeted violence, Luna is not. No evidence shows that Azar condones a practice of violence against women in its prisons. In fact, Luna was subject to gender neutral interrogation and imprisonment guidelines as evidenced by their application in the detention and interrogation of Josué Guevara. She was given a private cell out of respect for her unconvicted status, while the women in the *Castro Prison Case* were punished with solitary confinement for their involvement in the rebellion that incited the massacre. Also unlike the female prisoners in the *Castro Prison Case*, Luna was not subjected to forced nudity, and was afforded opportunities to cleanse herself during detention. It follows that this Court find Luna was not subject to violence punishable

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<sup>40</sup> *Castro Prison Case*, *supra*, note 27, at para. 259(h).

<sup>41</sup> *Id.* at 101, 109.

<sup>42</sup> *Id.* at 101.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 109.

under the Convention of Belém do Pará where facts support that any discomfort associated with her femininity was alleviated whenever possible.

### **CONCLUSION**

Given the measures the Republic of Azar implemented to ensure Luna's personal liberty and personal integrity, Luna was not denied of any rights under the American Convention on Human Rights. Furthermore, the Republic of Azar has fully complied with its obligations under the Inter-American Convention to Prevent and Punish Torture as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. Finally, the Republic of Azar has recognized the importance of human rights and has made great strides, despite internal conflict, and its developing status, to ensure the protection of such rights by incorporating the treaties of which it is a signatory into its constitution.

### **REQUEST FOR RELIEF**

Wherefore the Republic of Azar requests this Court:

1. Find the State in compliance with the American Convention on Human Rights Articles 1(1), 2, 5, 7, 8, and 25;
2. Find the State in compliance with Articles 3 and 6 of the Inter-American Convention to Prevent and Punish Torture;
3. Find the State in compliance with Articles 2, 3, and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, the "Convention of Belem do Para."