**2019 SUMMIT OF THE AMERICAS**

**INTER-AMERICAN HUMAN RIGHTS**

**MOOT COURT COMPETITION 2019**

**THE GUAJILLO, ANCHO, & POBLANO FAMILIES**

(Petitioner)

V

**THE REPUBLIC OF CHARECHIA**

(Respondent)

MEMORIAL FOR THE RESPONDENT

**TABLE OF CONTENTS**

**1. ADMISSIBILITY**.................................................................................................................7

1.1- Statement of Jurisdiction..............................................................................................7

**2. VALIDATION OF ACCEPTABLE GOVERNANCE**.........................................7

2.1- Fair representation in government...............7,8

2.2- Integrity of elections.............................8,9

2.3- Constitutionality of amendment proceedings...................................9

**3. VALIDATION OF STATE RESPONSE TO TERRORISM**………….9

3.1-Necessity of response ………………9-10

3.2-Proportionality and legality of response…...10, 11, 12

**4. NO VIOLATIONS IN THE HUMAN RIGHTS ARTICLES**.............................................12

4.1- Article 8: Right to Fixed Residence fulfilled....................................................12

4.2- Articles 7 and 8: Right to Personal Liberty fulfilled and Right to a Fair Trial fulfilled...12-13

4.3- Article 11: Right to Privacy fulfilled………………………………………13

4.4- Articles 13 and 16: Right to Freedom of Thought and Expression and the Right to Freedom of Association fulfilled ...14

4.5- Article 22: Right to Freedom of Movement and Residence fulfilled……14

4.6- Article 23: Right to Participate in Government fulfilled…………………...15

**5. REQUEST FOR RELIEF**.................................................................................................14,15

**INDEX OF AUTHORITIES**

**Treaties and other International Agreements**

American Convention on Human Rights................................................................8, 11, 12, 13, 14

Additional Protocol I of the Geneva Conventions………………………………...10, 11

**Hypothetical**

Hypothetical Case...................................................................................3, 4, 5, 6, 11,15

Clarification Questions.....................................................................5, 10

**Inter-American Court on Human Rights Case**

I/A Court of H.R. *Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala.* Judgement of 10 May 2012…………………...12

**STATEMENT OF THE FACTS**

***Factual Background***

The Republic of Charechia is an independent federative republic located in the Americas[[1]](#footnote-1) The state has a population of 28 million, and covers a surface area of 210,208 mi[[2]](#footnote-2) Geographically and demographically, the country is roughly divided into thirds.[[3]](#footnote-3) The northern third, known as Charechia Noresta, is mountainous, forming part of the Emmentan Shield and rich in minerals.[[4]](#footnote-4) The population of Charechia Noresta is mostly employed as shepherds or in the mining industry. To the west, lies Western Charechia, which is mostly covered by thick rainforest. The workforce of Western Charechia is made up of slash-and-burn farmers, river fishermen, and some timber operations. Finally, to the east and south, Charechia Maior, or simply Charechia, is a region that is home to about 18,000,000 of the 28,000,000 residents in the state.

Charechia is a constitutional federative republic with an executive, legislative and judicial branch.[[5]](#footnote-5) The executive branch is headed by the democratically elected president who may serve up to two consecutive terms.[[6]](#footnote-6) 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.[[7]](#footnote-7) The legislative branch is a bicameral national assembly with representatives democratically elected by the people in general elections.[[8]](#footnote-8) The legislative seats are all at-large seats, and are not tied to any specific region or state.[[9]](#footnote-9) Each state has its own provincial defense force and a limited-autonomy legislative body that handles internal taxation, education, and infrastructure.[[10]](#footnote-10)

The current president, Jamilo Avila-Gutierrez, was originally elected in 2012 with a 68% majority.[[11]](#footnote-11) He was reelected in 2016 with an 82% majority.[[12]](#footnote-12) Accusations of voter intimidation, voting booth discrepancies, ballot box stuffing, and foreign interference in the vote counting and gathering processes caused the Organization of American States (OAS) and the United Nations (UN) to investigate the voting process in the state.[[13]](#footnote-13) Both the OAS and the UN did not find any direct evidence of voter fraud or tampering. In June 2019, an amendment to remove the presidential term limit passed the Lower House and is now being debated in the Upper House, where it is assumed it will pass.[[14]](#footnote-14)

In 2016, a political resistance movement began organizing peaceful mass-protests in response to alleged impropriety and misuse of funds regarding President Avila-Gutierrez and the results of the 2016 election. In 2017, the Minister of Defense, a decorated general from Noresta named Jesus de Adama was summarily dismissed from his position. General de Adama returned to his village in Charechia Noresta, and subsequently began to unite the resistance groups into one group known as “The Shield of the North.” Their protests transitioned from peaceful to more aggressive in the early summer of 2017, 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.[[15]](#footnote-15) 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.[[16]](#footnote-16)

On August 3, 2017, three indigenous farmers were captured by the Shield of the North. 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.[[17]](#footnote-17) Two of the men survived to travel to the capital city to seek the help of the state.[[18]](#footnote-18) The third, Marcus Ochoa, died from injuries sustained in captivity while on the journey.[[19]](#footnote-19)

The Republic of Charechia used radar, drone surveillance, ground-level intelligence gathering, and information provided by internal operatives planted in the Shield of the North organization and in villages in which the organization receives support to identify Shield of the North targets to attack.[[20]](#footnote-20) On August 16, 2017, an air raid was carried out by the Charechian Military Police on the village of Paraio, 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 bomb.[[21]](#footnote-21) 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.[[22]](#footnote-22) 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.[[23]](#footnote-23) The three families brought cases first before the municipal, then the secondary, and finally the Supreme Court.[[24]](#footnote-24) 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."[[25]](#footnote-25) Nonetheless, the Guajillo family was awarded $75,000 in damages.[[26]](#footnote-26)

The families involved in the bombing of Paraio, the Guajillo, Ancho, and Poblano families, filed a joint lawsuit against the Charechian government violation of their human rights, which include the denial of freedom of assembly, freedom of speech, and freedom of movement. On March 1, 2019, the secondary court dismissed the lawsuit, claiming that the state performed necessary due diligence when identifying military targets. [[27]](#footnote-27)

**LEGAL ANALYSIS**

**1. Admissibility**

*1.1-* *Statement of Jurisdiction*

As a founding member of the Organization of American States (OAS) the Republic of Charechia ratified the OAS Charter on April 30, 1948 and the *American Convention on Human Rights* on January 15, 1984.[[28]](#footnote-28) The Republic of Charechia accepted the continuous jurisdiction of the Inter-American Court of Human Rights in 2001. The Republic of 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.[[29]](#footnote-29)

**2. VALIDATION OF DEMOCRATIC GOVERNANCE**

*2.1-Fair representation in government*

The Shield of the North and other vocal opponents of the current governance of the Republic of Charechia argue that Northern and Western Charechia lack political representation in the federal government. However, this allegation is fallacious because each region has both adequate federal and local representation that is in accordance with the requirements found in Article 23 of the *American Convention on Human Rights* (hereafter ‘ACHR’). The Republic of Charechia is a constitutional federative republic with three branches of government. Both the executive and legislative branches are democratically elected by the people. The legislative seats are filled at-large and are not tied to any region or state, but each state additionally possesses its own provincial defense force and a limited-autonomy legislative body that handles internal taxation, education, and infrastructure. The Supreme Court’s nomination and confirmation process is in compliance with other constitutional republics. Each citizen in the Republic of Charechia enjoys the right to take part in the conduct of public affairs, directly or through freely chosen representatives as required in Article 23 of the ACHR.[[30]](#footnote-30)

2.2-Integrity of elections

The integrity of The Republic of Charechia’s elections came into question leading up to the 2016 election. In accordance with Article 23 of the American Declaration of the Rights and Duties of Man, The Republic of Charechia has a duty to insure that its elections are universal and equal. 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. Both organizations released reports regarding discrepancies, irregularities, and refusal of access, particularly in the western and northern regions, but ultimately both organizations found no evidence of voter fraud or tampering. The Republic of Charechia is willing to work with both organizations to address the findings in the reports.

2.3- Constitutionality of amendment proceedings

Another point of contention with the governance is the amendment proposed to remove the term limit. Many argue that the amendment is unconstitutional, although as it currently stands, the amendment has followed all of the correct procedures. The amendment was introduced, passed in the Lower House, and is currently being taken up in the Upper House in accordance with proper legislative procedure. The amendment’s constitutionality, if it passes, will be determined by the Supreme Court.

**3. VALIDATION OF STATE RESPONSE TO TERRORISM**

3.1- *Necessity of response*

Due to the rapid militarization of the Shield of the North, the loss of civilian life due to hostage-taking, and the presence of a concerted foreign efforts to destabilize the country, the state had no choice but to respond to the situation with a strategic military response. In the Spring of 2016, peaceful protests began in Charechia Noresta in response to President Avila-Gutierrez’s reelection. The state respected the protester's freedom of thought and expression and freedom of association in accordance with Articles 13 and 16 of the ACHR and had no hostile response to the peaceful protest.

In 2017, the Minister of Defense, a decorated general from Noresta named Jesus de Adama, was summarily dismissed from his position by President Avila-Gutierrez. Instead of challenging his dismissal by a petition to the Inter-American Court of Human Rights, he returned to Noresta and united the protest groups into the terrorist organization, known as The Shield of the North. A month after his dismissal General de Adama was reported working with outside agents and disaffected members of the Charechian military police to stockpile weapons and munitions with an end goal of destabilizing the country. The accusations of foreign interference in the 2016 election and the reports of outside agents working with the disgraced General indicated a possible threat to the sovereignty of the state by a concerted foreign effort. In 2017, The Shield of the North began to engage in violent skirmishes with Charechian Military Police in both Noresta and Western Charechia. On August 3, 2017, the Shield of the North unlawfully detained three indigenous farmers, who they accused of being state spies. The Shield of the North tortured, starved, and beat the men for six days in an effort to extract information from them. The men were finally released on August 9th, but only two of the men survived. The third man, Marcus Ochoa, succumbed to the injuries inflicted upon him in captivity, on his way to the capital with the other two men. The death of Marcus Ochoa and the ongoing threat to the lives and freedom of the people of Charechia at the hands of the Shield of the North compelled the state to fulfill its obligation to protect its citizens.

3.2- *Proportionality and legality of response*

Additional Protocol I to the *Geneva Conventions* stipulates the appropriate use of military force in instances of non-international armed conflicts. Any military operations must be taken in accordance with the strict requirements of military necessity with a concerted effort to distinguish between combatants and non-combatants.[[31]](#footnote-31) Additionally, every precaution must be taken to prevent the incidental loss of civilian life in excess of the concrete and direct military advantage anticipated from the operation.[[32]](#footnote-32)

The death of Marcus Ochoa and the rapid invasion of the Western Region of Charechia by the Shield of the North required that the state act decisively to prevent any further loss of civilian life or state territory to the Shield of the North. The state utilized radar, drone surveillance, ground-level intelligence gathering, and information provided by internal operatives planted in the Shield of the North organization and in villages in which the organization receives support to determine that the organization had established its headquarters in the village of Paraio.[[33]](#footnote-33) A strike on the regional headquarters would provide the Charechian Military Police with the anticipated, direct military advantage of significantly eliminating the presence and influence of the organization within the region. On August 16, 2017, the Charechian Military Police carried out a calculated air raid on the village of Paraio in order to destroy the regional headquarters of the Shield of the North. In accordance with Additional Protocol I to the *Geneva Convention* the Charechian Military police made a concerted effort to distinguish between combatants and non-combatants by using advanced surveillance techniques. Unfortunately, due to a high level of integration and entanglement between combatants and noncombatants, incidental loss of civilian life did occur. The Supreme Court’s ruling in Paraio bombing stated 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.”[[34]](#footnote-34) Furthermore, Additional Protocol 1 of the *Geneva Conventions* stipulates that the presence or movements of civilians does not render certain points or areas immune from military operations, it only requires that every possible precaution be taken to minimize the incidental loss of civilian life.[[35]](#footnote-35) The state’s use of advanced intelligence-gathering constituted an abundance of precaution.

**4. NO VIOLATIONS IN THE HUMAN RIGHTS ARTICLES**

4.1- *Article 5: Right to Humane Treatment fulfilled*

Article 5 of the ACHR stipulates that every person has the right to humane treatment. More specifically, that every person has a right to the right to have his physical, mental, and moral integrity respected, and no one should be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.[[36]](#footnote-36) In the case *Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala,* the Inter-American Court of Human Rights, ruled that a state violates an individual’s right to personal integrity if it forcibly disappears that individual.[[37]](#footnote-37) Another aspect of forced disappearance is prolonged isolation and solitary confinement. The record indicates that any suspect that was detained was granted a trial. The record also states that both sides engaged in “forced interrogations,” but the ambiguity and mutuality of the phrase deprives it of any legibility. The Republic of Charechia has a duty of care to protect its people from any foreign or domestic threats, and the lawful detainment and interrogation of suspects are one of the ways the state gains valuable military intel.

*4.2- Articles 7 and 8: Right to personal liberty fulfilled and right to a fair trial preserved*

Article 7 of the ACHR stipulates that every person has the right to personal liberty.[[38]](#footnote-38)Article 8 of the ACHR states that every person has a right to a fair trial.[[39]](#footnote-39) Article 7 protects people from arbitrary arrest requires that anyone who is detained to be informed of why they are detained and the charge or charges that are being made against him.[[40]](#footnote-40) The protection carries over into Article 8, which stipulates that every person is entitled to due process and the right to appeal.[[41]](#footnote-41) Both Manuel Poblano and Claudio Ancho were arrested on formal charges and tried and convicted based on those charges. The charges leveled against the men were backed with evidence; therefore their arrest was in no way arbitrary. In accordance with Article 8, Manuel Poblano filed and was granted an appeal. The Poblano, Ancho, and Guajillo families were also entitled to full legal recourse. The family’s case was heard three different times and went through the full range of domestic remedies available to them.

*4.3- Article 11: Right to privacy fulfilled & recognized*

Article 11 of the ACHR stipulates that every person has the right to have his honor respected and his dignity recognized.[[42]](#footnote-42) Also, that no one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.[[43]](#footnote-43) Both the state’s intelligence gathering and the bombing were in order to fulfill its duty to protect its people by eliminating the threat of the Shield of the North. The state did not single out or make claims against any specific family or individual without granting them the full legal recourse to address the claims or charges.

*4.4- Articles 13 and 16: Right to freedom of thought and expression and the Right to freedom of association fulfilled*

Article 13 of the ACHR stipulates that every person has the right to freedom of thought and expression.[[44]](#footnote-44) Article 16 of the ACHR stipulates that every person has the right to freely associate for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.[[45]](#footnote-45) Both of these rights were extended to the initial peaceful protests, but the rapid militarization of the protests and the presence of foreign actors required the state to begin to investigate anyone associating with the Shield of the North. Any group that takes hostages and engages in armed conflict with the government is a threat to public order and national security. The dissemination of information from this group to other civilians caused both civil unrest and an armed insurrection in previously passive regions; therefore the state had a duty to ensure that the Shield of the North did not further influence any of its civilians. Any critiques of the governance of the Republic of Chareechia, regardless of their validity, should not be made with the aim to incite violence.

*4.5- Article 22: Right to freedom of movement and residence fulfilled*

Article 22 of the ACHR stipulates that every person is entitled to freely move and reside within their country.[[46]](#footnote-46) The Republic of Charechia, in no way, encumbered its people with any formal restriction to either their movement or residence. While de facto restrictions resulted from the conflict between the state and the Shield of the North, the Sovereign State of Chareechia acted appropriately and proportionally in the face of direct and unjustified insurrection by terrorist organizations within its sovereign borders.

*4.6- Article 23: Right to participate in government fulfilled*

Article 23 of the ACHR stipulates that every person has the right to take part in the conduct of public affairs, directly or through freely chosen representatives. [[47]](#footnote-47) The article also provides people with the right to vote in elections and to have access to the public service of their country.[[48]](#footnote-48) As previously established in section 2, the Republic of Charechia possesses valid democratic governance and has periodic elections that provide citizens with the right to the public service of their country.

**5. Request for Relief**

Based on the aforementioned contentions, the respondent respectfully requests the Court

holds that:

● The democratic of governance Republic of Chareechia is valid;

● The state’s response to terrorism was, and continues to be valid and justified; and,

● The aforementioned articles of the *American Convention on Human Rights* articles

were adhered to completely.

The Republic of Charechia would request that the court find no wrongdoing on the part of the

state.

1. Hypothetical Case Par. 1 [↑](#footnote-ref-1)
2. Hypothetical Case Par. 1 [↑](#footnote-ref-2)
3. Hypothetical Case Par 1 [↑](#footnote-ref-3)
4. Hypothetical Case Par. 2 [↑](#footnote-ref-4)
5. Hypothetical Case Par. 8 [↑](#footnote-ref-5)
6. Hypothetical Case Par. 8 [↑](#footnote-ref-6)
7. Hypothetical Case Par. 8 [↑](#footnote-ref-7)
8. Hypothetical Case Par. 9 [↑](#footnote-ref-8)
9. Hypothetical Case Par. 9 [↑](#footnote-ref-9)
10. Hypothetical Case Par. 10 [↑](#footnote-ref-10)
11. Hypothetical Case Par. 11 [↑](#footnote-ref-11)
12. Hypothetical Case Par. 11 [↑](#footnote-ref-12)
13. Hypothetical Case Par. 11 [↑](#footnote-ref-13)
14. Hypothetical Case Par. 14 [↑](#footnote-ref-14)
15. Hypothetical Case Par. 19 [↑](#footnote-ref-15)
16. Hypothetical Case Par. 20 [↑](#footnote-ref-16)
17. Hypothetical Case Par. 21 [↑](#footnote-ref-17)
18. Hypothetical Case Par. 21 [↑](#footnote-ref-18)
19. Hypothetical Case Par. 21 [↑](#footnote-ref-19)
20. Clarification Question 15 [↑](#footnote-ref-20)
21. Hypothetical Case Par. 22 [↑](#footnote-ref-21)
22. Hypothetical Case Par. 22 [↑](#footnote-ref-22)
23. Hypothetical Case Par. 23 [↑](#footnote-ref-23)
24. Hypothetical Case Par. 24 [↑](#footnote-ref-24)
25. Hypothetical Case Par. 24 [↑](#footnote-ref-25)
26. Hypothetical Case Par. 24 [↑](#footnote-ref-26)
27. Hypothetical Case Par. 29 [↑](#footnote-ref-27)
28. Hypothetical Case Par. 34 [↑](#footnote-ref-28)
29. Hypothetical Case Par. 34 [↑](#footnote-ref-29)
30. American Convention on Human Rights [↑](#footnote-ref-30)
31. Additional Protocol I to the Geneva Convention [↑](#footnote-ref-31)
32. Additional Protocol I to the Geneva Convention [↑](#footnote-ref-32)
33. Clarification Question 13 [↑](#footnote-ref-33)
34. Hypothetical Case Par. 24 [↑](#footnote-ref-34)
35. Additional Protocol I of the Geneva Conventions [↑](#footnote-ref-35)
36. American Convention on Human Rights [↑](#footnote-ref-36)
37. *Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala* [↑](#footnote-ref-37)
38. American Convention on Human Rights [↑](#footnote-ref-38)
39. American Convention on Human Rights [↑](#footnote-ref-39)
40. American Convention on Human Rights [↑](#footnote-ref-40)
41. American Convention on Human Rights [↑](#footnote-ref-41)
42. American Convention on Human Rights [↑](#footnote-ref-42)
43. American Convention on Human Rights [↑](#footnote-ref-43)
44. American Convention on Human Rights [↑](#footnote-ref-44)
45. American Convention on Human Rights [↑](#footnote-ref-45)
46. American Convention on Human Rights [↑](#footnote-ref-46)
47. American Convention on Human Rights [↑](#footnote-ref-47)
48. American Convention on Human Rights [↑](#footnote-ref-48)