

**2023 ESMOAS COLLEGIATE SUMMIT OF THE AMERICAS
INTER-AMERICAN COURT OF HUMAN RIGHTS MOOT COURT COMPETITION
HYPOTHETICAL CASE**

“THE BENARNOLDO TRIBE, PETITIONER

v.

“THE REPUBLIC OF SUPPLEEVIA & THE MARTÍN MINING CONGLOMERATE”

I. The Republic of Suppleevia: Background Information

1. Geography:

The Republic of Suppleevia is located in the north central portion of South America, in the transition zone between the Andes Mountains and the Amazon & Orinoco Basins. It encompasses an area of around 150,000 square miles, and is considered one of the world’s megadiverse countries, thanks to its straddling of different ecological zones. As such, it has been a leader in climate change reform and has set aside a large percentage of its land as either national preserve or as semi-autonomous indigenous reserve land. The land is rich in both mineral and agricultural resources, and its diversification makes the country’s economy one of the most stable on the continent.

2. Demographics:

As of the 2022 census, The Republic of Suppleevia had a population of around 22,000,000. The vast majority of Suppleevians self-identify as Mestizo (mixed white and indigenous), totaling to around 70% of the total population. Approximately 20% of the population (around 4,400,000) is indigenous, spread across around fifty distinct tribes. The remaining 10% of the population is split fairly evenly between those who identify as White and those of African descent, who are listed as Black. Most of the non-indigenous population identifies as Roman Catholic (about 85%), while the remaining 15% are described as having various “degrees of Christianity” intermingled with tribal animist practices. Those tribes who are more isolated are more aligned with the ancient indigenous animist beliefs, while those closer to the

urban areas tend to have a more heterogenized religion with elements of Catholicism and animism/ancestral religions. Approximately 70% of the population is urban, and the urban portion tends to be of higher socioeconomic class, while the rural population lags behind. However, a recent study showed that overall poverty in the country is at an all-time low, and has decreased to under 20% over the past decade (a drop of nearly 15%).

3. **History:**

Suppleevia's first settlers appear around 15,000 years ago, who likely journeyed by land from Central America or by boat down the Pacific coastline. Over time, the groups began to intermingle and groups of families in similar areas began to develop similar languages, resulting in the rise of several dominant indigenous cultures, including the Betsios, the Benarnoldos, and the Gritterus. Though all would eventually be absorbed into the Incan Empire in the Fifteenth Century, the isolated tribes retained much of their cultural identity through both the Incan period and the time of Spanish colonization. The more wealthy departments in the country established by the Spanish united to declare independence in 1820 and fought a three-year independence war, culminating in victory and joining with Bolivar's Republic of Gran Colombia. Suppleevia separated from Gran Colombia in 1830 as an ally of Ecuador, who left during the same year. Brief wars with Colombia, Ecuador, and Peru occurred through the latter half of the Nineteenth Century, but has remained a peaceful neighbor for much of the 1900s. It was a founding member of the Organization of American States and of the United Nations.

4. **Government Structure:**

Suppleevia is run by a tricameral system of government, with an executive branch led by the president and vice-president, who are popularly elected to six-year terms, a unicameral legislative branch (the House of Assembly) of 100 elected officials (2 from each of the 40 provinces plus 10 elected at large from the capital city district and 1 from each of the ten largest indigenous tribes), and a judicial branch consisting of the highest court (the National Court of Suppleevia, four super-provincial courts, forty provincial courts, and numerous municipal and other lower courts.

II. The Benarnoldo Tribe: Background Information

1. Location:

The Benarnoldo Tribe is the sixth-largest indigenous tribe in the country, with a population of around 50,000 individuals. The tribe is located primarily along the Talberto River and its tributaries, which descends from the Andes and feeds into the Orinoco River Basin.

2. Economics:

For centuries, the Benarnoldo have lived in small villages along the riverbanks, primarily consisting of houses on stilts with thatched roofs. Benarnoldo men traditionally made a living off of the river, using spearfishing and bow hunting to obtain food, while the women weaved baskets, ground cassava root, and smoked fish. More recently, many of the Benarnoldo men have obtained employment with the large foresting and mining companies in the area. Currently, most of the tribe's men work in the mining or timber industry, with approximately 60% of men 18-35 employed by the Martín Mining Conglomerate (MMC). Over the past 30-40 years, the overall quality of life has risen in the Benarnoldo villages due to this gainful employment. Now, most villages have running water, electricity, and even satellite television.

3. Religion:

Culturally, the Benarnoldo tribal religion (which is still the dominant religion among more than 80% of the tribe's population) is closely tied to the rivers that provided life to the villages for so long. As such, the tribe's annual festivals and weekly rituals center on the rivers or creeks running by the villages. The largest village, Manni (population 19,000), is located along the 22 mile long Trillos River, a tributary of the larger Talberto River. Manni's annual Prayer to the Waters is recognized as the most important tribal religious event among the Benarnoldo. Many pilgrims travel from smaller villages to Manni to participate, where they ritually bathe in the river and drink a fermented drink brewed from the water and a local plant. This is said to please the ancestral gods who have watched over the village since the beginning of time, and helps to ensure plentiful fishing and bountiful harvests for the villages in the upcoming year.

4. History with Government

The Benarnoldo and other indigenous tribes have made great strides in human rights protections in the Republic of Suppleevia. This includes the National Indigenous Rights Act of 1993, which recognizes the indigenous tribes' right to land, including:

- i.** "The right to own communal indigenous lands in perpetuity, and the right for these lands to be inalienable and indivisible unless declared as public utility by the power of the State"
- ii.** "The right to be exempt from taxation on the communal land occupied by the village"
- iii.** The right not to be displaced as a people from their ancestral lands"

Additionally, the Indigenous Protection Act of 2011 strengthened these rights, adding:

- iv.** "The right to maintain and ameliorate spiritual, cultural, linguistic, and economic identity and traditions"
- v.** The right to consultation on exploration and exploitation of non-renewable resources on their lands and on those programs that may have detrimental cultural effects, and to have a share in the benefits these practices produce"
- vi.** "The right to preserve and promote the natural environment in which they reside"
- vii.** "The right to maintain and manage, inalienably, their cultural heritage"

III. Mining Company Information

1. Overview:

The Martín Mining Conglomerate (MMC) is the largest mining company in Suppleevia, and is partially nationalized, with the state owning a controlling majority of the company (60%). It is the in the top 300 largest public companies in the world, with a revenue of US\$52.2 billion and a net income in 2021 of US\$10 billion.

Though competition with its petroleum and mining interests is allowed in Suppleevia, the competition is regulated and MMC continues to own the lion's share of revenue within the country in the mining and petroleum sector. The former president of

MMC most recently served on the executive board of OPEC, in which Suppleevia holds membership.

2. Local Economic Impact

Though the direct economic investment in the Benarnoldo villages can not be quantified easily, the fact that MMC employs such a large percentage of villagers and pays well above the national average for unskilled labor does create obvious economic benefits for villages like Manni. As of 2023, however, there is no official written program or plan for economic investment in the indigenous community by MMC either directly or otherwise.

IV. Trillos River Mine

1. Overview

The largest mine owned and operated by MMC in the Benarnoldo region is the Trillos River Mine, a bauxite and lithium mine 8 miles upriver from Manni. The mine was established in 2005 by MMC. The village of Manni was host to an informational meeting presentation by the company attended by the village elders and tribal council, who gave informal approval for the mine to be built, with the promise it would employ at least 500 indigenous workers. The mine is estimated to generate \$US 700-750 million annually.

2. 2013 Pollution Report

A pollution report filed by the Suppleevian government indicated that sediment pollution and runoff had rendered the Trillos river and adjacent lake essentially dead, as the oxygen levels in the water had been depleted so much that only algae could live there, and covered the river and lake for ten months out of the year (only clearing with glacial runoff in early spring from the Andes). The 2013 report declared the water unfit for human consumption or contact. From 2013-2016, the adjoining wetlands began to show significant signs of withering and dying.

3. 2016 Rejuvenation Project & 2018 Report

In 2016, to help alleviate the issue, the Suppleevian government began the Trillos Rejuvenation Program, which invested over US\$50 million in wetland restoration, including the planting of cleansing plants and direct injection of ozone into the lake.

However, by the 2018 follow-up report, the water quality had not improved significantly and remained, in the words of the report, “unfit for human or animal use”. Throughout this period, the Benarnoldo continued to hold their sacred river festivals, moving them to early March (they had been held in October) to take advantage of glacial runoff and allow for participation in the river-based events. The national government issued strong safety warnings against the process, but it nonetheless it persisted.

4. 2018 Park Project & 2021 Report

In 2018, the state government contributed an additional US\$ 60 million and received a donation from MMC of \$ 50 million to begin a project diverting river water from upstream over a plateau five miles north of Manni, creating a waterfall, and rediverting that water back to rejoin the existing riverbed two miles south of Manni, where it empties into the lake. This diversion emptied fresh water from a secondary river upstream to assist in clearing the polluted Trillos, and the waterfall helped to oxygenate the water flowing downstream, which shortens the time for the water in the lake to circulate and drain downstream. After the diversion was completed, a follow-up report was done three years later, in January 2021. The report showed significant decreases in the pollution levels of the Trillos and the associated lake. However, the portion of the Trillos running directly in front of the village has dried up, with the main channel of the river now running through the waterfall and bypassing the village by approximately three miles to the east and two miles to the south. However, a provincial park has been constructed around the waterfall, which has become a successful tourist destination. An ecotourism resort and several park installations are being constructed, as the park itself has turned a profit in 2022.

V. Judicial Proceedings within the Country

1. Provincial Court:

On 4 October, 2021, the Tribal Council of the Benarnoldo filed a legal complaint in the provincial court against both the Republic of Supleevia, claiming that the MMC had violated good faith agreements by polluting sacred waters, and that the republic

had acted with impropriety in its attempts to clean up the pollution without regard for the religious rights of the tribe. The case was heard from November 2-5, 2021, and the provincial court rendered a finding of responsibility of the MMC, issuing a fine of \$US 2 million to be paid directly to the tribal council for damages. The state was not found at fault.

2. Super-Provincial Appellate Court:

MMC appealed the decision, citing its significant financial contribution toward the cleanup and river diversion efforts, and its investment in the Manni village through its significant hiring of indigenous workers. The super-provincial court overturned the provincial court's decision in March 2022.

3. National Court:

The tribe filed an appeal with the national court on March 20, 2022, but the court refused to hear the case, deeming that the super-provincial court's ruling was final and there was insufficient evidence to begin another appeal.

VI. Proceedings before the Inter-American Human Rights System

1. Case Filing:

The Benarnoldo Tribe, with the financial assistance of Rights and Resources International, a non-profit coalition of organizations focused on indigenous resource rights, filed an application with the Inter-American Commission on Human Rights on June 6, 2022.

2. Commission Finding on Admissibility:

The commission reviewed the case and filed its Admissibility and Merits Report on August 10, 2022. In it, the IACHR found the case to be admissible, with potential human rights violations against articles outlined both in the indigenous rights acts in Suppleevia and potential violations of Articles 3, 9, 11 and 13 of the American Declaration of the Rights and Duties of Man.

3. Set of Hearing Date:

The Inter-American Court of Human Rights set the initial hearing date for April 15, 2022, via online session, and April 21-22, during its Extraordinary Session in Waco,

TX, to hear the arguments of the representatives of the petitioners and the state regarding the merits and reparations in the instant case.

VII. Pertinent Treaties and International Agreements

1. General Agreements:

Suppleevia is a member in good standing of the international community. It is a charter member of both the Organization of American States and the United Nations, and holds seats on the Economic Commission for Latin America and the Caribbean (ECLAC) and the Organization of Petroleum Exporting Countries (OPEC) and is a participating member of both Mercosur and PROSUR.

2. Specific Pertinent Agreements:

Suppleevia ratified the American Convention on Human Rights in 1969, the Geneva Conventions and additional protocols (since 1949), and has recognized the jurisdiction of the Inter-American Court of Human Rights since 1983. It was a signatory to the United Nations Declaration on the Rights of Indigenous Peoples in 2007 and the American Declaration on the Rights of Indigenous Peoples in 2016.

VIII. Appendix: Pronunciation Guide

- 1. Suppleevia:** suh PLEEV ee uh
- 2. Benarnoldo:** ben ar NOHL do
- 3. Talberto River:** tahl BEHR toh
- 4. Trillos River:** tree YOHS
- 5. Manni:** mah NEE