

**Arizmendi et al. v. Chuqui**

**A. The State of Chuqui and its context**

1. The State of Chuqui gained independence in 1907. It has fifteen million inhabitants. 40% of the population lives in poverty, and 15% lives in extreme poverty. Its traditional economy is basically agriculture; it produces sugar, coffee and bananas. It has diversified its economy since 1990, given the fact that several foreign companies have established themselves in Chuqui because of the benefits it affords foreign investors. The inhabitants of Chuqui have an annual per capita income of US \$5500 (five thousand five hundred dollars). Unemployment hovers around 7.5%.

2. Since the time of its independence, there have been four coups d'état in Chuqui arising from popular discontent over living conditions. These coups have been led by members of the military who, after holding power for some time, have held popular elections and turned it over to civilians. The military governments have been characterized by their restrictions on public liberties and the persecution of their opponents.

3. The last coup took place in 1984 and the military was in power for four years. In 1988 the elections were won by a political coalition called Nuevo Renacer, which consists of a broad range of political parties. Since then, the Nuevo Renacer coalition has won elections with broad popular support. An important part of the Nuevo Renacer coalition's political and economic agenda has been based on opening up the country to the rest of the world. Thus, in terms of international policy, it ratified between 1988 and 1992 all of the Conventions of the United Nations and the Inter-American System of Human Rights. From an economic standpoint, and following the recommendations of the International Monetary Fund and the World Bank, the country adopted a broad liberalization policy toward foreign investment and its deregulation, with a view to attracting foreign resources and thereby improving the living conditions of all of its inhabitants. As such, foreign investors who decide to invest in Chuqui are able to take advantage of a number of labor and tax benefits.

4. Consequently, from 1990 to the present, foreign investment in Chuqui has risen by over 1000%, unemployment has decreased by more than 14 points and the annual per capita income has risen by more than US\$ 1000 (one thousand dollars). Foreign investment has also led to an increase in the national treasury, resulting among other things in greater state investment in road infrastructure, considerable improvements in primary education and health coverage for children and the elderly.

**B. Facts of the case**

5. In November of 1998, Doctor Juan Bautista, Director of the Public Hospital in the city of Kinkili (the capital of Chuqui, with a population of approximately six million) was informed by the person in charge of the pediatric department that four children had died

*2008 Inter-American Human Rights Moot Court Competition*  
*Hypothetical Case: Arizmendi et al. v. Chuqui*

during the past six months of unknown causes, but that in all of the cases their blood was found to contain elevated levels of mercury and other contaminating agents. Surprised by this news, the Director immediately sent out an internal memorandum at the Hospital and asked to be informed of all cases in which elevated levels of mercury or other contaminating agents were found in blood.

6. In December of 1999 Doctor Juan Bautista sent a communiqué to the Minister of Health, reporting that seven children and five adults had died in the past 18 months of unknown causes, but that all of the cases showed elevated blood levels of mercury and other contaminating agents. Finally, he reported that over 30 people had been hospitalized for severe intoxication from mercury or chemicals, which in some cases had severely and irreversibly affected organs including the kidneys, lungs and stomachs of different patients.

7. On February 8, 2000, the Minister of Health created an Ad-Hoc Technical Committee that was given three months to issue a report on the causes of death of the individuals specified in the communiqué from the Director of the Kinkili Public Hospital. On May 8, 2000, the Technical Committee issued the requested report and indicated that the deaths were due to contamination by mercury and other chemicals, which had been released into the environment by one or more unknown sources.

8. On June 1, 2000, the Minister of Health sent the report to the Minister of the Environment, requesting that the appropriate measures be taken to determine the origin of the mercury contamination that had caused the deaths and affected the health of the persons specified in the letter.

9. On June 11, 2000, the Minister of the Environment requested that the Environmental Inspector from the Ministry initiate the appropriate investigations to determine the origin of the contamination by mercury and other chemicals specified in the Technical Report of the Ministry of Health and make the appropriate recommendations.

10. On January 5, 2001, the Environmental Inspector announced in a report the results of the investigation into the deaths they had knowledge of at that time according to the report from the Ad-Hoc Committee of the Ministry of Health. Following an exhaustive investigation, the report concluded that the mercury contamination was probably due to the chemicals that the company Androwita S.A. was dumping on the property adjacent to its main plant. The contaminants would permeate the surface, seep through the groundwater table to reach other public and private properties, and in this way contact people. The report determined that at the time it was very difficult to determine where the chemical agents that had already seeped though had been initially deposited. It also recommended the immediate opening of an environmental investigation into the company Androwita S.A.

*2008 Inter-American Human Rights Moot Court Competition*  
*Hypothetical Case: Arizmendi et al. v. Chuqui*

11. Androwita S.A. is a Canadian-American company that produces and exports different chemical products. It has been operating in the State of Chuqui since 1992, and has a total of 1800 (one thousand eight hundred) employees. Prior to beginning its operations, it had to accept the regulations governing the entry of all foreign investment capital and obtain the municipal, health and environmental permits required for it to operate in accordance with the laws of Chuqui. All of these permits were granted in a timely manner.

12. On January 25, 2001, the Minister of the Environment sent the results of the investigation to the Minister of Health. On the same date, the Minister of the Environment ordered the opening of an environmental investigation against the company Androwita S.A. to determine its possible liability for the contamination by mercury and other chemicals that caused the deaths of 12 persons and—in the case that it was found liable—to adopt the appropriate measures pursuant to the environmental laws, the health code and other relevant standards. The Minister of the Environment also informed the Mayor of the opening of the administrative investigation, and the Mayor indicated that he would be paying attention to the results.

13. On March 30, 2001, the Minister of Health sent a new communiqué to the Minister of the Environment, indicating that four new deaths had been reported between December 1999 and that time, apparently caused by contamination from mercury or other chemical agents. One of the deceased was a minor child. Within the same time period another 14 people had been hospitalized for contamination by mercury and other chemicals, one of whom will have to undergo dialysis treatments for the rest of his life.

14. On July 12, 2001, the administrative investigation was closed and made public. It concluded that the company Androwita S.A. was causing environmental pollution by mercury and other chemical agents in excess of the permissible levels, which was affecting considerably the health of the inhabitants living next to the area where the company operates. Around 150,000 (one hundred and fifty thousand) low-income individuals live in that area. It was impossible to determine the extent of the area contaminated with chemical waste spilled by the company. The report ordered the immediate closure of the company until it made changes to its method of disposing of its chemical waste. It also imposed a fine of US\$ 25,000 (twenty-five thousand dollars) against the company.

15. On July 20, 2001, the General Manager of Androwita S.A. met with the Minister of the Environment and stated that the company would immediately take the necessary precautions to put an end to the pollution, which it had had no knowledge of up to that point. The General Manager said that closing the company would have a high social cost because more than 1800 (one thousand eight hundred) people would be deprived of employment. It would also be a terrible prejudice to the company, as it would not be able to fulfill its previously acquired commitments. The General Manager also stated that the company had a well-earned international reputation and that a closure would seriously affect the company as well as Chuqui's image with respect to the liberalization of foreign investment. Finally, the General Manager expressed the company's willingness to pay

**2008 Inter-American Human Rights Moot Court Competition**  
**Hypothetical Case: Arizmendi et al. v. Chuqui**

immediately the fine assessed against it and to initiate with the government a campaign to raise awareness at the national level on the importance of living in a pollution-free world.

16. On August 2, 2001, in the exercise of his authority, the Minister of the Environment ordered a two-month suspension of the order to close the company and stipulated that at the end of that period technical personnel from the Ministry would conduct an inspection to examine whether the company had taken the appropriate measures to refrain from dumping waste on the adjacent land. The company would be closed immediately if it did not pass the inspection. On October 2, 2001, the technical inspection was carried out and it was concluded that the company was no longer dumping chemical waste on the land where it had normally done so, and therefore could continue operating as usual.

17. On August 20, 2001, the Director of the Kinkili Hospital sent a new communiqué to the Minister of Health, reporting that two minors and three adults had died during the past year of causes apparently resulting from contamination by mercury or other chemical agents. Furthermore, an additional 17 individuals had been hospitalized as a result of chemical contamination. The Minister of Health again conveyed the new background information to the Minister of the Environment and to the Mayor, expressing to them his concern for what was happening.

18. The non-governmental Organization for a Clean World knew about the administrative investigation and the subsequent decision of the Minister of the Environment, and requested in writing and at a press conference that the Municipal authorities and the pertinent authorities at the Ministry of Health and the Ministry of the Environment immediately and definitively close Androwita S.A. because of the pollution it was causing and the consequent unpredictable risk it posed to the health of the public. It also called upon the health authorities to begin the immediate medical monitoring of all those individuals and properties potentially affected by the pollution caused by the company. It appealed to the public to be on alert for this type of pollution and to go immediately to the hospitals should they show any sign of contamination.

19. The Office of the Ombudsman of Chuqui also made an urgent appeal for the authorities to take every possible measure to prevent new deaths from continuing to occur, and for the harm caused to be redressed.

20. On October 30, 2001, the Organization for a Clean World filed a criminal complaint with the office of the prosecutor requesting that it establish who was liable for the 21 deaths from contamination by mercury or other chemical substances, and that it determine the appropriate criminal penalties. On the same date it also filed civil actions seeking compensation for the damages caused to the deceased individuals and their relatives, as well as to the people who were hospitalized and who suffered as a consequence of the chemical contamination. It further requested that all necessary

*2008 Inter-American Human Rights Moot Court Competition*  
*Hypothetical Case: Arizmendi et al. v. Chuqui*

measures be adopted to mitigate the harm already caused to the environment, property and possibly the health of hundreds of inhabitants.

21. The Prosecutor assigned to the case initiated the criminal investigation immediately. On July 20, 2002, the Prosecutor issued an indictment against the General Manager and the Waste Management Engineer of Androwita S.A. for their negligent management of chemical waste, which caused the deaths of 21 individuals. The Prosecutor requested that the court find them guilty of manslaughter and sentence them to five years in prison. No indictments were issued against any authorities or officials from the Ministry of Health, the Ministry of the Environment or the Office of the Mayor of Kinkili, as they did not have adequate resources for effectively monitoring the pollution that the company was generating, and therefore there was no way for them to know what was happening.

22. On December 5, 2003, following due process of law, the Criminal Court handed down judgment and sentenced the Waste Engineer of Androwita S.A. to 24 months in prison for manslaughter, for failing to handle with due care the waste from the chemical agents and therefore failing to foresee the possible consequences of his actions. The court acquitted the General Manager of the company because it found that he was the person who had handled the environmental and health permits necessary to its proper operation, which demonstrated his care and intent not to pollute and cause harm to third parties. The Organization for a Clean World appealed this decision because it considered the sentence against the company's Waste Engineer to be laughable and disproportionate to the harm caused. It also questioned the acquittal of the General Manager because he, as the person in charge of the company, was ultimately responsible for it. The judgment was affirmed in its entirety by the Court of Appeals.

23. On March 30, 2004, after obtaining all of the pertinent evidence and hearing all of the parties with due process, the civil judge issued a judgment holding that the company Androwita S.A. was responsible for the deaths of 21 individuals and for the harm caused to the health of another 61 people when it contaminated the groundwater table by dumping chemicals on the land bordering its property. The judgment ordered Androwita S.A. to redress the harm it caused: the company was ordered to compensate each of the deceased victims' families in the amount of US\$ 5000 (five thousand dollars) and to compensate those persons who were hospitalized as a result of the contamination in the amount of US\$ 2000 (two thousand dollars). The company was also ordered to clean up the contaminated area within a period of six years. Not content with the judgment, the Organization for a Clean World filed an appeal. The Court of Appeals reviewed it and held that it conformed to law.

24. The Organization for a Clean World stated at a press conference that the criminal sentence and the compensation ordered by the national courts were ridiculous, and that they sought to provide impunity for crimes committed by transnational corporations and economic groups. It further asserted that these crimes were committed with the tolerance of the State, which did nothing to prevent them. The organization stated that it had

**2008 Inter-American Human Rights Moot Court Competition**  
**Hypothetical Case: Arizmendi et al. v. Chuqui**

decided to go to the Inter-American System of Human Rights to seek effective justice in this case and prevent acts like these from occurring again.

**C. Proceedings before the Inter-American System of Human Rights**

25. On June 1, 2004 the Organization for a Clean World filed a complaint before the Inter-American Commission on Human Rights against the State of Chuqui for the violation of articles 4, 5, 8, 25, 17, 19, 21 and 26 of the American Convention on Human Rights in connection with articles 1.1 and 2, as the party liable for the death of Mr. Jorge Arizmendi and 20 other individuals, the contamination of 61 individuals and the resulting effects on their health and personal integrity. The complaint also indicated that this pollution continued to affect the property of the specified individuals and their families.

26. The complaint before the Commission also asserted that these violations apply to all such persons who, subsequent to the filing of the complaint, can demonstrate in the proceedings before the Inter-American System of Human Rights that they have been affected in some way by the harmful effects of the contamination, because such effects are ongoing.

27. During the course of the proceedings before the Commission, the State of Chuqui asserted that the case was a matter between private parties (affected persons and Androwita S.A.) that did not give rise to the international liability of the State under any circumstances. The State further alleged that the issue had already been resolved by the national courts in accordance with its legal system and within the framework of due process.

28. The Inter-American Commission decided the admissibility and merits of the case at the same time and concluded that the State of Chuqui was liable for all of the violations alleged by the petitioners on behalf of the persons named individually in their original petition. It further concluded that the State of Chuqui was also liable for the deaths of another four people during the years 2000, 2001 and 2002 and for the harm caused to the health of an additional 10 people during the years 2000 and 2001, all according to what was proved in the proceedings before the Commission.

29. Once the procedures and time periods set forth in the American Convention and in the Regulations of the Inter-American Commission on Human Rights had concluded, the case was submitted to the jurisdiction of the Inter-American Court of Human Rights. Chuqui accepted the jurisdiction of the Court without reservations in 1992.