

2019 EUGENE SCASSA MOCK OAS PROGRAM
INTER-AMERICAN COURT OF HUMAN RIGHTS MOOT COURT COMPETITION
HYPOTHETICAL CASE

“THE GUAJILLO, ANCHO, & POBLANO FAMILIES

v.

THE REPUBLIC OF CHARECHIA”

I. The Republic of Charechia: Background Information

1. The Republic of Charechia is an independent federative republic located in the Americas. It has a population of 28 million, and covers a surface area of 210,208 mi². Geographically and demographically, the country is roughly divided into thirds.
2. The northern third, known as Charechia Noresta, is mountainous, forming part of the Emmentan Shield and rich in minerals. The population of Charechia Noresta is primarily Charechianos known colloquially as Norestans. As with all ethnic Charechianos, the Norestans are descended from the indigenous groups who settled the area in the 12th Century. Most rural Norestans are shepherds, while those in the urban areas are usually employed by the large mining firms located throughout the ore-rich region, particularly in semi-nationalized coal, copper, and gold mines.
3. To the west, generally south of the mountain region and west of the Autar River, lies Western Charechia. Western Charechia is much less developed and consists primarily of rural settlements populated by *mestizojos* (people whose ancestry is split between Charechianos and various indigenous tribes in the area). Western Charechia is covered almost entirely in thick tropical rainforest. The economy is quite underdeveloped, with a workforce made up primarily of subsistence, slash-and-burn farmers and river fishermen. Some timber industry has developed here, but it is limited.
4. Finally, to the east and south, Charechia Maior, or simply Charechia, is the region where power and wealth are concentrated. First settling near the modern capital of Autarres, the “first five families,” as they are now known, consolidated the oil-rich lands along the coast in the early 19th Century. Since this time, the vast majority of government officials

and those in power both economically and culturally have hailed from this region and, further, from these original five families. The population of Charechia Maior enjoys some of the highest standards of living in the Americas, and the national economy depends nearly entirely on the banking and petroleum industries based in this part of the country. The only exception is the mineral-rich north, but even this region is mined and administered by corporations founded and headquartered in the south.

5. Of the approximately 28,000,000 residents, about 18,000,000 live in Charechia Maior (Charechia), while 7,000,000 reside in Charechia Noresta and the remaining 3,000,000 are scattered throughout Western Charechia.
6. According to the Economic Commission for Latin America and the Caribbean (ECLAC), in 2018 Gross Domestic Product was US\$ 235 billion. The discrepancy between regions is significant, however: the average monthly income in Charechia Maior is over \$3,000, while Noresta is around \$1200 and Western Charechia is less than \$500.
7. Although land reforms and land nationalization throughout the 20th century sought to bring more economic equality to the country, wealth concentration and inequality remains a significant issue. 1% of the population holds 85% of the nation's wealth, and over 85% of the wealth is concentrated in the southeast.
8. The Republic of Charechia is a constitutional federative republic with three branches of government. The executive branch is headed by the democratically elected president who may serve up to two consecutive terms. Amendments to the constitution have been proposed to remove this term limit and are currently being debated on the floor of the Upper House, having been approved in the Lower House in June 2019.
9. The legislative branch is a bicameral national assembly with representatives democratically elected by the people in general elections. The legislative seats are all at-large seats, and are not tied to any specific region or state.
10. The judicial branch is headed by a seven-member Supreme Court, all nominated by the President and confirmed by the Upper House of the legislature for life terms. Each state has its own provincial defense force and a limited-autonomy legislative body that handles internal taxation, education, and infrastructure. The federal judiciary has seven secondary courts, with 5 located in Charechia Maior and the remaining two in Charechia Noresta. The secondary courts have original jurisdiction over all matters of federal law,

including issues of judicial review of legislation. Cases may be appealed to the secondary courts from the municipal courts, who act as the local magistrates throughout the country. Decisions of the secondary courts may be appealed to the Supreme Court. Decisions of the Supreme Court are final.

II. The State of the Presidency and Government in Charechia

11. The current president, Jamilo Avila-Gutierrez, was originally elected in 2012 with a 68% majority. He was reelected in 2016 with an 82% majority. President Avila-Gutierrez is a direct descendent of Leonidas Gutierrez, patriarch of one of the “first five families”. Since Leonidas’ emigration to Charechia in the early 19th Century, the Avila-Gutierrez family has risen to prominence as the richest family in Charechia and one of the richest in all the Americas, primarily through oil revenues and land brokerage. Forbes Magazine listed Jamilo Avila-Gutierrez as the 23rd richest person in the world, with an estimated net worth of approximately US\$24 billion.
12. Much speculation surrounds the president’s wealth and business dealings, with many claims that a large chunk of his wealth is due to illicit trade in drugs and firearms. The president has been accused multiple times of rampant government corruption and nepotism, which included the installation of his wife as Minister of Commerce, his presumed mistress as Minister of Transportation and Infrastructure, his nephew as Minister of Finance, and his brother-in-law as Minister of Defense.
13. Accusations of voter intimidation, voting booth discrepancies, ballot box stuffing, and foreign interference in the vote counting and gathering processes resulted in OAS and UN interference in 2016, where both organizations set up election monitoring missions within the country. Their access was limited by the state military police and, though they could find no direct evidence of voter fraud or tampering, both released damning reports regarding discrepancies, irregularities, and refusal of access, particularly in the western and northern regions.
14. Despite the accusations, Avila-Gutierrez remains very popular in the south and east, and has used this popularity to introduce legislation to remove the presidential term limit. Though the minority parties in both the Lower and Upper House of the legislature have

denounced the move as unconstitutional, and the Secretary General of the OAS has warned Avila-Gutierrez in a written statement not to “degrade the quality of democracy in the region through undemocratic methods,” the amendment passed the Lower House in June 2019 and is now being debated in the Upper House, where it is expected to be approved by a slim margin by December, opening the door for Avila-Gutierrez to campaign for reelection in March 2020.

15. The OAS and United Nations have both threatened not to recognize the results of a third election as official or democratic, and declare the efforts a "constitutional coup d'etat".
16. This constitutional coup notwithstanding, the Republic of Charechia is a member in good standing of the Organization of American States and the United Nations, and holds seats on the Economic Commission for Latin America and the Caribbean (ECLAC) and holds one of the director's positions on the Executive Board of the International Monetary Fund (IMF). Charechia has ratified several human rights and international humanitarian law treaties, including: the American Convention on Human Rights (in force for the State since 1984); the Geneva Conventions (since 1955), as well as the three Additional Protocols of 1977 and 2005; the Inter-American Convention to Prevent and Punish Torture (ratified 1992); and the Convention for the Protection of Cultural Property in the Event of Armed Conflict (in force since 1969). It has also recognized the jurisdiction of the Inter-American Court of Human Rights since 2001.

III. The Development of the “Shield of the North”

17. In direct response to the multiple claims of impropriety and misuse of funds regarding President Avila-Gutierrez, a political movement has been gaining traction in the area of Charechia Noresta. Beginning with mass protests in the spring of 2016 after the results of the election were announced, groups of citizens in the region have begun organizing demonstrations and calling for the secession of the north region from the rest of Charechia. Until 2017, the group has been mostly peaceful.
18. However, in March 2017, the Minister of Defense, a decorated general from Noresta named Jesus de Adama was summarily dismissed from his position by President Avila-Gutierrez and replaced by the president's brother-in-law, a man with no formal military

training or previous government background (in fact, the new Minister of Defense, Juan Avila-Berroa, was previously a real estate developer).

19. After his very public departure, General de Adama returned to his home village in Noresta and eventually became the face of the resistance groups. As he gained popularity, the loosely affiliated groups came under a single umbrella and his informal military leadership. These groups began calling themselves the “Shield of the North”. Their protests transitioned from peaceful to more aggressive, and multiple reports emerged from Noresta that the group was stockpiling weapons and munitions, provided by disaffected members of the Charechian Military Police and by outside agents looking to destabilize the country.
20. Regular skirmishes between the Shield of the North and the state-run Charechian Military Police began breaking out in the early summer of 2017, and have since spilled over into the forested Western Charechia region. Each group routinely sabotages the other, and kidnappings, forced interrogations, and seizure of property have become commonplace in the area as both sides attempt to consolidate support among the indigenous westerners and ferret out dens of resistance.

IV. Raids and Counter-Raids

21. On August 3, 2017, three indigenous farmers were detained while traveling the main road between their village and the fishing port of Olmocan. Representatives from the Shield of the North accused these men of being state spies, and held them without proper warrants or paperwork for over six days. These men were tortured for information, starved, and beaten until they were released on August 9th. Two of the men survived to travel to the capital city to seek the help of the state. The third, Marcus Ochoa, died from injuries sustained in captivity while on the journey. The two survivors were welcomed as special guests of the President, who interviewed them and presented them on national television as examples of the “horrors of the terrorist organizations bent on keeping me from remaining in office”. He personally donated \$100,000 to each survivor’s family and \$200,000 to the family of the deceased tribesman.

22. On August 16, 2017, an air raid was carried out by the Charechian Military Police on the village of Paraio (#1 on the map), presumed to be the regional headquarters of the Shield of the North. In the raid, two bunkers were destroyed (these bunkers were, in fact, being used by the Shield of the North as storage facilities), but ten individuals belonging to three different families (six men, three women, and one child) living near the bunkers were killed by the bombs. The families were later identified as the Guajillo (three men and one woman), Ancho (one man, two women, and one child), and Poblano (two men) families.
23. The Guajillo family was found to have no connection either to the government or to the Shield of the North. One of the men in the Poblano family who was killed, Manuel Poblano, had recently been arrested, tried, and found guilty of organized sabotage as part of a plot to destroy a state-run munitions plant near his village. In his trial, he was identified as a member of the Shield of the North. Additionally, one of the members of the Ancho family, Claudio Ancho, had recently been found guilty of aiding and abetting criminal activity by allowing known members of the Shield of the North to use his home for temporary residence. These individuals, however, were cousins of Mr. Ancho, and he claimed no knowledge of any criminal or anti-government activity on their behalf.
24. The three families brought cases first before the municipal, then the secondary, and finally the Supreme Court. In January 2018, the Supreme Court ascertained that the correct action had been taken by the state to secure the area against “presumed terrorist activity” and that the deaths of the individuals were unavoidable “collateral casualties”. Nonetheless, the Guajillo family was awarded \$75,000 in damages. The Poblano and Ancho families received no compensation.
25. In an official statement on January 17, 2018, General de Adama and the Shield of the North denounced the air raid on the village as a “scare tactic” to silence vocal opposition to the reelection amendment. Further, they stated that the president’s “unabashed and repeated corruption and misuse of public funds has led to the unstable situation in the region,” and that the “military conflicts between the Shield of the North and the State of Charechia would not exist if the government provided proper representation and transparent accounting of its funds and actions,” and that “continued misuse of the profits

gained through the hard labor of Charechians in the north and west leaves us no choice but to continue resisting oppression by whatever means necessary”.

26. In an official response on January 19, 2018, President Avila-Gutierrez called the Shield of the North a “cowardly organization of terrorists and rabble-rousers,” and stated that “military raids, both ground and air, will continue in regions where instability is fomented by these groups,” and that “military crackdowns are necessary to secure resources and protect Charechian citizens throughout the country,” but that “reasonable care is taken to limit these strikes to military targets.”
27. Between January 25, 2018 and January 10, 2019, there have been seventeen raids conducted in the Western Charechian region by the Charechian Military Police (fourteen from the air, three on the ground). Unofficial estimated casualties total 82, with 51 identified as members of the Shield of the North, and 31 identified as non-military “collateral casualties”. Of the seventeen raids, only three were confirmed to be military targets. The rest were classified as "operations to disrupt the organization and support of anti-government entities in the region". One raid (#2 on the map) on the village of Guaido resulted in the deaths of twelve individuals in a village school, ten of whom were children. The Shield of the North has also claimed responsibility for fourteen instances of “forced detention,” in which citizens have been captured and held without bail for the purposes of interrogation. One death was reported as resulting from the forced detention, when a diabetic man collapsed due to his insulin being misplaced during the interrogation procedure.

V. Judicial Proceedings

28. The original three victimized families, the Guajillo, Ancho, and Poblano families, filed a joint lawsuit against the Charechian government for serial harassment and denial of human rights, particularly the denial of freedom of assembly, freedom of speech, and freedom of movement. Their case claimed that unconstitutional military actions against dissident political voices resulted in the wrongful death of their family members.
29. On March 1, 2019, the secondary court dismissed the lawsuit, claiming that the state performed necessary due diligence when identifying military targets, though it did issue a

warning to the state regarding its “unusually high percentage of non-military casualties” and requested, “more transparency with regard to the military's stated objectives in the region”.

30. The families presented the case to the Inter-American Human Rights Commission on May 5, 2019.
31. On June 10, 2019, the Inter-American Human Rights Commission issued its report on admissibility and merits (Report 174/2019). The IACHR found the Republic of Charechia in violation of Articles 5, 7, 8, 11, 13, 16, 22, and 23 of the American Convention on Human Rights. The IACHR further noted, however, that the Shield of the North was not a state actor and thus could not be found guilty of articles in the convention, but warned them nonetheless against violations of rights themselves, particularly in Articles 5, 7 and 8. It recommended an immediate end to “proxy conflict” between the Military Police and the Shield of the North in the Western Charechia region, and that diplomatic solutions between the two factions should be sought, with an immediate end to all military raids on villages for any purpose.
32. Once the period for compliance with the recommendations had elapsed, pursuant to Article 35 of the Regulations of the Inter-American Court, the Inter-American Commission on Human Rights brought the *Case of The Guajillo, Ancho, and Poblano Families v. the Republic of Charechia* before the Inter-American Court on August 30, 2019.
33. The Inter-American Court of Human Rights set the hearing date for November 15-16, 2019, during its Extraordinary Session in San Antonio, TX, to hear the arguments of the representatives of the victims and the State regarding the merits and reparations in the instant case.
34. With its most recent Constitution of 2004, the Republic of Charechia ratified the main regional and universal instruments on the subject. It is a founding Member State of the Organization of American States (OAS), having ratified the OAS Charter on April 30, 1948. On January 15, 1984, the Republic of Charechia ratified the American Convention on Human Rights and accepted the contentious jurisdiction of the Inter-American Court of Human Rights (Inter-American Court or Court) in 2001. Additionally, Charechia

approved and ratified the OAS American Declaration on the Rights of Indigenous Peoples and voted in affirmation during the June 15, 2016 adoption of the declaration.

Appendix: Map of Charechia

