

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

Clarification Questions & Answers – ENGLISH

1) Paragraph 8 requires further clarification due to the fact that the emitter and recipient of the report are the same (in Spanish).

a) General clarification: Due to a typographical error, paragraphs 8 and 9 of the Spanish version of the hypothetical case should read as follows (please note the English version remains the same):

8. El 1 de junio de 2000 el Ministro de Salud remitió el informe al Ministro del Medio Ambiente solicitándole que se tomen las medidas pertinentes a fin de determinar el origen de la contaminación con mercurio que ha causado las muertes y afectado la salud de las personas que se indican en la misiva.

9. El 11 de junio de 2000 el Ministro del Medio Ambiente solicitó al Inspector Ambiental del Ministerio que iniciara las investigaciones correspondientes a fin de determinar el origen de la contaminación con mercurio y otros químicos, indicada en el informe Técnico del Ministerio de Salud y le formulara las recomntioned in the investigation, and independent from the actions of Organization for a Clean V

a) In the adm

ministrative investigation findings, there was a fine imposed on the company in the amount of \$ 25,000, which the company duly paid.

3) The civil judge's decision included reparations and the order to clean the area. I would like to know if the license to operate chemicals was taken way from Androwita SA after the judge's decision?

a) No, the license was not taken away.

4) What were the requirements imposed upon Androwita S.A. by Chuqui for the establishment of the company and for granting the municipal, health and environmental permits?

a) The demands were outlined in the regulations of the State of Chuqui. To obtain the respective licenses, it was necessary among other things to conduct an Environmental Impact Study, which had to be approved by the Ministry of Environment.

5) Was the written request made by the NGO Organization for a Clean World challenging the decision of the Minister of Environment in the administrative investigation (§ 18 of hypothetical) an administrative appeal? If so, what was the decision of the State in its regard?

a)

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

- a) It started in January 2002.
- 7) Does the penal code of the State of Chuqui include sentencing for environmental crimes?
 - a) There are various laws in the State of Chuqui that refer to crimes against the environment. Precisely in this case, the tax indictment and the sentence of the judge were based on unintentional criminal offenses against the environment.
- 8) What were the standards required by environmental, health, and municipal departments of the State of Chuqui for granting permits?
 - a) They were normal and common standards similar to those of other countries in the region. See response to question 4.
- 9) On average, what were the mercury levels present in the blood of victims?
 - a) The victims had high levels of mercury in their blood.
- 10) According to paragraph 22 of the hypothetical case, the Criminal Court of Chuqui sentenced the Waste Engineer of the company Androwita S.A. to 24 months in prison for manslaughter arising from the environmental contamination caused by the company. In turn, in the civil sphere, the same company was ordered to indemnify the families of each of the deceased at US\$5,000.00 and each of the victims affected by the contamination at US\$2,000.00, as well as given the obligation to decontaminate the area within 6 years. Are such decisions, as far as their judicial nature and the "quantum" of criminal and civil penalties, in accord with the sanctions abstractly envisioned in the domestic law of the State of Chuqui?
 - a) The criminal penalty imposed was within the margin of punishment for environmental crimes, which ranges between 12 and 70 months of imprisonment. The civil penalty is determined by the assessment of the judge and the law does establish a "determined quantum."
- 11) According to paragraph 26 of the hypothetical case, the Organization for a Clean World

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

- a) The State always knew that the company Androwita S.A. would handle hazardous wastes dangerous to the human health, and in particular mercury.

13)

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

19) When a company establishes itself in Chuqui, what mutual labor and tax benefits do its investors and the State receive?

- a) See response 15 regarding benefits to Chuqui. Investors are taxed considerably less than other companies operating in Chuqui, and lax labor regulations are applied.

20) Paragraph 16 indicates that once the technical inspection was completed in October 2001, it was concluded that the company was no longer dumping chemical waste at the site where it normally occurred. Where then was it being dumped?

- a) Before October 2001, the waste was dumped carelessly into unsuitable containers, which were located on the adjacent property. Since October 2001, the company began to utilize tanks specially designed to prevent mercury leakage.

21) On what date did the Organization for a Clean World ask for the definitive closure of the company Androwita S. A.? Was it before or after October 2, 2001?

- a) The Organization For a Clean World requested the closure of the company on October 3, 2001.

22) How many deaths due to mercury or other pollutants were registered after October 2, 2001?

- a) The deaths of 4 people are known.

23) On what date in December of 1999 was the initial communiqué sent to the Minister of Health, and how soon after was he informed of the 30 plus people hospitalized, as referred to in paragraph 6?

- a) The communiqué was sent on December 5th, simultaneously informing the Minister of Health of the deaths and hospitalizations.

24) What specific criteria needed to be met by As he46(e)-1(t by 5u 006 Tw Tf0.0221 Tc -0t.hospita.65 -1T A)2

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

a) Yes, it is necessary to have an environmental impact study. The environmental impact studies must ultimately be managed and approved by the Ministry of Environment.

28) Are the deaths of the 4 persons which occurred between 2000 and 2002, as well as dam

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

- 37) What is the penalty for the crime of manslaughter (unintentional homicide) under the laws of the State of Chuqui?
- a)

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

46)

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

- a) These were determined by the judge based on his knowledge of the case.
- 56) Could the injured individuals have taken civil action against the state of Chuqui in domestic court?
- a) Please see response 84.
- 57) What domestic laws has Chuqui enacted to regulate and monitor companies like Androwita and to compensate members of the public who are affected by environmental degradation?
- a) In the State of Chuqui, any company that intends to carry out any activity that has an impact on the environment or the population must undergo an environmental impact study. In addition, in Chuqui there exists environmental legislation and civil contractual and extra-contractual liability legislation. Within the legislation regarding civil responsibility there exists a civil action regarding environmental cases that is investigative in nature, which was used in this case.
- 58) What was the extent of the property damage (both financial and environmental) to the families living in the affected area?
- a) Paragraph 14 states that upon completion of the administrative investigation, the State was unable to determine the extent of the contaminated area. However, it can be concluded that some of properties were considerably affected by the contamination.
- 59) What actions have Androwita and/or Chuqui taken to clean up the polluted area and mitigate the chance of further harm to the persons living there?
- a) The Government of Chuqui and the company Androwita S.A. began an awareness campaign on the importance of living in a healthy environment. As of August 2, 2001, the Ministries of Health and Environment and the Municipality initiated a public campaign about what was occurring. In addition they explained the possible symptoms of contamination and asked that anyone who showed symptoms go immediately to the nearest public hospital. The civil sentence ordered the company Androwita S.A. to clean the polluted area over a period of 6 years (paragraph 23). The company took appropriate measures to that effect and the Ministry of Environment and Health began to monitor its compliance.
- 60) Does the penal code of the State of Chuqui allow for the designation of criminal liability on individuals who are in executive positions within legal entities?
- a) Yes.
- 61) If the answer to the previous question is yes, how is it regulated under the penal code of Chuqui?
- a) Irrelevant to the case.
- 62) Who else was affected after July 12, 2001?
- a) See paragraphs 17 and 21, and the chapter concerning petition before the Commission.
- 63) What suitable and effective judicial mechanisms exist in the State of Chuqui for the protection of environmental rights and fundamental rights?

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

a)

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

requirements of the administrative act or, on the contrary, the administrative act would have full effect.

- 72) Which one(s) and what type(s) of applicable measures of the laws of Chuqui are referenced in Paragraph 12 of the Hypothetical Case?
- a) See administrative investigation and its consequences.
- 73) The case shows that Chuqui ratified "between 1988 and 1992 all the conventions of the United Nations and Inter-American Human Rights System" (paragraph 3) but, did Chuqui ratify all the Protocols of the Convention, and more specifically the Protocol of San Salvador?
- a) Yes.
- 74) Can the issue of Res Iudicata be raised, in accordance with the decisions of the internal courts of the State of Chuqui?
- a) That should be decided by the participants in light of the international human rights law.
- 75) In reference to paragraphs 14 and 16, please clarify what the State requires from the company

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

80) If the company Androwita S.A. was no longer pouring chemical waste at the site where it normally would, then where were these chemical residues dumped? (In reference to paragraphs 16 and 17 of the case.)

a) See responses 20 and 75.

81) What could be "other pollutants" that were found and, specifically, what kind of mercury was present (organic and/or inorganic), and in what amounts?

a) The other pollutants are varied in nature, and some of them can affect human health.

82) What were the measures (technical/administrative/civil/economic) taken by the State and/or Androwita to prevent and/or reverse additional toxins in the affected areas? If no measures were taken, why were they not taken and who decided not to take them?

a) See response 59 and other relevant responses.

83) How were the victims identified in the case, specifically was it indicated whether they lived near one another and, with respect to contaminated areas and facilities of the company, whether the victims had contact with any source of polluted water?

a) The contaminated victims were identified by the medical reports. The deceased were identified from the death certificates and the corresponding medical reports. Based on that information it was established that they lived in the vicinity of the company, Androwita S.A.

84) Could the State of Chuqui have been included in the civil liability case in which the company Androwita S.A. was ordered to repair damages for the harm caused to the victims?

a) If the State had any direct or indirect responsibility there could have been a civil action initiated against the State.

85) Paragraph 8 of the case (in Spanish) states, "On June 1, 2000 the Minister of Health sent a report to the Minister of the Environment requesting ..." Please clarify this fact of the case

since the tmt7d(10e3 Twng tter the StM-0.0001 T0.0008 pp45 -.15b 0.72fm)8(evant responses.)TjE0.0/P

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

State exercised effective supervision over waste management and by what means it did so during the company's operation.

- a) Paragraph 21 states that the Prosecutor did not make any criminal charge against any public official because authorities did not have the proper equipment to effectively control the pollution that the company was producing and consequently there was no way of knowing what was happening.
- 96) The team would like to receive a detailed description of the judicial structure of Chuqui.
- a) In Chuqui there exist Trial Courts, Court of Appeals, and Supreme Court.
- 97) The team also requests the Constitution of Chuqui to see whether the complaint presented in the hypothetical case presents a constitutional violation.
- a) The question goes beyond the scope of the hypothetical case.
- 98) We would like to receive the Code of Criminal Procedure of the State of Chuqui.
- a) The question goes beyond the scope of the hypothetical case.
- 99) What do the administrative investigation and environmental investigation refer to and how are they different?
- a) The administrative investigation and environmental investigation are the same in this case.
- 100) Should paragraphs 8 and 9 read Minister of Health instead of Minister of the Environment (in Spanish)? And who solicits the Environmental Inspector at the beginning of the investigations?
- a) See response 1.
- 101) At what point did it become public knowledge that the environmental pollution was caused by Androwita S.A.?
- a) The situation became public knowledge once the NGO Organization for a Clean World publicized it. See paragraph 18.
- 102) Does the State of Chuqui have laws that punish environmental crime?
- a) There are various laws in the State of Chuqui that reference crimes against the environment.
- 103) Has the State of Chuqui provided aid, subsidies, or incentives, or did it have any form of participation in the capital stock of the company Androwita S.A.?
- a) No, the State of Chuqui does not have any type of participation in the capital stock of the company Androwita S.A.
- 104) What are the approximate assets, revenues, and utilities of the company Androwita S.A.?
- a) Irrelevant to the case.