

2003: Valencia et al v. Liberté

Hypothetical Case

I. Historical Background

1. Liberté has been difficult to govern since it gained its independence in 1833, after a long and bloody war. It is bordered on three sides by neighboring countries, and to the west by the Pacific Ocean. It has a population of approximately 20 million, of whom approximately 50 percent are mestizo, 20 percent are indigenous, 20 percent are descendants of settlers from various European countries, and 10 percent are descendants of African lineage. As with the majority of its neighbors in the region, Liberté has been marked by severe disparities in the distribution of income, and strong divisions within society based on economic, ethnic and cultural lines.

2. The most recent milestone in the history of Liberté was the 1996 signing of the peace accords negotiated under the auspices of the United Nations to conclude a bitter internal conflict. While the conflict had spanned a decade, the armed insurgency never amassed enough power or popular support to obtain political control. At the same time, gross and systematic human rights violations committed by the Armed Forces and National Police, and to a lesser extent by the insurgency, during the conflict largely discredited the political parties and figures that had traditionally held power. In fact, between 1986 and 1996, the Inter-American Commission conducted four on-site visits, published four country reports, and approved 58 reports on individual cases finding the State of Liberté responsible for human rights violations. Five of those cases were submitted to the Inter-American Court, which declared the State responsible and ordered measures of reparation. While the conflict had been sporadic and concentrated in certain areas of the country, it had none-

2(n c)40 of 3. National elections were held in December of 1997, and the President took office on January 15, 1998. The new President, Claudia Reina, was the leader of the recently formed Liberté United Party, which characterized itself as representative of the citizen consensus against both rebellion through violence and control through repression. Its platform was fiscally centrist tending toward conservative, and moderately progressive on social issues, with its agenda based on the revitalization of democratic institutions and implementation of the peace accords.

4. The process of negotiating those accords had opened new spaces for political dialogue and provided important opportunities for the participation of non-traditional political actors in decision-making. Claudia Reina was herself the first woman elected President in Liberté. Among her Cabinet were women ministers of Justice and Economy, an indigenous Minister of Development and a Minister of Education of African descent. Incoming members of the National Congress were likewise more representative of the diversity of the country than in the past.

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5. In 1998, in compliance with the peace accords, a Constitutional Assembly approved amendments to the Constitution, which were subsequently ratified by a national referendum. In the area of human rights, there were three principal modifications aimed largely at preventing the kinds of abuses perpetrated during the conflict. First, the Constitution was amended to guarantee the protection of human rights recognized in treaties ratified by Liberté, with such treaties accorded juridical status equivalent to the Constitution itself. Second, the emergency powers vested in the Executive were further defined and limited. According to Article 101 of the Constitution of Liberté, as amended:

The President of the Republic may declare a state of emergency in all or part of the national territory in the event of imminent external aggression, war, serious internal disturbances, or natural disaster. Any individual rights affected must be expressly indicated in the decree. The President must notify the Congress of this declaration within 48 hours of its issuance. The state of emergency may last no longer than the exigencies for which it is required; if the state of emergency is not lifted within 90 days of issuance, it shall lapse automatically at the end of that period. The Congress may, if the circumstances justify it, revoke the decree at any time by majority vote.

Third, the constitution was amended to define the role of the Armed Forces as pertaining to external security, with the National Police responsible for internal citizen security.

6. In 1999, in furtherance of its commitment to the inter-American human rights system, Liberté established an inter-institutional working group to analyze the possible friendly settlement of individual cases, and assist in the implementation of decisions of the Inter-Commission and Court. In fact, the State was able to enter into friendly settlement processes in eleven individual cases, and settlements were reached in eight of those. In late 1999, Liberté ratified the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).

7. During the first Reina Administration, as Liberté moved forward with implementing the peace accords, it also experienced a period of greater than expected economic growth. Accordingly, the State was able to effectively channel the additional revenue into infrastructure, rural development initiatives, and education and health care spending, thereby beginning to reverse some of the economic and social consequences of the conflict.

II. The Current Situation

8. President Reina formally launched her reele

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impact on the economy of the country, as imports and exports were piling up on the docks.

14. In mid-October of 2001, these confrontations took a more dangerous turn. In several instances, gunshots were fired in the midst of protests that had turned violent. During the second half of October, five people were killed in such incidents, including a police officer. Ballistics tests confirmed what the State had insisted – that the guns used were not the regulations arms used by the security forces. A wide range of media sources began reporting that there were elements at work trying to destabilize the country and frustrate or manipulate the upcoming elections. Two prominent newspapers published unconfirmed reports that opposition figures planned to use protests to block roads in certain areas during the upcoming election.

15. As it became clear that the outbreaks of violence, including shootings, were not necessarily isolated or spontaneous, the State ordered the National Police to redouble its efforts to ensure security at these protests, investigate the shooting incidents and apprehend those responsible. The National Police assigned the greater part of its human and material resources to dealing with the protests and investigating the incidents of violence.

16. On October 28, 2001, the dockworkers' unions, frustrated at the refusal of the employers to negotiate on their demands that their contract terms be respected, called for a strike. The ports of Liberté were paralyzed. The gravity of the situation was exacerbated by the fact that some areas of the southwest hit hardest by the drought were now dependent on imported foodstuffs, which were rotting on ships because the workers refused to unload them. At this point, polls indicated that President Reina's approval rating was the lowest it had ever been.

17. The situation threatened to slip out of control. There were now thousands of people protesting in different areas of the country almost every day. Because the protests were springing up in so many different areas, it was difficult, if not impossible, for the National Police to respond quickly and effectively to each. At the end of each day, news reports included a recap of the number of injured in that day's protests. In the first half of November, four protesters and three police officers lost their lives from injuries sustained in violent confrontations. Dozens more were seriously injured. Three other protesters and two passers-by were killed as the result of gunshots fired in the midst of protests. At this point, the strike was estimated to be causing the equivalent of hundreds of thousands of dollars (US\$) in damage to the economy.

18. On November 7, 2001, President Reina declared a national state of emergency. The decree indicated that:

1. Given the situation of risk posed by increasingly violent protests in areas throughout the country; that elements acting in violation of the law are evidently distorting these protests to sow fear, confusion and turmoil;

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Forum aimed at protecting civil liberties and promoting democratic institutions. Members of the Democratic Forum, including lawyers, labor leaders and opposition activists, often took great risks to defend basic rights under attack during the conflict. Angela Valencia, Joel's mother, continues to work for the Forum as its legal advisor. Joel's father, Abraham Valencia, left the organization in late 1997, after he was elected to the National Congress as a candidate of the center-left Justice Party. He was campaigning for reelection in 2001 in one of many tight races.

26. Over the course of 2001, the Democratic Forum had been monitoring the Government's response to the deteriorating economic, social and political situation with mounting concern. The declaration of emergency had taken members of the organization aback in terms of its breadth, as well as the way it recalled the repressive measures imposed by executive decree during the internal conflict. The organization had

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32. On June 30, 2002, the Commission declared the case admissible with respect to the Articles listed, and placed itself at the disposal of the parties with a view to reaching a friendly settlement. The parties declined to enter into friendly settlement negotiations.

33. On November 25, 2002, the Commission adopted a report pursuant to Article 50 of the American Convention, finding that the situations denounced by the petitioners constituted violations of Articles 1(1), 5, 7, 8, 16, 19, 23, 25 and 27 of the American Convention, as well as Article 8 of the Protocol of San Salvador. The Commission recommended that Liberté take the legislative and other measures necessary to: reinstate and ensure the enjoyment of the rights concerned to the extent possible, and provide reparation where such reinstatement was not possible or sufficient. Information submitted by the State on January 5, 2003 in response to the Article 50 report indicated that these recommendations had not been implemented.

34. On January 25, 2003, the Commission referred the case to the Inter-American Court. On January 30, 2003, the Inter-American Court notified the State of Liberté accordingly. On February 5, 2003, Liberté directed a communication to the Inter-American Court indicating that, given that the measures questioned had been adopted precisely to uphold respect for basic rights, uphold the rule of law and ensure the effective exercise of the popular vote, it waived any preliminary objections. The Inter-American Court has scheduled a hearing for oral arguments on the merits of the case.

V. Relevant Instruments

35. Liberté has been a Member of the OAS since 1948. It is a Party to the American Convention, having ratified it in 1978 without reservations. It accepted the contentious jurisdiction of the Inter-American Court, through its declaration deposited in 1978 without special agreement. Liberté ratified the Protocol of San Salvador in 1999. As noted, Liberté participated with all the OAS member States in the adoption of the Inter-American Democratic Charter in 2001.

36. Outside the regional system, Liberté is Party to the ICCPR and the International Covenant on Economic, Social and Cultural Rights, both of which it ratified without reservation in 1980. It is also a member to the United Nations Convention on the Rights of the Child, ratified on February 21, 1998. The Universal Declaration of Human Rights and the American Declaration on the Rights and Duties of Man are also applicable to this case.

37. Finally, the Rules of Procedure of the Inter-American Commission that entered into force on May 1, 2001, and the Rules of the Inter-American Court that entered into force on June 1, 2001 apply in this case.