

2020 EUGENE SCASSA MOCK OAS PROGRAM
INTER-AMERICAN COURT OF HUMAN RIGHTS MOOT COURT COMPETITION
HYPOTHETICAL CASE

“THE CHURICHAYAN LEGAL AID PROJECT & THE YGUARA FAMILY
v.
THE REPUBLIC OF BANAGUAY”

I. The Republic of Banaguay: Background Information

1. The Republic of Banaguay (BAHN-uh-gwai) is an independent unitary republic located in the Americas. It has a population of approximately 10 million, and covers a surface area of 63,250 mi². The republic is an emerging economy, with a Gross Domestic Product (PPP) of US\$45 billion, ranking it in the bottom quartile worldwide.
2. Banaguay is the traditional homeland of the Banaguayans, who make up approximately 70% (7,251,000) of the total population. A significant indigenous population of ethnic Churichayans (Chur-uh-CHAI-ans), a minority population of about 2,000,000 lives primarily in the southeastern quarter of the country. Historically, the Banaguayans and Churichayans have been adversaries.
3. The Republic of Banaguay was formed after independence from its former colonial occupier was declared in 1932 after a brutally bloody revolution. After the war for independence was over, the majority Banaguayans assumed total control of the newly formed republic, installing a strong military-backed president and unicameral legislature of 35 representatives. The president is elected popularly, while the legislature is comprised of 17 presidential appointees and 18 at-large delegates. Though Churichayans are allowed to serve in any office, a longstanding code of gerrymandering and electoral suppression has resulted in only one ethnic Churichayan serving in the legislature currently.
4. The judicial branch is headed by a five-member Supreme Court, all nominated by the President and confirmed by the legislature for twenty year terms. The national judiciary has three secondary courts. The secondary courts have original jurisdiction over all

matters of national law, including issues of judicial review of legislation and the trying of all cases related to crimes against the state (treason, terrorism, etc.). Cases originating at the municipal court level may also be appealed up to the secondary courts. Decisions of the secondary courts may be appealed to the Supreme Court. Decisions of the Supreme Court are final.

5. Banaguay is a member in good standing of the international community, but has recently been chastised by both Human Rights Watch and the United Nations Commission on Human Rights regarding its treatment of the Churichayan minority.
6. Banaguay 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 is a participating member of the Central American Free Trade Association (CAFTA). Banaguay was a founding member of the OAS in 1945 and, since 1937, Banaguay has ratified several human rights and international humanitarian law treaties, including: the American Convention on Human Rights (adopted in 1969 and entered into force in 1970); the Geneva Conventions (since 1949), as well as the three Additional Protocols of 1977 and 2005; the Inter-American Convention to Prevent and Punish Torture (ratified 1992); and has recognized the jurisdiction of the Inter-American Court of Human Rights since 2000.

II. Issues Surrounding Churichayan Independence and Local Terrorism

7. Several groups over the past eighty years have formed to press for increased Churichayan autonomy or outright independence. The chief two groups are the CPLF (Churichyana People's Liberation Front) and the more militant PFC (People's Front of Churichaya). The PFC in particular, over the course of the past three decades, has been responsible for a large number of terrorist incidents, including an attempted *coup d'etat* in 1973. Bombings of public spaces and in public events, as well as sabotage within Banaguayan military and industrial facilities has been the hallmark of the PFC, which advocates for complete Churichayan independence.
8. In 1997, the CPLF and the PFC united to form the Churichayan Independence Coalition (CIC) in hopes of centralizing their leadership and gaining more acceptance in the

international community. Though the CIC denounced terrorism and militaristic threats at first, a wing of the CIC closely affiliated with the old PFC and made up of many of its former officials emerged, calling itself the Shimmering Path. Though not officially recognized by the CIC, the terrorist actions of the Shimmering Path continue to current times and are largely tolerated or minimized by CIC leadership.

9. The Shimmering Path, whose logo is a white six pointed star on a dark green background, is outlawed in Banaguay. Though their logos and flags have been illegal to display publicly (since the Anti-Terrorism Act of 2001), there is no expressed law against owning them. There is, however, a law against knowingly supporting, either financially or materially, any of the operations of the Shimmering Path, per the Safety and Internal Security Act of 2003 (SISA).
10. The current president, Marco Carajillo, is an ethnic Banaguayan from a well-established political family with ties back to the original ruling house established after the revolution in the 1930s. He was last elected in 2018 for a third term (terms are four years, but no limit on number of consecutive terms) with 72% of the vote (winning nearly 90% of the Banaguayan vote but only 8% of the Churichayan minority).
11. Accusations by the CIC 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 both 2014 and 2018, 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 attempts at voter suppression among the Churichayan minority.
12. Since the disputed election of 2014, the activities of the Shimmering Path have increased exponentially and have caused a nationwide security crisis, culminating most famously in the bombing of a football stadium during CONCACAF preliminaries in 2015.
13. To address these issues and to combat directly the resurgence of the Shimmering Path, President Carajillo enacted the “See Something Say Something Program” on September 1, 2017. This program provides cash rewards for tips regarding the presence of terrorist cells or the actions of terrorist supporters. Tips that lead to arrest are reimbursed up to US\$1,000.00. Since 2017, the program has resulted in the arrest of 537 different

individuals. Of these, 494 are ethnic Churichayans. Of the 537 total arrests, 373 were released, 164 were formally charged with crimes, and 118 of those charged were convicted of terrorism-related offenses.

III. The Incident in Question

14. In the summer of 2018, a global pandemic of an antibiotic-resistant strain of Influenza-B known as Orinoco Flu was declared by the World Health Organization. Due to its high transmission rate and mortality rate, the WHO called for complete economic shutdowns across the globe.
15. Beginning in August 2018, Banaguay issued a stay-at-home order to all citizens. Because of its lack of economic prowess and a severe lack of quality medical facilities, Banaguay extended this order for one month for all non-essential workers, but declared all public school buildings off-limits for the entirety of the fall semester. Because school is compulsory for all children under 16 years of age (thanks to the Education Access Act of 1939), all schoolchildren in Banaguay were required to attend online classes administered by the local school systems with assistance from the national government beginning September 1, 2018.
16. Households who could not afford the necessary equipment, including the cameras and laptops, were provided these items directly through a government lend/lease program which sold the items to citizens on a sliding income scale. All schooling from September 1 to December 31, 2018 was moved to an online video platform.
17. On October 3, 2018, a ten year old fifth grade student was participating in an online class from his parents' bedroom, using a camera and laptop purchased through the national program. During the class, a clear image of a Shimmering Path flag could be seen hanging on the back wall of the bedroom. The student, Jamir Yguara, is of Churichariyan descent.
18. In keeping with the See Something Say Something Program, the student's teacher submitted a tip to the proper authorities regarding the flag, including a screenshot taken during the class of the flag and the student.

19. On October 7, 2018, Jamir Yguara's family home was forcibly entered and searched by the Banaguayan National Police's Anti-Terrorism Force, under the authority of a warrant issued by the municipal court at its request. During the raid, the flag was found hanging in the same spot and was confiscated. Both parents were arrested, and Jamir was taken into protective custody.
20. On October 9, 2018, Jamir and his mother Ana are released after the father, Josef Yguara, admits to being the only person responsible for the purchase and hanging of the flag. He is detained further on suspicion of terrorism and is held without legal counsel as an enemy of the state from his arrest until January 10, 2019, while the investigation into his connections with the Shimmering Path is underway.
21. During the investigation, no actual links are established between Josef Yguara and the Shimmering Path. However, a signed confession from Mr. Yguara is obtained, in which he stated that he supports the efforts of the Shimmering Path, and purchased the flag from a known Shimmering Path leader who was holding a rally in the Yguaras' village in 2017. Though Mr. Yguara admitted to no direct involvement in terrorist activity, he did admit to being aware that the proceeds from the sale of the flag would, at least, indirectly benefit the Shimmering Path.
22. Due to his lengthy detainment, Josef Yguara lost his job as a private sector engineer, and his family's house was foreclosed upon on November 30, 2018. Jamir and Ana Yguara remained homeless until Josef's release on January 10.
23. On December 10, 2018, Jamir was taken back into protective custody, this time as a ward of the state, as a result of truancy. Jamir had not attended school for at least fourteen consecutive days.
24. Custody was not returned to Josef and Ana Yguara until February 15, 2019. Between the date of the family's initial arrest and the truancy arrest, Jamir had been having severe disciplinary problems in school and declining grades. Since his return to the family in February 2019, Jamir has continued to struggle in school and with behavioral issues.

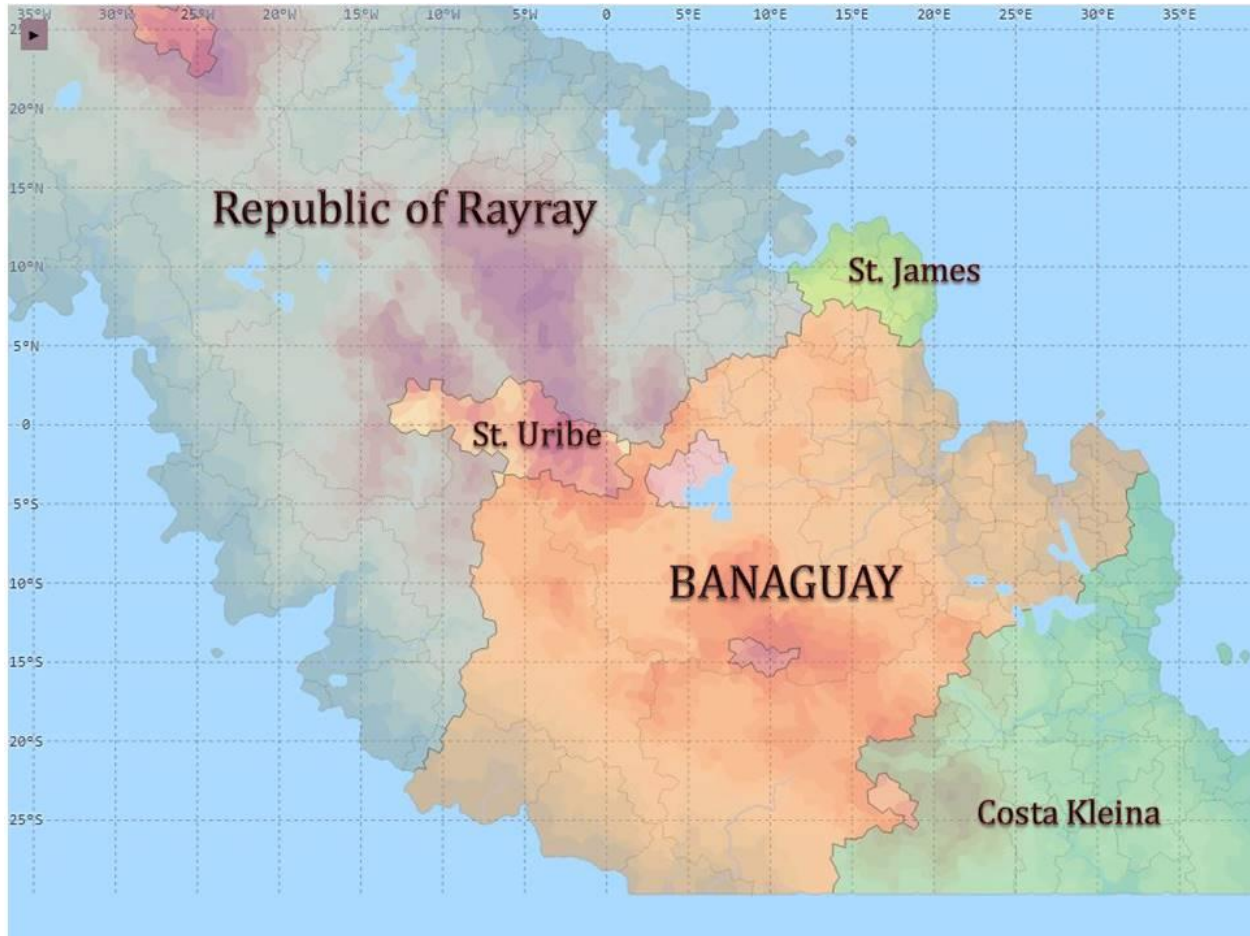
IV. Judicial Proceedings

25. A civil case was brought by the Yguara family against Banaguay on March 20, 2019. The family sought the recovery of the value of the house they lost, lost wages for Josef, and \$250,000 for mental and physical distress. The court dismissed the case. In the case, the father argued that his confession was coerced, while the State countered that the confession was valid. In dismissing the case, the trial court did not speak on the validity of the confession, and dismissed the matter on other grounds.
26. The case was brought before the regional appellate court and then, eventually, the Banaguayan Supreme Court. The Supreme Court awarded damages of \$80,000 on August 30, 2019. Appellate courts did not address the issue of the confession. The Supreme Court, in awarding damages, issued a memorandum opinion reciting the various causes of action brought, and awarded unspecified “damages” in the amount of \$80,000, and did not specify under which theory the damages were awarded.
27. On March 1, 2020, the Churichayan Legal Aid Project, on behalf of the Yguara Family, filed a petition with the Inter-American Court on Human Rights, alleging the violation of the rights contained in Article 5.3 (Right to Humane Treatment), Article 7.3 and 7.5 (Right to Personal Liberty), Article 8.2.e (Right to Counsel), Article 10 (Right to Compensation), Article 11.2 and 11.3 (Right to Privacy), Article 16.1 (Right to Free Association), Article 17.1 (Right of the Family), and Article 21 (Right to Property).
28. On March 15, 2020, the Commission began processing the petition, forwarding the pertinent parts to the State of Banaguay and granting it the period of 45 days for the submission of its reply.
29. In a communication dated April 3, 2020, the Republic of Banaguay refused to acknowledge any conduct that violated its obligations under the American Convention in relation to the aforementioned events, claiming the forfeiture of rights through illegal terrorist activities (namely, the willful and knowledgeable financial support of a terrorist organization). In the same letter, which was properly forwarded to the petitioners, it clarified that it was not willing to participate in any friendly settlement procedures, confident that, if the case were to be submitted to the Inter-American Court, it would detail its arguments at that time and its position would prevail. Further, it indicated that Josef Yguara, through his financial backing and his free association with known members

of the Shimmering Path, caused him to be identified fully as a member of the organization, and was therefore a “legitimate target of attack.”

30. In view of the State’s reply, the Inter-American Commission issued its report on admissibility and merits (Report 92/2020). In the report, the IACHR declared the case admissible, and found violations of Articles 5,7,10,11, and 21 of the American Convention, all in relation to Article 1.1 thereof, to the detriment of Josef Yguara and his family.
31. In that document, the IACHR asked the State to implement its recommendations.
32. Once the deadline and the requirements set forth in the American Convention and the Rules of Procedure of the Commission had been met, and because Banaguay did not find it necessary to implement any of the recommendations made by the Commission, on October 3, 2020, the case was submitted to the Inter-American Court of Human Rights for adjudication. It alleged the violation of the same articles specified in the Commission’s report on the merits.
33. The Inter-American Court of Human Rights set the hearing date for November 13-14, 2020, 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.

Appendix: Map of Banaguay



Appendix: Flag of the Shimmering Path

