

# WORLD HUMAN RIGHTS MOOT COURT COMPETITION

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## HYPOTHETICAL CASE TO BE ARGUED

1. Gallopia is an independent state with 5 million inhabitants, neighbouring the economically powerful Livokia, with almost 50 million inhabitants. While Livokia is rich in natural resources, Gallopia's economy is mainly dependent on farming.

2. Gallopia and Livokia have been independent states since the late 19th century. During most of the 20th century tensions between the countries remained high, due to the warrior-like attitude of Sogal I, who ruled Livokia with an iron fist. Several vehement cross-border skirmishes took place during the first half of the 20th century, during which Livokia's strong military had the upper-hand. After the death of Sogal I in 1940, his eldest son Sogal II became the ruler of Livokia. Under his benign leadership the relationship between Gallopia and Livokia improved. Between 1942 and 1975 cross-border migration between Livokia and Gallopia was common place. During this time, about 500 000 ethnic Gallopians settled in the industrialised zones across the Livokian border. Simultaneously, almost 600 000 Livokians settled in the Gallopien province of Algora which directly neighbours Livokia and which is known for its tropical climate and fertile farming soil. However, in 1976 the relationship between the two countries once again deteriorated, when Sogal II was succeeded by his daughter Sogala I. As an outspoken pan-Livokian, she propagated the creation of a strong Livokian Federation, of which all neighbouring countries in the region with ethnic Livokians should form part. Livokia's military capacity also expanded by 25% after Sogala I took power.

3. Livokia and Gallopia are both members of the United Nations. Both countries have ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1980. Livokia ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and the Convention on the Rights of the Child (CRC) in 2000.

4. Livokia and Gallopia are members of a regional inter-governmental organisation, the Gossian Community (GC) which has 17 member states. The GC Treaty provides in Article 3 that member states shall protect the rights set out in the Universal Declaration of Human Rights. The Treaty provides that disputes over the interpretation and application of the Treaty shall first be resolved through

negotiation. If negotiations yielded no satisfactory result, the matter could be resolved by means of judicial proceedings accessible to the parties.

5. In January 2010 the Assembly of Heads of State and Government of the GC adopted the Convention on the Establishment of a Gossian Human Rights Court (CEGHRC). The Convention was ratified by Livokia in July of the same year. Article 3 of the Convention provides that a country can make a declaration allowing victims of human rights violations direct access to the Court. Livokia made such a declaration under Article 3 when it ratified the Convention. The Convention further provides in Article 10 that the Court may consider claims that the Universal Declaration of Human Rights or any UN human rights instrument ratified by a member state has been violated. It recognises as sources of law those mentioned in Article 38(1) of the Statute of the International Court of Justice. The Court may order any appropriate remedy. The admissibility criteria for complaints to the Gossian Human Rights Court are substantially the same as those under the Optional Protocol to the ICCPR. However, the CEGHRC allows victims of systematic human rights violations to submit collective complaints, as well as to authorise NGOs to act on their behalf. Gallopia has not ratified the CEGHRC.

6. Since the early 1980s a secessionist conflict has brewed in Algora. Gallopia has accused Livokia of supporting the secessionist efforts of ethnic Livokians living in Algora, who make up 60% of the Algoran population. In January 2011 Algora declared itself independent from Gallopia. Livokia and six other GC member states recognised Algora as a sovereign state. No other member of the United Nations has done so. Algora has not yet been admitted as a member of the United Nations or any other international organisation, nor has it ratified any international human rights treaties.

7. Livokia has developed strong ties with Algora since the period of cross-border migration. According to official statistics more than 50% of Algora's gross national budget consists of Livokian aid. The Livokian government is also the majority shareholder in Algora's largest company, which manufactures military equipment. The newly-established Algoran cabinet is composed solely of ethnic Livokians, the majority of whom have only recently settled in Algora, after previously serving as cabinet members in Livokia in the government of Sogala I. According to the international human rights organisation Discrimination Watch, 95% of all public servants in Algora are ethnic Livokians. Under Livokian law anyone who has a Livokian father is automatically granted Livokian citizenship.

8. The Algoran independence declaration was followed by widespread assault by Livokians against Gallopians in Algora, and looting of their property. As a result, more than 100 000 ethnic Gallopians have fled Algora. Livokians from the poor eastern part of Livokia have moved into the properties of those who have fled and it has been documented that Algoran authorities in many cases have granted title deeds to the new occupants. Many governments have accused the Algoran

and Livokian authorities of not doing enough to curb the violence and dispossession of property in order to enable refugees to return. After much pressure the Livokian government made a public statement that it did not condone the violence and illegal property transfers, but that there was not much they could do since Algora was an independent state. The violence against Gallopians in Algora has resulted in sporadic mob violence against Livokians living in Gallopia.

9. Gallopia has historical ties with the neighbouring ethnically homogenous region of Baldoria. The Baldoria region has belonged to Livokia for centuries and is under the direct rule of the central Livokian government in Livokia City. For decades Baldorians have claimed that Livokia had tried to destroy their identity by, for example, forbidding the use of the Baldorian language in schools or public places in Livokia, including in Baldoria. The Baldorians are also afraid that a new purge will take place similar to the notorious extermination campaign 1984, in which a large portion of the Baldorian population was killed by Livokian security forces. As a result of the repression the Baldorian Liberation Movement (BLM) was founded, whose mission was “to defend the legitimate interests of the Baldorian People”. There is clear evidence that the BLM has bases in Gallopia, where those sympathetic to their cause regularly provided refuge and financial support, including to some members of parliament in their private capacity.

10. In February 2011 an explosion destroyed a key Livokian oil reservoir. Ten security guards were killed in the attack which caused the explosion. As a result of the explosion large quantities of crude oil ended up in Livokia’s largest river, soiling and threatening the water supplies of Livokia City with its 3 million inhabitants.

11 Several Baldorians and Gallopians have been arrested in Livokia for terrorism-related offences both before and after the attack on the oil reservoir. The Livokian authorities also discovered plans for several similar attacks throughout Livokia, which would have been executed in the months following the February 2011 explosion. In July 2011 four Baldorians and two Gallopians were convicted and sentenced to 15 years imprisonment for the attack on the oil reservoir. The accused acknowledged that they had committed the attack but argued that such attacks were the only way of drawing attention to the desperate situation of the Baldorians. There was no appeal against the conviction and sentence. The Gossian Community sent trial observers, who noted in their report that the trial had been conducted in accordance with international fair trial guarantees.

12. Citing national security, Livokia and Algora have since July 2011 deported large numbers of Gallopians from Livokia and Algora. The deported persons were informed by letter that they had 72 hours to leave. Those Gallopians who could provide convincing proof that they had no ties with the BLM would be exempted from the deportation order. Whether such proof was provided, was to

be determined by the Livokian Minister of the Interior. She was advised in a non-binding fashion by a judicial body consisting of three senior trial attorneys. All others either had to leave voluntarily, or would otherwise be deported by force by Livokian police. By September 2011, almost 7000 ethnic Gallopians had reportedly been expelled from Livokia and Algora in this manner. In many instances, the affected individuals were married to Livokian nationals. However, due to difficulties in obtaining visas for Gallopians, as well as fear of retaliation by Gallopians in Gallopians in Gallopians itself, many such Livokians were unable to accompany their spouses to Gallopians, resulting in the separation of more than 1 000 families.

13. The Gallopians government as well as Discrimination Watch accused the Livokian and Algoran authorities of condoning and systematically supporting the discrimination against ethnic Gallopians. The Algoran and Livokian authorities countered this accusation by stating that their intelligence services had uncovered new plans by the Gallopians and secessionists within Livokia to destroy a large dam and create flooding with catastrophic consequences for the country. In a joint statement the Livokian and Algoran authorities emphasised that “no terrorist activities would be tolerated on our soil; those responsible would not be allowed to return to further their terrorist aims”. Some attempts were made by authorities from Gallopians and Livokia to settle their differences but the negotiations broke down because of lack of trust. Gallopians refused to involve Algoran authorities in the negotiations as it feared this would constitute an indirect recognition of Algora as an independent state.

14. On 30 September 2011 Discrimination Watch filed a complaint on behalf of 300 Gallopians who had been displaced from Livokia and Algora before the Livokian Supreme Court which is the only court which have jurisdiction in a dispute of this nature. The complainant sought the following relief:

(a) a declaration that Livokia has human rights obligations in respect of Algora;

(b) a declaration that Livokia should allow the right to return; and that the refusal of Livokia to allow and facilitate the return of displaced Gallopians to Algora and Livokia and guarantee their security constitutes a violation of the prohibition of discrimination and the right to family life as guaranteed by international human rights law; and

(c) a declaration that the looting and unlawful appropriation of homes and property belonging to displaced ethnic Gallopians in Algora violate international human rights law and an order for compensation to the displaced Gallopians.

15. On 20 November 2011 the Livokian Supreme Court handed down its judgment in which it declared claim (a) unfounded. The Court declared claims (b) and (c) inadmissible in as far as they dealt with events in the independent State of Algora, and declared them unfounded with regard to the action or inaction of Livokian authorities.

16. On 30 January 2012 Discrimination Watch filed a complaint against Livokia on behalf of 300 Galloprians who had been displaced from Livokia and Algora before the Gossian Human Rights Court seeking the same relief as had been claimed before the Livokian Supreme Court.

17. Assume that it is 2012. Prepare heads of argument for both Discrimination Watch (acting on behalf of 300 displaced Galloprians) as applicant and the State of Livokia as respondent.