

**INTER-AMERICAN HUMAN RIGHTS MOOT COURT  
COMPETITION**

**The GUAJILLO, ANCHO, AND POBLANO FAMILIES**

(Victims)

V.

**THE REPUBLIC OF CHARECHIA**

(Respondent)

Memorial for the Respondent

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### **STATEMENT OF FACTS**

The Republic of Charechia (Charechia or State) is a federative republic divided into three main regions.<sup>1</sup> The northern third is known as Charechia Noresta and is primarily populated by descendants of indigenous groups.<sup>2</sup> The southern third is known as Charechia Maior and is the home to most of the economic and political power within the country. Most of its notable members of the population are descended from the original “five families” that settled the area around the capital city of Autarres.<sup>3</sup> Finally, the western third is known as Western Charechia and consists mainly of rural settlements and a comparatively underdeveloped economy.<sup>4</sup> The current President of Charechia, Jamilo Avila-Gutierrez, is a descendent of one of the “five families” and

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<sup>1</sup> Hypothetical ¶1

<sup>2</sup> Hypothetical ¶2

<sup>3</sup> Hypothetical ¶4

<sup>4</sup> Hypothetical ¶3, 6

is currently serving the remainder of his second and final term in office, having been reelected in 2016 with 82% of the vote.<sup>5</sup> His popularity in Charechia Maior has helped him garner support for a constitutional amendment removing term limits on the office of the presidency. The amendment passed the Lower House of the Charechian Legislature and is currently being debated in the Upper House.<sup>6</sup>

However, President Avila-Gutierrez's actions have caused the rise of a political movement in Charechia Noresta, calling for the secession of the region from Charechia, which was bolstered by the return of General Jesus de Adama to his home in the region after President Avila-Gutierrez dismissed him from his post as the Minister of defense.<sup>7</sup> Eventually, this movement became known as the "Shield of the North" and began engaging in violent skirmishes with the Charechian Military Police in 2017. Soon after, the violence spilled over into Western Charechia.<sup>8</sup> On August 26, 2017, the State conducted an air raid in the village of Paraio, destroying two bunkers being used by the Shield of the North as storage facilities. During the raid, ten individuals from the Guajillo, Ancho, and Poblano families (Families) were killed.<sup>9</sup> One deceased member of the Poblano family had recently been found guilty of organized sabotage and was identified as a member of the Shield of the North. Additionally, one deceased member of the Ancho family had recently been found guilty of aiding and abetting known members of the

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<sup>5</sup> Hypothetical ¶11

<sup>6</sup> Hypothetical ¶8, 14

<sup>7</sup> Hypothetical ¶17-19

<sup>8</sup> Hypothetical ¶19-20

<sup>9</sup> Hypothetical ¶22



Shield of the North.<sup>10</sup> The three families sued the state in a municipal, then a secondary, and finally the Charechian Supreme Court. The Supreme Court determined that the State had acted correctly, but still awarded \$75,000 to the Guajillo family.<sup>11</sup>

Between January 2018 and January 2019, conflict continued to intensify between the Shield of the North and the State, with the State conducting seventeen raids in Western Charechia and the Shield of the North claiming responsibility for fourteen instances of forced detention, one of which resulted in a death.<sup>12</sup> Following this, the three families again sued the State, but the claim was dismissed on March 1, 2019 by a secondary court. As such, the families presented their claims to the Inter-American Commission on Human Rights on May 5, 2019 (Commission). On June 10, 2019 the Commission issued Report 174/2019 on the admissibility and merits of the case, finding the State in violation of Articles 5, 7, 8, 11, 13, 16, 22, and 23 of the American Convention on Human Rights (ACHR). The Commission also noted that the Shield of the North had violated Articles 5, 7, and 8 of the Convention, but they could not be found guilty by the Commission because they were a non-state actor. The Commission also recommended an immediate end to conflict in Western Charechia and the end of military raids for any purpose.<sup>13</sup> Once the period for compliance had elapsed, the case was brought before the Inter-American Court of Human Rights (Court).<sup>14</sup>

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<sup>10</sup> Hypothetical ¶23

<sup>11</sup> Hypothetical ¶24

<sup>12</sup> Hypothetical ¶27

<sup>13</sup> Hypothetical ¶28-31

<sup>14</sup> Hypothetical ¶32

## **LEGAL ANALYSIS**

### **I. Preliminary Objections and Admissibility**

#### **A. Statement of Jurisdiction**

Charechia ratified the American Convention of Human Rights in 1984 and accepted the contentious jurisdiction of the Inter-American Court of Rights in 2001.<sup>15</sup> Thus, Charechia is treaty bound to abide by the ACHR and the decisions of this Court.

#### **B. The Families Failed to Exhaust Domestic Remedies**

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<sup>15</sup> Hypothetical ¶34

1) The Complaint is Inadmissible Because the Families Failed to Exhaust Domestic

Remedies

The Families' complaint is inadmissible because they did not exhaust all domestic remedies, a requisite jurisdictional requirement for admissibility.<sup>16</sup> An intermediate appeals court dismissed the Families' lawsuit on March 1, 2019, and their appeal is still pending before the Charechian Supreme Court.<sup>17</sup> But there are no expectational circumstances in this case to justify the Families' failure to fulfill the exhaustion requirement. The Charechian Supreme Court had previously decided partly in favor of the Families in an appropriate time frame, meaning that the domestic remedies were duly available in a timely manner.<sup>18</sup> As a result, the Court should dismiss the case.

2) Non-Exhaustion Should be Jurisdictional in this Instance

The failure of the Families to exhaust domestic remedies is a jurisdictional requirement . The Court has determined that Articles 44-47 of the ACHR are in some instances procedural requirements that may be waived and sometimes jurisdictional requirements that cannot be waived.<sup>19</sup> Instead, "the Court must examine the issue in its specific context."<sup>20</sup> The Court, through various cases, has laid out the specific instances in which the exhaustion requirement is non-jurisdictional: when the State explicitly waives the non-exhaustion objection,<sup>21</sup> when the State admits responsibility for a human rights violation by complying with the Commission's

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<sup>16</sup> ACHR Art. 46 (1)

<sup>17</sup> Clarification Question 16

<sup>18</sup> Hypothetical ¶24

<sup>19</sup> *In the matter of Viviana Gallardo et al.* (1981) 101 A ¶25-28 IACHR

<sup>20</sup> *Case of Velásquez-Rodríguez v. Honduras* (1989) 4 C ¶84

<sup>21</sup> *In the matter of Viviana Gallardo et al.* (1981) 101 A ¶26 IACHR

recommendations,<sup>22</sup> when the State refuses to answer the Commission's inquiry into whether all domestic remedies were exhausted,<sup>23</sup> and when the objection was filed in an extremely untimely manner before the Commission or the Court.<sup>24</sup> None of those cases apply to the present instance.

The only possible implicit waiver of this issue was in how long it took the State to raise the exhaustion requirement issue. However, even then, it was not in an extremely untimely manner. The Court's prior cases dealing with untimely objections before the Commission involve objections that the States raised years into the proceedings.<sup>25</sup> The case here is different because the Commission decided the case in little over a month after the Families presented it.<sup>26</sup> The State did not even have the full three months normally granted for the filing of a response and the raising of a preliminary objection.<sup>27</sup> The breakneck speed of these proceedings has put the Court in uncharted waters. Additionally, here, the State has two months after the Commission and Victims file any briefs to respond and raise preliminary objections.<sup>28</sup> Seeing as that deadline has not yet passed, this objection is timely before the Court. Thus, because the domestic remedies do not warrant an exception to the exhaustion requirement and this case does not fall within one of waiver instances the Court has outlined, the non-exhaustion objection should be jurisdictional in this instance.

### **C. The Unclean Hands Doctrine Bars Relief for the Families**

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<sup>22</sup> *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2000) ¶50 IACHR

<sup>23</sup> *Case of Moiwana Village v. Suriname* (2005) ¶46, 50 IACHR

<sup>24</sup> *Case of Castillo Páez v. Peru* (1996) 24 C ¶40-43 IACHR

<sup>25</sup> See *Mayagna Community*, *Moiwana Village*, and *Castillo Páez*

<sup>26</sup> Hypothetical ¶30-31

<sup>27</sup> Rules of Procedure of the Inter-American Commission on Human Rights Art. 30 (3)

<sup>28</sup> Rules of Procedure of the Inter-American Court of Human Rights Art. 41, 42 (1)

1) The Families Failed to Come to the Court With Clean Hands

Here, the Families failed to come to the Court with clean hands, and so the clean hands doctrine bars any equitable relief or damages. The clean hands doctrine demands that “a plaintiff seeking equitable relief come into court having acted equitably in that matter for which he seeks remedy,”<sup>29</sup> and offers judges a clear rationale for refusing damages when the plaintiff acted in a similar manner to the defendant.<sup>30</sup>

As the Commission noted, the Shield of the North also violated portions of the ACHR.<sup>31</sup> Because some of the alleged victims were members of the Shield of the North or at least aiding and abetting members, the unclean hands doctrine bars relief for Families. One of the deceased members of the Poblano family had been found guilty of organized sabotage and had been identified as a member of the Shield of the North; one of the deceased members of the Ancho family has also been found guilty of aiding and abetting the Shield of the North.<sup>32</sup> Their acquiescence in supporting an organization that the Commission also found in violation of human rights means that the hands of Families are collectively unclean for two primary reasons.

First, the Families could have brought separate suits against the State, in which case the Guajillo family would not be barred from relief by the unclean hands doctrine. But the Families decided to bring a joint suit, which collectively dirties the hands of all involved because the Families voluntarily agreed to a joint suit. Second, the unclean hands of one member applies to the collective group. If the entire State is going to be held responsible for any human rights

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<sup>29</sup> Lawrence, William. *Application of the Clean Hands Doctrine in Damage Actions*. 57 Notre Dame Law Review (1982) p. 674

<sup>30</sup> Id. p. 684

<sup>31</sup> Hypothetical ¶31

<sup>32</sup> Hypothetical ¶23

violations that individual members of the government committed, then the Families should be held collectively responsible for family members who joined or aided the Shield of the North. After all, every single individual citizen of Charechia did not allegedly commit human rights violations, but their taxes will be used to pay for any damages awarded to the Families. It is only fair that the Families also be collectively accountable for all of their members. Alternatively, the unclean hands doctrine should at the very least bar damages and relief for the deaths of Manuel Poblano and Claudio Ancho.

2) The State Preserved the Unclean Hands Objection Before the Inter-American Commission on Human Rights

The State did not waive this objection before the Commission. In raising the fact that the Shield of the North was also in violation of the ACHR, the State fulfilled its requirements to preserve the unclean hands objection. While the record does not reveal the full extent of the Families' or the State's arguments before the Commission, the fact that the Commission went beyond the suit between the Families and the State to decide that the Shield of the North was also in violation of the ACHR indicates that one party raised the issue of human rights violations by the Shield of the North.<sup>33</sup> It seems unlikely that the Families would have raised this issue because it does nothing to benefit them, which means that the State likely raised it. Of course, the Commission could have raised the issue *sua sponte*, but in that case, it is still preserved for appeal.<sup>34</sup> Therefore, the State preserved the unclean hands objection in the prior proceedings of this case.

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<sup>33</sup> Hypothetical ¶31

<sup>34</sup> Lawrence, William. *Application of the Clean Hands Doctrine in Damage Actions*. 57 Notre Dame Law Review (1982) p. 677

## **II. Laws of War Analysis**

### **A. Protocol II of the Geneva Conventions Governs the Conflict in Charechia**

The conflict in Charechia triggers Additional Protocol II of the Geneva Conventions (Protocol II) by its nature. Protocol II applies to “all armed conflicts[...]which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations.”<sup>35</sup>

These criteria are met in the conflict between the Shield of the North and the State. The Shield of the North is organized under the responsible command of General de Adama and exercise control over parts of Western Charechia and Charechia Noresta, allowing them to carry out military operations.<sup>36</sup> As such, the *lex specialis* of the laws of war, or international humanitarian law, ought to apply to this case instead of the normal articles of the ACHR. International humanitarian law on internal conflict is triggered when there is involvement of an armed group with a minimal level of organization and violence of sufficient intensity between governmental authorities and the armed group.<sup>37</sup> Both criteria are met here, and because the issue in this case focuses on the rights of non-combatants, Protocol II is the most applicable governing law.

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<sup>35</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) Art. 1(1)

<sup>36</sup> Hypothetical ¶19-21, 27

<sup>37</sup> Rome Statute of the International Criminal Court, art. 8(2)(f), July 17, 1998, UN Doc. A/CONF.183/9, 2187 U.N.T.S. 90; *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. U.S.) (Merits) (1986) ¶218-19 I.C.J.; *Prosecutor v. Tadić* Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, (1995) ¶70 I.C.J.; see also *Prosecutor v. Akayesu* (1998) ¶618-21 I.C.J.

**B. The Inter-American Court of Human Rights Does Not Interpret Any Portion of the Geneva Conventions**

The Court has determined that it will not adjudicate claims regarding the Geneva Conventions. The “Court [has] competence to determine whether the acts or the norms of the States are compatible with the Convention itself, and not with the 1949 Geneva Conventions.”<sup>38</sup> Therefore, any violation of the governing international humanitarian law is not within the jurisdiction of this Court, and the allegations before the Court should have been brought before a body capable of applying and enforcing the Geneva Conventions because that is the governing law, not the ACHR.

**C. The State Has the Right to Suspend Articles 7, 8, 11, 13, 16, and 22 of the American Convention on Human Rights Under Article 27**

Even if the Court decides to apply the ACHR, the State can suspend Articles 7, 8, 11, 12, 16, and 22. This suspension may occur “in time of war, public danger, or other emergency that threatens the independence or security of a State Party.”<sup>39</sup> Given that the conflict between the Shield of the North and Charechia is governed by the laws of war, the State was clearly permitted to invoke Article 27 of the ACHR in this instance. This means that there cannot be a violation of Articles 7, 8, 11, 12, 16, and 22 while the conflict is raging. Thus, the decision of the Commission to find the State in violation of those articles was incorrect. However, the Shield of

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<sup>38</sup> *Case of Las Palmeras v. Colombia* (2000) 67 C ¶33

<sup>39</sup> ACHR Art 27 (1)



the North can still be in violation of Articles 5, 7, and 8 because they are not a State Party capable of invoking Article 27.

**D. The State Fulfilled Its Duties Under the Laws of War**

1) The Response of the State was Necessary and Proportional

The State's use of force must be a necessary and proportional response to the threat posed by the Shield of the North.<sup>40</sup> If these conditions are met, collateral civilians casualties are not a violation of international humanitarian law.<sup>41</sup> The necessary prong of the test requires that a strike provide a military advantage for which no equivalent exists.<sup>42</sup> Given where the stockpile of weapons was located and the broad support for the Shield of the North in villages in western and northern parts of Charechia, the strike at issue here meets this criteria. The proportional prong of the test requires that the collateral damage of strike not exceed its anticipated advantage.<sup>43</sup>

Again, the strike at issue had a clear military target of importance, and the collateral casualties were likely killed either by flying debris or the collapse of homes that were not constructed to handle the shock waves from the bombings nearby, which would have been very difficult for the State to reasonably predict and avoid.<sup>44</sup> Furthermore, the violations of human rights that the Shield of the North was committing according to the Commission heightens the need of the State to undertake the necessary measures to quickly and effectively end the conflict

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<sup>40</sup> *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. U.S.) (Merits) (1986) ¶218-19 I.C.J

<sup>41</sup> Int'l Comm. of the Red Cross, 2(1) Customary International Humanitarian Law 3-130 (Jean-Marie Henckaerts & Doswald-Beck eds., 2005)

<sup>42</sup> Melzer, Nils. *Targeted Killing in International Law* 382 (2008)

<sup>43</sup> See note 40

<sup>44</sup> Clarification Question 6

with the Shield of the North.<sup>45</sup> This strike is similar in nature to the ones carried out everyday by the United States in Afghanistan with Predator drones, which is generally seen to comport with international humanitarian law, despite civilians casualties.<sup>46</sup> Thus, while the civilians deaths were very unfortunate, the State did not fail to meet its obligations under the laws of war.

## 2) The State is Not Required to Satisfy Article 27 (3)

Under international norms, the State does not have to fulfill the requirements of Article 27 (3) of the ACHR in order to satisfy its obligations under the laws of war. While the record does not indicate that the State notified the Secretary General of the Organization of American States, international customs have long recognized that in the modern world where communications and news coverage are almost instantaneous, such notice requirements are often ignored. Take the U.N. Charter for example. That charter also contains a notice requirement before states can use force in self-defense, but it is widely accepted that states may ignore that requirement.<sup>47</sup> Additionally, the International Court of Justice determined that when the Security Council has constructive knowledge, proper notice is not required.<sup>48</sup> The same principle can be applied here with respect to the Secretary General. Therefore, the State's lack of proper notice under Article 27 (3) falls within general international norms.

## **III. Human Rights Law Analysis**

### **A. The Families Only Raised Particularized Claims**

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<sup>45</sup> Hypothetical ¶31

<sup>46</sup> Murphy, Richard & Radsan, Afsheen John. *Due Process and Targeted Killing of Terrorists*. 31 Cardozo L. Review 405, 406 (2009).

<sup>47</sup> *The Charter of the United Nations: a Commentary* 803-5 (Bruno Simma et al., eds.) (2002).

<sup>48</sup> See note 40

The Families' original petition focused on the claim that unconstitutional military actions led to the wrongful deaths of their family members.<sup>49</sup> They did not raise any general claims on behalf of the population as a whole. Therefore, the alleged violations that this Court evaluates should be confined to the alleged violations that the Families actually suffered. Although the Families did sue the government for serial harassment and the violation of human rights, nothing in that complaint indicates that they were suing on behalf of the greater Charechian population. Rather, the focus on the particular deaths of family members and the fact that these three families alleged the same type of violations in a joint suit, coupled with the fact that no other members of the general population joined this suit, all suggest that the Families were making a particularized claim of human rights violations, not a generalized one.

## **B. The State Did Not Violate Article 5 of the American Convention on Human Rights**

### 1) The Bombing Does Not Constitute Punishment Under International Law

The bombing of the Shield of the North's bunker is not a form of punishment under international law. Punishment must be intended to harm an offender<sup>50</sup> and have a condemnatory nature.<sup>51</sup> The bombing at issue had neither of those elements. The intent was solely to eliminate a military target in the most effective, realistic, and timely manner. Therefore, the State did not violate sections (3), (4), (5), or (6) of Article 5 of the ACHR by bombing the Shield of the North's bunker and unintentionally killing nearby civilians.

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<sup>49</sup> Hypothetical ¶28

<sup>50</sup> Hanna, Nathan. "Taking the Consequences", *Criminal Law and Philosophy*, Vol. 8 pp. 589–604. (2014)

<sup>51</sup> Feinberg, Joel. "The Expressive Function of Punishment", *Doing and Deserving*, Princeton University Press, pp. 95–118. (1970)

## 2) The Bombing was a Legitimate Use of Force and Not a Tool of Intimidation

The bombing at issue here was a legitimate use of force and not, as the Shield of the North alleged, a “scare tactic” designed to “silence local opposition.”<sup>52</sup> The State took reasonable care to distinguish between civilians and military targets,<sup>53</sup> and no degree of due diligence could have prevented the unintended and regrettable deaths of civilians. The targeted bunkers were distinct from the rest of the village<sup>54</sup> and were, in actuality, being used by the Shield of the North.<sup>55</sup> Therefore, there was a clearly distinguished military target, and the means employed were necessary and proportional, which means that the use of force was legitimate.<sup>56</sup> The strike was not intended to silence opposition elements of the population or violate the physical or mental integrity of members of the Families.

## 3) Unintentional Killings Do Not Violate Article 5

Within the context of international humanitarian law, these unintentional deaths do not violate Article 5 of the ACHR. As far back as the Nuremberg Military Tribunals, international jurists recognized that “civilians may legitimately be killed through military action, though noncombatant.”<sup>57</sup> In this instance, the State was acting in self-defense and in a necessary and proportional manner. International law has recognized that attacks by an insurgency can justify

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<sup>52</sup> Hypothetical ¶25

<sup>53</sup> Clarification Question 13

<sup>54</sup> Clarification Question 6

<sup>55</sup> Hypothetical ¶22

<sup>56</sup> See note 40

<sup>57</sup> *The Medical Case* (1949) Nuremberg Military Tribunals p. 849 (Musmanno, J., concurring)

the use of force in self-defense,<sup>58</sup> and given that the strike was necessary and proportional, as previously noted, the State did not act outside of international norms. Additionally, the State is not responsible for the unintentional killing or other violation of physical, mental, or moral integrity when acting toward a legitimate end.<sup>59</sup> The ACHR reflects this reasoning in concluding that individual rights are limited by the security of all and the demands of the general welfare.<sup>60</sup> Here again, the human rights violations committed by the Shield of the North heightens the need for the State's actions. Therefore, the State did not violate Article 5 of the ACHR.

### **C. The State Did Not Violate Article 23 of the American Convention on Human Rights**

#### 1) The State was Fulfilling Its Duty to Guarantee Optimum Conditions for the Exercise of Political Rights

Article 23 of the ACHR guarantees the right to participate in government, and the State never violated that right. If anything, many of the actions that the State took after the outbreak of conflict between the Shield of the North and the State were designed to help ensure the protection of that right. This Court has explained that “it is imperative that the State create optimum conditions and mechanisms for the effective exercise of political rights.”<sup>61</sup> Clearly, a conflict that amounts to a domestic insurgency is not conducive to the effective exercise of political rights. Therefore, the State had a duty to take the actions necessary to ensure the optimum conditions for the exercise of political rights for all its citizens. Coupled with the framework of the international humanitarian law that applies here, it is clear that while the deaths

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<sup>58</sup> *Armed Activities on the Territory of the Congo* (Dem. Rep. Congo v. Uganda) (2005) ¶75 I.C.J.

<sup>59</sup> *Cadenhead Case* (Great Britain v. United States) (1914) pp. 506-508 Arbitral Tribunal

<sup>60</sup> ACHR Art. 32 (2)

<sup>61</sup> *Case of Human Rights Defender et al. v. Guatemala* (2014) ¶186 IACHR

caused by strike on the weapons stockpile were unintended and unfortunate, they do not amount to a violation of Article 23.

2) Article 46 Bars the Families from Raising any Pre-Conflict Violations

Article 46 (1)(a) and (1)(b) of the ACHR bar the Families from raising any pre-conflict violations of Article 23. The Families did not challenge the 2016 election results or the proposed constitutional amendment in a Charechian court.<sup>62</sup> Rather, this violation of the right to participate in government was first introduced before the Commission. Therefore, the Families did not exhaust the available domestic remedies before turning to the Commission. Additionally, even if a decision by a court is not necessary to fulfill the “final judgement” requirement,<sup>63</sup> the petitions were filed outside of the six month time frame for filing a petition with the commission. In the case of the 2016 election, if a court does not have to issue a decision to satisfy the final judgement issue, then the final judgement would occur whenever the results of the election became official. This occurred well beyond six months ago, so Article 46 should bar the Families from challenging the 2016 election. Additionally, there has not been any sort of final judgement about the proposed constitutional amendment because it has not passed the Upper House. This Court provides for a procedure in which State Parties may ask for an advisory opinion about pending legislation,<sup>64</sup> but it has never allowed individuals to challenge proposed legislation before it is passed. Therefore, the Court should not accept the complaints regarding Article 23.

3) Even if the Claims are Admissible, the 2016 Election and the Proposed Constitutional Amendment Do Not Violate Article 23

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<sup>62</sup> Hypothetical ¶28

<sup>63</sup> ACHR Art. 46 (1)(b)

<sup>64</sup> ACHR Art. 64 (2)

The actions of the State prior to and during the outbreak of violence still comply with its obligations under Article 23 of the ACHR. This Court has explained that “participation through the exercise of the right to be elected assumes that citizens can stand as candidates in conditions of equality and can occupy elected public office, if they obtain the necessary number of votes.”<sup>65</sup>

The crucial aspect here is the obtaining of the necessary number of votes. Even if voter turnout for the whole country was one hundred percent, the northern and western portions of the country would not have enough votes to form a majority of seats in the Legislature because of their size.<sup>66</sup> There are still opposition parties in the Legislature and observer organizations could not find any direct evidence of voter fraud or tampering, nor did any member of the Families alleged that the State prohibited them from casting a vote.<sup>67</sup> Thus, the 2016 election did not violate Article 23. Additionally, “instituting and applying requirements for exercising political rights is not, *per se*, an undue restriction of political rights.”<sup>68</sup> Rather, there must be some form of discriminatory intent. The proposed amendment has no such discriminatory intent. First, it actually loosens requirements on holding the presidency. Additionally, if the president was from Charechia Noresta, the amendment would apply in the same manner. Nothing the State has done has in any way discriminated against or unduly limited the political rights of the Families.

#### **REQUEST FOR RELIEF**

For the foregoing reasons, the State respectfully requests that the Court:

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<sup>65</sup> *Case of YATAMA v. Nicaragua* (2005) ¶199 IACHR

<sup>66</sup> Hypothetical ¶5

<sup>67</sup> Hypothetical ¶13-14

<sup>68</sup> *Case of YATAMA v. Nicaragua* (2005) ¶206 IACHR

- 1) Declare that Charechia's use of force was legitimate
- 2) Declare that Charechia did not violate the American Convention on Human Rights
- 3) Order the Shield of the North to cease its actions in violation of the American Convention on Human Rights