

2013 Inter-American Human Rights Moot Court Competition

Hypothetical case, by Victor Madrigal-Borloz, Principal Specialist at the Inter-American Commission on Human Rights (Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons) and Silvia Serrano, Human Rights Specialist at the IACHR (Litigation Group, which provides support in litigating cases before the Inter-American Court of Human Rights)

Case of Serafina Conejo Gallo and Adriana Timor v. Elizabetia

1. The Republic of Elizabetia is a country with an area of nearly 100,000 square kilometers, located in the American hemisphere. The ancestral home of the Granti indigenous people, Elizabetia was colonized by a European country in the 16th century, and gained independence at the beginning of the 19th century.
2. Following independence, Elizabetia underwent numerous political vicissitudes and changes in power until 1960, when the victorious faction of a final civil war set up a Constituent Assembly, which adopted the current Constitution and marked the beginning of the 6th Republic. Since that time, Elizabetia has been a democratic State.
3. Respected commentators have noted that this democratic tradition since the beginning of the 6th Republic may be due to various circumstances, but there is consensus that one such circumstance is the fact that control over the Executive Branch has alternated every five years between two majority political parties:
 - a. the Pink Party, traditionally identified with the right, and
 - b. the Blue Party, traditionally associated with the left.

There has never been an exception to this pattern of taking turns in office. The Elizabetians are of the opinion that this practice keeps the nation on a centrist political path, and stabilizes the most extreme tendencies of both the right and the left.

4. The Elizabetian State considered itself safe from the brunt of the volatile decades of the sixties, seventies, and eighties in the American hemisphere, and enjoys a solid international reputation for respecting human rights. The Elizabetians pride themselves on being a homogenous people with a shared system of social values. The Constitution of 1960 establishes the plurality of religions and freedom of worship.

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5. Elizabetian territory is divided, for administrative purposes, into seven provinces: Santa Débora, Santa Isabel, Santa Verónica, Santa María, Santa Marta, Santa Catalina and Santa Claudia.
6. From a geographic, political, and economic perspective, the territory contains three large regions:
 - a. The northwest, comprised by the provinces of Santa Débora and Santa Isabel, with an area of approximately 30,000 square kilometers and a population of four million. Although it is not mountainous, the territory of these provinces is fragmented, and therefore, not suitable for extensive farming. This circumstance, in addition to its

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privileged access to the sea, meant that the economy was driven by trade during the colonial period and industry during the 19th and 20th centuries. The inhabitants of Santa Débora and Santa Isabel enjoy much higher levels of health, literacy, and social wellbeing than their compatriots to the south; the population is 75% urban and 25% rural;

- b. In the center of the country is the Great Diagonal Volcanic Mountain Range, which divides the northwestern and southeastern regions, and comprises the province of Santa Verónica. The Great Mountain Range is an area with dramatic heights of great scenic beauty and few opportunities for mining or farming operations. In the middle of the only pass that allows for land contact between the northwest and the southeast, is the plateau, at 3,000 meters above sea level, where the city of San Benito is located. It was designated the capital during the colonial period because of its strategic location, and its economy is based on tourism and public services. San Benito is the political and cultural center of Elizabetia, and around two million people reside there. The population of San Benito also enjoys excellent levels of health, literacy, and social wellbeing, and is almost completely urban;
- c. The provinces of Santa María, Santa Marta, Santa Catalina and Santa Claudia, with two-thirds of the country's territory and around six million inhabitants, make up the Elizabetian southeast. Composed of vast, landlocked areas of grassland or savanna, they maintain the farming way of life they acquired during colonial times. During that period, the impoverished offspring of colonists received royal land grants, which were assigned to them together with the people living there—all members of the Granti people. The Grantis occupied the entire territory of Elizabetia, but lived mainly in the southeastern region. The population of Santa María, Santa Marta, Santa Catalina and Santa Claudia has much lower social indicators than the capital and the northwest; the population is 75% rural and 25% urban.

* * *

7. The capital city of San Benito was built during the colonial period on the ruins of the mythical city of Bra'granti, capital of the Granti kingdom. After several decades of effective resistance against colonial occupation, Bra'granti was destroyed in February 1531 in a ferocious attack by the colonial power.
8. Bra'granti is considered to have been one of the great man made wonders of the world. At its most prosperous time, at the end of the 13th century, it was inhabited by some 20,000 people, and its center contained an exquisite group of temples and monumental sculptures built out of grey stone and covered in jade. Granti'Itna, the supreme deity of the Granti religion, was worshipped at those temples. Granti'Itna was a person considered to be the height of perfection because s/he was born as a man and died as a woman—having been transformed halfway through life—and was considered to be the origin of the energy that keeps the cosmos in

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motion.

9. Fernando de Cáceres, an enlightened explorer, chronicler, and artist, spent time with the Granti people from 1505 to 1509. He chronicled their traditions and customs, and his “Cáceres’s Journals” are the richest source of information about them. In the spring of 1507, Cáceres recorded in great detail a ceremony to worship Granti’Itna:

The men chosen for the celebration, all very striking and dressed in their best finery, were regarded by the wise men, the royal court, and then by the crowd. Then they removed their finery and turned out to be beautiful Indian women, dressed in very ornate Indian women’s finery. For each Indian woman they brought another Indian girl to serve her, and all of them were the daughters of Indian chiefs. Then some other beautiful Indian women came to the dance, and when they removed their finery they proved to be young men and the sons of Indian chiefs. They were all given the name Granti’Itna-cent (“son-daughter of Granti’Itna”), and they live in the main temple. I am astonished and very unsettled by this ceremony.

10. During the colonial period, the colonial elites considered the Granti customs, language and religion to be barbaric and immoral, and punished their practice with whippings or torture. In the southeast, where for several centuries systematic measures were taken to eradicate and exterminate the Granti culture, the use of the Granti language disappeared. However, there are many aspects of Granti culture that have been assimilated into the customs, traditions, beliefs, and the very idiosyncrasies of the Elizabethian people.
11. In spite of the democratic stability that has existed in Elizabethia since 1960, the Elizabethian southeast is still marked culturally by the remnants of servitude, and even though the National Department of Social Welfare inspects the ranches there regularly, it is not unusual to hear of extremely poor and illiterate families living in servitude under the descendants of the aristocrats.

* * *

12. The Constitution makes reference to the family in the following terms:

Article 85: The family that results from the cohabitation of a man and a woman is the fundamental unit of society and warrants the special protection of all the institutions of the State.

13. On the right to equality and nondiscrimination, the Constitution establishes:

Article 9: All persons are equal before the law. All act or omissions that have the purpose or result of an arbitrary distinction, restriction, exclusion, or preference based on sex, race, national origin, ethnicity, religion, political opinion, sexual orientation, or gender identity, or other analogous social status, are prohibited. Any distinction, restriction, exclusion, or preference that is based on and/or takes account of any of

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these factors is presumed unconstitutional and must be justified by compelling reasons, be suitable, necessary, and strictly proportional.

14. Unconstitutionality actions are regulated as follows:

Article 110: An unconstitutionality action is a public right of action. It may be filed by any citizen in his or her individual capacity. The approval of the Office of the Human Rights Prosecutor of the Republic shall be a prerequisite to its filing. All unconstitutionality actions shall be filed directly before the Constitutional Chamber of the Supreme Court of Justice, and must be accompanied by the authorization granted by the Office of the Human Rights Prosecutor of the Republic.

15. The State Civil Code regulates the institution of marriage in the following terms:

Article 396. Any couple consisting of one man and one woman, both over 18 years of age, may enter into marriage by mutual consent. To do so, the couple must submit an administrative request to the National Secretariat of the Family. The marriage ceremony must be performed before a competent judicial authority and shall have legal and constitutional effects as from the time of its registration in the National Office of Vital Records.

16. Another provision of the State Civil Code was amended in 2009 following a judgment of the Constitutional Chamber of the Supreme Court of Justice. This judgment ruled that the phrase “between a man and a woman” in the civil regulation recognizing the concept of domestic partnership was unconstitutional.

17. As a result, the Constitutional Chamber granted the Legislative Branch a period of six months to enact the necessary legal amendments for the recognition of domestic partnership not to include any distinction between sex and/or gender. In 2010, the legislature made the respective changes, regulating the concept of domestic partnership in the following terms:

Article 406. Domestic partnership.

1. Domestic partnership is recognized with the legal effects described in Article 397 of this Code, in the case of a couple comprised by two individuals who prove, with suitable evidence, uninterrupted cohabitation for a period of five years. The existence of a domestic partnership must be judicially decreed. The exercise of the rights derived from the legal effects of domestic partnership is subject to the respective judicial decree.

2. A domestic partnership comprised by two individuals of the same sex has all of the effects described in Article 397 of this Code, with the exception that it shall not be considered a “family” within the meaning of Article 85 of the Constitution, and it is not authorized to adopt jointly.

18. The effects described in Article 397 of the Civil Code relate to social security, inheritance, and the ability to own property jointly.

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19. Elizabetia ratified the American Convention on Human Rights and accepted the contentious jurisdiction of the Court on January 1, 1990; that day, in a solemn ceremony, the State ratified all of the inter-American human rights instruments, and accepted all of their optional clauses without any reservations.

* * *

20. Serafín Conejo Gallo was born on November 28, 1963 to a family of farm workers in the province of Santa Marta. His father and mother worked on the ranch belonging to the de la Goblana del Atelo family, descendants of the colonial aristocracy. From the time Serafín was very young, he exhibited behavior identified as feminine. He maintained this behavior when he began attending the ranch's school which, during those years, existed under the patronage of the rancher's wife, Antonia de la Goblana del Atelo.
21. In 1969, when he was in the first grade, his teacher Dimay Salvaciolo called his father and mother on seven occasions to discuss what she considered a serious problem: Serafín was, on a daily basis, using feminine gestures and expressions that she found ridiculous in a boy. She had confronted him herself on numerous occasions in front of his class, and was of the opinion that his behavior needed to change.
22. On all of these occasions, Serafín's father and mother told Ms. Salvaciolo that they had always considered Serafín to be a normal, healthy child, and that although they understood that his behavior was a bit strange, they did not find it to be harmful or detrimental to anyone. Nevertheless, upon arriving home after each occasion, Serafín's mother and father—who viewed Ms. Salvaciolo as an authority figure—asked him to try to be “normal” and to act like the other boys.
23. When Serafín reached eleven years of age, his teacher—who had held countless meetings with his father and mother over the past four years, and who had frequently whipped him in order for him to “be a man”—decided to convey her concern about the situation to Mrs. Antonia de la Goblana del Atelo. As part of her argument, Ms. Salvaciolo explained to Mrs. de la Goblana del Atelo that Serafín's father and mother, “who still had a lot of Indian in them,” tolerated the “perversity” of his behavior and that, in their care, Serafín was hopelessly destined to be homosexual. Agreeing with the teacher's diagnosis, Mrs. de la Goblana del Atelo appealed to her friend, the wife of the Governor of Santa Marta and the Honorary Chairwoman of the National Child Protective Service (TUNAI), who instructed the agency's Director to send two inspectors to the home of the Conejo Gallo family.
24. The inspectors reported to the Conejo Gallo home and, following a summary proceeding in which only the teacher and the rancher's wife took part, and in which the father and mother were called into question for failing to let go of the barbaric values of the Granti culture, Serafín was removed by officers from the State Child Protective Service (TEI) and taken to Virginia, the

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capital of Santa Marta, where he was placed in a residential youth center as an abandoned child. Serafín spent the next five years of his life deprived of his liberty at that center, without his father or mother knowing of his fate, and in the erroneous belief that they were the ones who had requested his admission to the place.

25. During his confinement, far from giving up his feminine expression, Serafín willfully persevered in exploring his identity. He would make dresses out of sheets and pillows and put on theatrical performances for his companions, and constantly took on feminine behaviors, gestures, tones of voice, and expressions.
26. During his stay at the Virginia Youth Center, Serafín was raped on multiple occasions by his custodians and fellow detainees.
27. When he was sixteen, in August of 1979, Serafín escaped from the Virginia Youth Center and fled to the city of San Benito. From the time of his arrival in the La Escapada district on the south side of San Benito, Serafín worked in prostitution under the name Serafina. At the end of 1985, when he turned 22, after several operations to obtain silicone breast implants and to round out the shape of his body and face, he relinquished his male identity and insisted that everyone who knew him call him Serafina.
28. Serafina witnessed the HIV-AIDS pandemic, and saw a lot of her neighbors and fellow sex workers die. She was one of the first activists to assemble her companions to develop survival strategies, require clients to use condoms, and denounce the impunity surrounding their claims. In 1990, she started the Mariposa movement, an informal organization to engage in activism, education, and training in the San Benito community and, later, throughout Elizabetia.
29. Her activism put Serafina in contact with a large number of lesbian, gay, trans, bisexual, and intersex activists in Elizabetia and around the American hemisphere. Through them, she obtained scholarships and completed her high school education. Serafina recalls with mixed feelings the day she was called to receive her diploma in December of 1992, at 29 years of age. A ceremony had been prepared at the Rex Theater in San Benito to hand out diplomas to the trans women in Mariposa's formal education program. Serafina, wearing her best clothes, heard a name that she had not heard in a long time: the diploma was granted to Serafín Conejo Gallo. In a documentary about her life, Serafina made the following statement:

... just imagine my embarrassment. All the people who had anything to do with me had known forever that I was Serafina. It's not that I killed Serafín; he was never alive. In other words, I don't know how to express it, but he was the one who was beaten, raped, and abused. That Serafín stayed in Virginia and on the ranch. No one can abuse Serafina—that is, me. And to call him, and not me, at the most important moment of my life and my struggles, for him to receive the diploma that I had earned... It was terrible. I never understood how no one had thought of that. But of course, in my state of shock, I went up and received it and I was crying. I hadn't thought that it was just the continuation of an endless number of humiliating moments.

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30. From that moment, Serafina set the goal of gaining the acknowledgement of her name and her identity as a woman. Obtaining funds from international cooperation agencies for the development of projects opened the door for her to work as a project manager and, gradually, it opened the door to knowledge of the judicial and legal system, as well as to public servants and activists. Quitting work in the sex trade allowed her to explore her romantic life and acknowledge herself as a lesbian woman.
31. In spite of her growing sphere of influence, from 1993 to 1999 Serafina saw all of her efforts fail. Initially, she filed administrative requests with the District Offices of Vital Records in San Benito and Virginia, and when they were rejected, she filed seven petitions for a constitutional remedy before the Constitutional Chamber of the Supreme Court of Elizabetia. She was unable to obtain the recognition of her identity through any of them.

Processing of Petition P-300-00 before the Inter-American Human Rights System

32. On February 10, 2000, Serafina filed an individual petition before the Inter-American Commission on Human Rights (“the IACHR”), asserting that Elizabetia had incurred international responsibility when it discriminated against her by not recognizing her gender identity.
33. From 2000 to 2005 the Elizabetian Government, in the hands of the Pink Party, objected to the admissibility of the petition, alleging mainly that the petition called upon the IACHR to act as a fourth instance of appeal. After the Commission declared the petition admissible in 2003, the State also objected to the merits of the case. The State’s principal argument turned on the solid system of Elizabetian values, which is enshrined in the constitution.
34. On March 10, 2005, the IACHR issued a report on the merits, finding that Elizabetia’s failure to register Serafina Conejo Gallo with that name and as a female at its vital records office resulted in its violation of Articles 2 (Domestic Legal Effects), 3 (Right to Juridical Personality), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 18 (Right to a Name), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection). In the report on the merits, the Inter-American Commission recommended that the Elizabetian State take measures of reparation and non-repetition.
35. As is the tradition in Elizabetia, in December of 2005, following elections that were transparent and free of challenges, the opposition party candidate (in this case the Blue Party) was elected President. One of the first acts of President Marcela Aldana de Zambrano was to declare that she would comply with all of the recommendations of the IACHR in Petition P-300-00.
36. On November 28, 2006, in a deeply moving ceremony, President Aldana de Zambrano apologized to Serafina for the serious violations that she had suffered since childhood as a result of the acts and omissions of the authorities and agents of the Elizabetian State. She also announced the introduction of a draft Gender Identity Act, advocated by Mariposa as the main tool for the social inclusion of trans women in Elizabetia.

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37. The bill was indeed submitted to Congress two weeks later, and three months after that, in a ceremony that Serafina attended as the guest of honor, the Gender Identity Act entered into force. Among other provisions, the Act establishes:

Article 9: All persons may request a name change and the correction of their sex on their vital records when their gender identity is inconsistent with such records. In the case of persons under 18 years of age, the principles of progressive capacity and best interests of the child as provided in the Convention on the Rights of the Child, the American Convention on Human Rights, and the case law of the Supreme Court of Elizabetia shall be considered.

Article 10: The correction of sex on vital records shall entail the change of the person's given name. The request for the correction of vital records shall include the selection of the new given name.

Article 11: The following are essential requirements for obtaining a name change and the correction of sex on vital records, and the person may provide any type of evidence to prove:

- The existence of a discrepancy between the originally recorded sex and the self-perceived gender identity of the applicant.
- The stability and constancy of this discrepancy.

Article 12: Once the correction of the vital records has been ordered, it shall be incumbent upon the Office of Vital Records of the respective province to issue a new birth certificate with a reference indicating the location of the certificate prior to its amendment.

Article 13: The original birth certificate that existed prior to the correction of the applicant's sex may be accessed only by persons demonstrating a legitimate interest, or in cases involving legal transactions in which the applicant's genetic sex must invariably be considered.

Events subsequent to compliance with the recommendations of the IACHR in Petition P-300-00

38. On January 13, 2007, Serafina was the first trans woman in Elizabetia to obtain the recognition of her gender identity. In accordance with the Gender Identity Act, Serafina has appeared since then in the National Office of Vital Records of Elizabetia as a person of the female sex for all legal purposes. The entry in the registry states that it was issued on January 13, 2007 as evidence of the birth, on November 28, 1963, of Serafina Conejo Gallo. An annotation states: original certificate in the Parish of Todos los Santos, Santa Marta, certificate one, volume 761, page 110.
39. In January 2010, in accordance with the historical trend, there was a new change in the government of Elizabetia, and the Pink Party candidate, Antonio de la Goblana del Atelo, was

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elected President. In his inaugural address, President de la Goblana del Atelo stated:

... As part of my term of office, I promise today before the Republic to defend the family, the essential core of our society, and marriage as the basis of the family. Do not misinterpret: we are not going to discriminate against any man or woman in our country, but let there be no doubt that we are not going to sacrifice the sacred institution of marriage to those who, out of ignorance or malice, would turn it into something it is not, and will never be.

40. That same day, the results of the public opinion polls on the government's political agenda were published. They revealed that 59% of Elizabetians approved of the continued recognition of domestic partnerships between same-sex couples, but that 76% disapproved of its being considered equal to marriage.
41. That same year (2010), Serafina began a romantic relationship with Adriana Timor, a lesbian woman belonging to the old Deborine aristocracy, who possesses great wealth. After living together for a year, and aware of the obstacles they faced, the two women decided to get married in February of 2011.
42. On March 15, 2011, Serafina and Adriana went to the National Secretariat of the Family to request authorization to get married. In their written application, they indicated that, "although Article 396 of the State Civil Code establishes that couples consisting of a man and a woman can enter into marriage, it is also true that Article 9 of the Constitution, a higher-ranking law, prohibits all discrimination based on sexual orientation."
43. On May 29, 2011 the National Secretariat of the Family denied the application in an administrative decision, the legal basis for which was Article 396 of the State Civil Code. Serafina and Adriana filed a motion for reconsideration before the same authority, which was also denied.
44. Within the time period provided by law, Serafina and Adriana filed a motion to vacate before the court of appeals for administrative matters. In the brief they filed in support of the motion, they reiterated the need to take account of the nondiscrimination clause set forth in Article 9 of the Constitution. They additionally expressed at this time the need to take into consideration that, according to the applicable law, the institution of marriage was the only one that would enable them to be considered "family" in the constitutional sense.
45. This motion was denied on August 5, 2011. Court No. 7 for the Review of Administrative Decisions held that a motion to vacate requires the court to review the legality of the administrative decision and that, in light of Article 396 of the Civil Code, the challenged administrative decision was not unlawful. With respect to the reference to Article 9 of the Constitution, the court held that excluding a same-sex couple from the institution of marriage is a reasonable restriction necessary to preserve the concept of family in the Elizabetian constitutional system, in which, furthermore, same-sex domestic partnership with legal effects

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comparable to marriage had already been recognized.

46. According to the law, this decision is not subject to appeal.
47. Because this decision was rendered in single-instance proceedings, it was final as of the date it was handed down, August 5, 2011.
48. On November 18, 2011, Serafina and Adriana filed a petition for a constitutional remedy challenging the decision issued by Court No. 7 for the Review of Administrative Decisions, and reiterated the arguments submitted to that court. According to the domestic law applicable to the petition for a constitutional remedy, the judicial authority must render a decision immediately, and in particularly complex cases, within a maximum period of three months. Family Court No. 3 ruled on the petition for a constitutional remedy on February 18, 2012, holding that a petition for a constitutional remedy is improper for challenging court decisions except for in cases of “manifest arbitrariness,” and that the case did not provide sufficient facts to demonstrate that the challenged decision was “manifestly arbitrary”; therefore, the Family Court dismissed the action without ruling on the merits.
49. This decision was appealed within the period established by law, and on May 16, 2012, the Three-judge Plenary Tribunal with General Jurisdiction of District No. 5, hearing the petition for a constitutional remedy, affirmed the decision of Family Court No. 3.

Processing of P-600-12 before the Inter-American Human Rights System

50. The initial petition was filed by Mariposa before the Inter-American Commission on February 1, 2012. Upon deciding that the case would be subject to priority initial review, the Commission began processing the petition on May 10, 2012, providing notice to the State and initiating the admissibility stage.
51. During that stage, the State argued that the petition did not describe any violations of the American Convention, and that it was inadmissible based on the “failure to exhaust domestic remedies.” In its reply to the IACHR, the State indicated, first, that the petition to the Commission was submitted while the petition for a constitutional remedy was still pending. Second, it noted the “existence of the unconstitutionality action, which is available because it is a public right of action and could have been used with respect to Article 396 of the State Civil Code.”
52. On September 22, 2012, the Inter-American Commission issued Admissibility Report 179-12 and declared that the domestic remedies had been exhausted definitively by the time admissibility was determined, and therefore it was irrelevant to examine the status of exhaustion at the time the petition was submitted. In addition, the IACHR indicated that under the circumstances of the case it was not necessary to require the exhaustion of the unconstitutionality action. The Commission ruled that the facts alleged could amount to possible violations of Articles 11, 17,

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24, 8 and 25, in conjunction with Article 1.1.

53. At the conclusion of the regulatory time periods, and in view of the petitioners' refusal to initiate friendly settlement proceedings, on January 3, 2013 the Commission issued Merits Report 1-13. The Commission found that the State had violated the rights established in Articles 11, 17, 8.1, 24 and 25, in conjunction with Article 1.1 of the Convention and, by virtue of the principle of *iura novit curia*, the IACHR also found the violation of Article 2. The Commission ruled that Article 8.2(h) was inapplicable to the case because the challenged proceeding was not punitive in nature, and therefore the guarantees of Article 8.2 were not applicable.
54. In its reply to the notice of Merits Report 1-13, the State expressed its total disagreement with the Commission's analysis, and announced that it would submit the case to the Inter-American Court of Human Rights and that it would request a review of the legality of the proceedings before the IACHR. Accordingly, on February 1, 2013, the State submitted the case to the Inter-American Court of Human Rights pursuant to Article 36 of the Court's Rules of Procedure. In its brief submitting the case, the State again expressed its complete disagreement with the analysis of the Inter-American Commission at both the admissibility stage and the merits stage.
55. The State specified that although it recognized the Inter-American Court's jurisdiction to decide the case, it found it necessary to raise several procedural issues that the Court had to resolve first, as they could preclude the examination of the merits. Among those "procedural issues" the State indicated: (i) that the Commission violated the State's right to a defense by including Article 2 of the Convention, even though it had not been expressly admitted, and therefore was not part of the subject matter of the case it had defended at the merits stage; and (ii) that the Commission erred in its examination of the requirement of exhaustion of domestic remedies by not taking account of the procedural status of the case at the time the petition was submitted, and by failing to take account of the existence of the unconstitutionality action.
56. Upon receiving the State's submission of the case, the Inter-American Court issued a judgment on the motion on February 13, 2013, holding that, by analogy, it was proper for the "procedural issues" raised by the State to be treated as preliminary objections under the Rules of Procedure. The written position of the Inter-American Commission in response to the "procedural issues" treated as preliminary objections was basically replicated by the representatives in their respective brief. Accordingly, the representatives assumed the position of the IACHR on the procedural aspects of the case and indicated that it would be so at the public hearing.
57. The Inter-American Court set a hearing on preliminary objections, and possible merits, reparations, and costs, for May of 2013.

Request for provisional measures

58. Three days before the hearing set by the Court, Mariposa filed a request for provisional measures on behalf of Adriana, in order for Serafina to be given the opportunity to provide consent in an urgent health situation. The relevant facts, although somewhat confusing, were

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recorded in the file as follows:

- a. Adriana Timor was admitted to the public hospital three days earlier for a severe headache accompanied by blurry vision and the loss of movement of her left hand. From the time of her admission, Serafina, who accompanied Adriana, informed hospital personnel that her partner had suffered a ruptured congenital cerebral aneurysm during adolescence;
 - b. A few minutes after entering the hospital Adriana lost consciousness and was admitted, in a comatose state, to the intensive care unit. After being stabilized and undergoing 24-hour monitoring, the neurology specialist, Dr. Gepeto Vargas—who is also a close personal friend of the couple’s—informed Serafina that Adriana had indeed had a congenital cerebral aneurysm, and that the internal hemorrhaging was now under control.
59. Dr. Vargas also informed Serafina that there were two options for dealing with the effects of the hemorrhage: the first was to perform intracranial surgery within one week at the most, for which the consent of a spouse or relative would be required. If this surgery is successful, there is a good prognosis in terms of the complete maintenance of the patient’s faculties, but it is a very high-risk operation—statistically, only 15% of patients survive. The second option, to continue monitoring the situation, is much less risky: it has an 85% survival rate, but it entails the near certainty that Adriana would experience—among other effects—the disorder known as anterograde amnesia.
60. Doctor Vargas informed Serafina that without informed consent for the surgery, the decision would have to be made by the Regional Medical Committee. Privately, Dr. Vargas added that in similar situations the Regional Medical Committee invariably takes the course that involves the least risk to the life of the patient.
61. Serafina told Dr. Vargas that she was perfectly aware of Adriana’s opinion. Since Adriana had gone through the same situation in adolescence, she had told Serafina on more than two occasions that, if facing a similar situation, she would risk death over the alternative of living with anterograde amnesia.
62. Serafina further informed Dr. Vargas that Adriana’s mother and father had died in a natural disaster in 2012, that Adriana was an only child, and that she had lost all contact with her other relatives more than 15 years ago, since they had excluded her from the family circle when they learned that she was a lesbian. Serafina also told him that they lived together and that their application to get married had been denied, and that they had not taken the steps to obtain a court decree of domestic partnership, as they had not yet been living together for five years. In any case, she was not sure whether same-sex domestic partnership would have the effect of their being considered “family” for such purposes.

2013 Inter-American Human Rights Moot Court Competition

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63. The next day, Dr. Vargas again told Serafina that either she had to get a relative—no matter how distant—to sign the consent form or the decision would be submitted to the Regional Medical Committee at the end of five days.
64. That same day, Mariposa filed the request for provisional measures, asking for the Court to require the Elizabetian State to allow Serafina to provide informed consent in Adriana’s case. The Office of the President of the Inter-American Court issued a resolution the same day, ordering that the parties make their arguments regarding this request at the public hearing scheduled in the contentious case.

November 21, 2012