

2022 ESMOAS COLLEGIATE SUMMIT OF THE AMERICAS
INTER-AMERICAN COURT OF HUMAN RIGHTS MOOT COURT COMPETITION
HYPOTHETICAL CASE

“EMILIA CORTEZ & FAMILY, PETITIONER

v.

“THE REPUBLIC OF CULEBRITA”

I. The Republic of Culebrita: Background Information

1. **Geography:** The Republic of Culebrita is a democratic republic hugging the eastern coastline of South America. It has a population of approximately 3 million, and covers a surface area of around 11,000 mi². Culebrita is small relative to its neighbors, and enjoys a brisk trade relationship with Brazil, Argentina, and Colombia, as well as with members of the EU, Russia, China, and Japan.
2. **Demographics:** Culebrita’s largest city is Onama, with a population of around 350,000. There is a stark division between the urban and rural population in all respects. Approximately 70% of the population lives in urban areas, and urban areas comprise over 96% of the country’s overall wealth. The rural population is primarily indigenous or Afro-indigenous, while the urban population is predominately of European or mixed Euro-indigenous descent.
3. **History:** Culebrita was settled by Portuguese, French, and Spanish maritime traders in the late 1600s. Previous to this, the area was inhabited by various tribes belonging to the Tupi-Guarani linguistic group. A handful of port cities were established by the Europeans, and changed hands several times between the colonial powers. During this time, a robust logging industry developed, with emphasis on rare and precious woods found only in the coastal rain forests of the country. Over the course of the next century, the lumber industry consolidated into the hands of a few wealthy families who dominated the politics of the region. In 1935, Culebrita declared independence from Portugal and was granted autonomy peacefully.

4. **Government Structure:** Following the independence edict, Culebrita formed a democratic republic with a tricameral structure of executive, legislative, and judicial branches. The executive branch is led by a democratically elected president who retains most of the power. The legislative body is unicameral and consists of 50 representatives, who are led by a Prime Minister who may cast deciding votes in the instance of ties, but has little other power. The president appoints 30 representatives, while the remaining 20 are elected. The judicial branch is a tiered system of district courts, regional appellate courts, and a national supreme court comprised of seven lifetime appointees.
5. **Elections and Monitoring:** The presidency of Culebrita has been dominated by the Nunez family for the past seventy years, since the election of Maximo Nunez in 1949. The Nunez family is one of the original lumber magnate families of the country, and its social status and economic strength have allowed it to manipulate, sometimes unfairly, the election process. In 2017, Camilo Nunez was elected by a 94% majority and is currently serving his second term (he was reelected in 2021 by a 96% majority). Discrepancies in the electoral process and dispersions cast about corruption in the government and the electoral system have resulted in Culebrita hosting both UN and OAS election monitors in both of the aforementioned elections. Though no discrepancies were officially reported, both monitoring groups noted the stranglehold the family retains over the political structure, and note that the family is propped up economically by the other five wealthy lumber industry families through significant campaign contributions. These families are the Monez, Carbendero, Jalito, Merced, and Herdez families.
6. **Regional Alliances:** Culebrita is closely allied with both Brazil and Argentina, as well as Paraguay, Uruguay, and Chile. It is a member of Mercosur (joined 1996) and PROSUR (joined 2019).

II. Concerning the Case of Francesca Cortez

1. **Circumstances of Birth:** Francesca Cortez was born in the Italpa Province village of Castaneo on 14 January, 2021. She is the daughter of Esther Cortez, age 14.

Francesca's father is unknown. Esther Cortez lived in the home of her mother, Emilia Cortez, and her uncle, Jesus Marano, at the time of the birth, as well as two siblings, Marta and Juliana. At the time of birth, Esther and the baby tested positive for several illicit substances, and Esther was known to be sexually promiscuous and generally considered by those in the village to be a "problem child." Her three siblings have also run afoul of the law in the past—her brother, Marco, is currently serving 3-6 years in prison for drug trafficking. He is a member of a well-known criminal gang that has attempted a violent government overthrow at least twice. He does not live in the same village. The two sisters, Marta and Juliana, both live at home. Marta, 17, has two children. Juliana, 15, has no children but was arrested for petty theft and is currently on probation. The uncle, Jesus Marano, was the candidate from the Culebrita People's Party (CPP) for Governor of Italpa in the last election. He lost to the incumbent, Fernando Magalhaes, who is a member of the People's Front of Culebrita (PFC), the ruling party of the Nunez family. The election is under review after an appeal and demand for recount due to voting discrepancies.

2. **Removal of Francesca:** Local authorities, acting on information obtained through an anonymous tip and from the hospital, arrested Esther on 21 January and committed her to a juvenile detention and rehabilitation facility for one year after a trial. In the trial, she was found guilty of endangerment and found to be "unfit" as a parent. Baby Francesca was turned over to the Ministry of Family Services, who cared for her in a regional facility for orphans at the close of the trial.
3. **Adoption Proceedings:** Francesca Cortez was deemed eligible for adoption and placed on a public adoption list on 5 February, 2021. The adoption list was disseminated via government publication and online through the orphanage's website, as well as through several international adoption agencies, both non-profit and commercial. Between 5 February and 17 April, 2021, ten applications for adoption of Francesca were filed. One, filed 5 February, was by Esther Cortez's mother, Emilia Cortez. Of the ten applications, five were approved for the second step of the adoption process, a home study and financial investigation. This is conducted by the Ministry of Family Services, a government agency of approximately 100 individuals

headed by the Minister of Family Services, Tamara Nunez (niece of President Camilo Nunez).

4. **Adoption Findings:** From 17 April, 2021 until 25 June, 2021, the five applicant families were investigated by the ministry for fitness to adopt. On 30 June, 2021, the Ministry granted pre-placement of Francesca to Maxmillian and Margarita Herdez, a wealthy family from the capital who applied for adoption on 10 March, 2021. The Herdez family is a heavy financial supporter of the Nunez political party, and Maxmillian Herdez was appointed Ambassador to Bolivia in 2019.
5. **Post-Placement:** Francesca Cortez was transferred permanently to the legal custody of the Herdez family on 30 September, 2021, after the three-month required probationary period after pre-placement. She continues to live with the Herdez family to this day.
6. **Esther Cortez:** On 18 September, 2021, Esther Cortez was released from juvenile detention, having successfully completed a rehabilitation program. Per the terms of her release, she has been tested for drugs monthly since her release, and has passed all tests. She remains on juvenile parole until December 2023. She has returned to live with her mother, Emilia, and filed an appeal with her of the adoption decision on 4 October, 2021.

III. Judicial Proceedings within the Country

1. On 4 October, 2021, the Cortez family (Esther and Emilia) filed a joint appeal with the Provincial Court of Italsa, seeking to overturn the adoption and return Francesca to the joint custody of Esther and Emilia. The case was heard in provincial court, and the Court of Italsa issued an injunction against the adoption, citing the Cortez's right to family and naming Esther and Emilia the preferred caregivers for Francesca. The judge ordered on 17 November, 2021, that she be returned to the Cortez home.
2. The Herdez family filed an appeal of the Italsa court's decision immediately on 17 November, 2021, and were granted a stay while the regional appellate court considered the case. The appeal was approved and was heard by the regional court on 6 January, 2022. On 15 January, 2022, the court overturned the Italsa decision and

returned custody to the Herdez family. The Cortez family filed an appeal to the Culebrita National Supreme Court, but the court refused to hear the case, deeming that it was sufficiently considered and the ruling of the regional appellate court was final.

IV. Proceedings before the Inter-American Human Rights System

1. The Cortez family, with the assistance of Family Rights International, a non-profit organization that provides legal assistance to disadvantaged families, filed an application with the Inter-American Commission on Human Rights on 10 March, 2022.
2. The commission reviewed the case and filed its Admissibility and Merits Report on 19 August, 2022. In it, the IACHR noted that Culebrita had failed to “take all reasonable measures to ensure that the child remained with his biological family,” and “did not reasonably consider the Cortez family” when they granted pre-placement with the Herdez family. Further, the commission noted that the baby’s mother did not receive proper advice and information and prevented her from her informed consent to adoption. Though the family was granted a public defender by the state, the representation was considerably skewed in favor of the much more well-represented Herdez family.
3. The commission did note, however, that the Cortez family was granted visitation rights by the provincial court in its decision, though it does also note that visitation is made difficult by the distance and cost of traveling from the rural province of Italpa to the capital city, where the Herdez household s located. The commission also found that the state failed to respect the rights of Francesca to a family.
4. The commission declared the state responsible for violations of the right to fair trial, a family life, and equal protection under the law.
5. The Republic of Culebrita filed an official response to the commission’s report, submitting that it followed all legal procedures and considered the case in a fair and equitable manner. The response also cited the UN Convention on the Rights of the

Child, Article 19, citing that Francesca's right to be protected from violence of harm was considered when the Cortez family was denied custody.

6. The IACHR's official recommendation included that the State should:
 - i. Provide comprehensive redress to the Cortez family to restore the ties between mother and child
 - ii. Investigate the actions and proceedings of the adoption system and the regional appellate court's decision
 - iii. Adopt non-recurrence measures designed to ensure that all adolescents receive free legal support during custody cases
 - iv. Fund public policies and training of adoption and judicial agents with regard to custody processes involving minors and juvenile delinquents.
7. 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 Culebrita did not find it necessary to implement any of the recommendations made by the Commission, nor were any of the original decisions made by the regional appellate court reversed, the case was submitted on October 30, 2022 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.
8. The Inter-American Court of Human Rights set the hearing date for November 5, 2022, during its Extraordinary Session in Waco, TX, to hear the arguments of the representatives of the petitioners and the state regarding the merits and reparations in the instant case.

V. Culebrita Treaties and International Agreements

1. Culebrita is a member in good standing of the international community, but has recently been under scrutiny by Human Rights Watch and the United Nations Commission on Human Rights regarding systemic corruption.
2. Culebrita is a member 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 both Mercosur and PROSUR. Culebrita became a founding member of the OAS in 1945.

3. Culebrita 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 and additional protocols (since 1949), and has recognized the jurisdiction of the Inter-American Court of Human Rights since 1981. It ratified the UN Convention on the Rights of the Child in 1990.

VI. Appendix: Findings of the Adoption Agency

1. Cortez Family

- i. **Family Size: 5** (Uncle, Mother, 3 Teenage Daughters)
- ii. **Family Home:** Family income (uncle's construction business and mother's sewing) nets ~US\$400 per month, considered lower-middle class. Home is a wooden single family unit of approximately 600 square feet.
- iii. **Education Level:** Uncle completed 2 year technical college, Mother completed school through 8th grade. Daughters each still enrolled in secondary school.

2. Herdez Family

- i. **Family Size: 3** (Father, Mother, adopted child)
- ii. **Family Home:** Family income (father owns Herdez Timber International Exports Inc.) is approximately US\$150,000 per month, considered upper 1%. Home is a brick and stone single family home of approximately 3,450 square feet.
- iii. **Education Level:** Both mother and father hold postgraduate degrees (father in Business Administration from the University of Buenos Aires, mother a master's in management from the University of Sao Paulo).

VII. Appendix: Pronunciation Guide

Culebrita: cool lay BREE ta

Camilo Nunez (President of Culebrita): ca MEAL oh NOON yez

Francesca Cortez (child of petitioner): fran CHESS ka cor TEZ

Jesus Marano (uncle of petitioner): hay SOOS muh RAHN o

Italpa Province: ee TAHL pa

Fernando Magalhaes (current Governor of Italpa): fer NAHN do MAH gahl YAYS

Tamara Nunez (Minster of Family Services): tah MAR ah NOON yez

Herdez (Adoptive family): air DEZ