**THE 2023 EUGENE SCASSA MOCK OAS PROGRAM INTER-AMERICAN COURT OF HUMAN RIGHTS MOOT COURT COMPETITION**

|  |  |
| --- | --- |
|  |  |
|  |  |

**IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

|  |  |
| --- | --- |
|  |  |
|  |  |

**April 2023**

**“THE BERNARNOLDO TRIBE”**

*Petitioner*

**v.**

**“THE REPUBLIC OF SUPPLEEVIA”**

*State*

|  |  |
| --- | --- |
|  |  |
|  |  |

**MEMORIAL FOR THE PETITIONER**

# **TABLE OF CONTENTS**

**INDEX OF AUTHORITIES.**.....................................................................................................**3**

**STATEMENT OF FACTS.**........................................................................................................**4**

**LEGAL ANALYSIS.**...................................................................................................................7

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

**1.1** **Statement of Jurisdiction**.........................................................................................**7**

**1.2** **Exhaustion of Remedies…**.......................................................................................**7**

**2. VIOLATIONS…**......................................................................................................................8

**2.1** **American Convention on Human Rights**................................................................8

**2.2** **American Declaration on the Rights of Indigenous Peoples**….............................8

**2.3** **American Declaration on the Rights and Duties of Man**………………………...8

**3.** **ARGUMENTS ON THE MERITS**…....................................................................................8

**3.1 American Convention on Human Rights**…………………………………………8

**a. Article 1**…........................................................................................................8

**b. Article 12.2**…...................................................................................................9

**3.3** **American Declaration of the Rights and Duties of Man**………………………..10

**a. Article 3**……………………………………………………………………..10

**3.2 American Declaration on the Rights of Indigenous Peoples**…………………...11

**a. Article 13.1**.....................................................................................................11

**c. Article 23.2**.....................................................................................................13

**REQUEST FOR RELIEF**........................................................................................................15

# **INDEX OF AUTHORITIES**

## **International Agreements**

American Convention on Human rights**.....................................................................................**

American Declaration on the Rights of Indigenous Peoples**…..................................................**

American Declaration on the Rights and Duties of Man**................................................................**

## **Precedent**

Sawhoyamaxa Indigenous Community v. Paraguay**...............................................................**

Last Temptation of Christ v. Chile**...............................................................**

Garífuna Punta Piedra Community and its Members v. Honduras**.................................................**

Kichwa Indigenous People of Sarayaku v. Ecuador**...............................................................**

## **Hypothetical Clarification**

**Questions….......................................................................................................................... passim Hypothetical Case................................................................................................................ passim**

# **STATEMENT OF FACTS**

The Republic of Suppleevia is a central South American country.[[1]](#footnote-1) Approximately 20 percent of the population in Suppleevia is indigenous while another 70 percent identifies as Mestizo - a mixed race of white and indigenous heritage.[[2]](#footnote-2) The Benarnaldo tribe is the sixth largest indigenous tribe in the entire country, with a population of 50,000 individuals.[[3]](#footnote-3) The largest village is called the Manni Village and is located along the Trillos River.[[4]](#footnote-4) This river serves as not only a source of plentiful fish and bountiful harvest for the village but also serves as a part of the Benarnaldo tribe's religion which is tied closely to the rivers.[[5]](#footnote-5) The Trillos river is recognized as a part of the indigenous people's lands as of the National Indigenous Rights Act of 1993 which recognizes the tribes' rights to their land.[[6]](#footnote-6)

In 2005 the Martin Mining Company (MMC) conducted open, informal discussions with the Benarnaldo tribe on the topic of opening a bauxite and lithium mine eight miles above the village of Manni.[[7]](#footnote-7) Before the official opening of the mine, there was an environmental study done on the land. The conclusion of this study was that there were potential environmental risks to the mine opening. The State claims that this information was shared with the Benarnoldos, however, the Benarnoldos assert they have been misled about that information.[[8]](#footnote-8) Despite the State’s awareness of the potential environmental risks, there was not another check done on the environment, specifically the Trillos river, until 2013 when there was news of environmental damage already occurring.[[9]](#footnote-9) At the point in time when the State finally became aware of the damage that the mine had done to the Trillos River in 2013, an algae bloom had depleted oxygen in the water and killed all other living things. The algae bloom covered the river’s surface for ten months of the year.[[10]](#footnote-10) The State made the report declaring the river unfit for human consumption or contact one year after the report.

Once this was discovered, the state put up several signs around the water, particularly in high-traffic areas.[[11]](#footnote-11) There was one notable attempt by the state to fix the damage that had been done by itself and the MMC - the state being culpable due to the fact that it had a 6o percent stake in the company.[[12]](#footnote-12) This attempt occurred in 2016, during which the river was injected with ozone to try and rejuvenate it to its original oxygenated levels. By 2018 this had been deemed a failure and the state, therefore, decided to move the river.[[13]](#footnote-13) Shortly thereafter, the river was diverted and an ecotourism location was quickly opened up. The ecotourism resort and the several park installations have since turned a profit in 2022.[[14]](#footnote-14)

The movement of the Trillos River was not something that the Benarnaldo tribe confirmed nor was consulted on. The river itself has a significant cultural impact on this tribe, specifically in its location. The location is important to various tribal festivals and rituals which are observed in the Trillos River. One example would be the Manni annual Prayer to the Waters, which is the most significant tribal religious event during the year. Pilgrims from other villages reach the river specifically at Manni, where villagers ritually cleanse themselves the river and drink fermented brewed drink from the river and local plants.[[15]](#footnote-15) As such the tribe had a right to be consulted on this matter as per the indigenous protection act of 2011 which added Article 5 to the National Indigenous Rights Act of 1993. In this article, it is stated that all indigenous tribes have the right to be consulted on programs that may be detrimental to the culture of the indigenous tribes.[[16]](#footnote-16)

As a result, the Benarnaldo tribe filed legal complaints against the Republic of Suppleevia and the MMC, claiming that there were actions of pollution and attempts to clean up this pollution without regard for the religious rights of the tribe.[[17]](#footnote-17) The case was heard from November 2 to 5 And the Provincial Court found in favor of the indigenous peoples.[[18]](#footnote-18) MMC appealed the decision at the Super-Provincial appellate court and the decision was overturned in March 2022.[[19]](#footnote-19) After being denied a trial at the national court level, the Benarnaldos tribe was given financial assistance by Rights and Resources International, a nonprofit organization focused on assisting indigenous peoples in maintaining their rights to their resources.[[20]](#footnote-20) With this financial assistance, the Benarnaldo tribe was able to file an application with the Inter-American Commission on Human Rights(IACHR).[[21]](#footnote-21)

# **LEGAL ANALYSIS**

## **I.** **Admissibility**

### *1.1 Statement of Jurisdiction*

The Republic of Suppleevia became the founding member of the Organization of American States (OAS) in 1948 and has recognized the jurisdiction of the Inter-American Court of Human Rights (IACHR) since 1981.[[22]](#footnote-22)

### *1.2 Exhaustion of Domestic Remedies*

The case was initially filed as a formal complaint to the provincial courts. The claim was that the Republic of Supleevia and MMC had acted inappropriately by not only polluting the waters but by also acting without regard for the religious rights of the Benarnaldo tribe.[[23]](#footnote-23) This court found in favor of the Benarnaldo tribe on November 5, 2021.[[24]](#footnote-24) MMC filed an appeal to the Super-Provincial Court, citing money that they had donated to the rejuvenation programs and river relocation program.[[25]](#footnote-25) The Super-Provincial Court overturned the decision of the provincial court in March, 2022. The tribe filed once again with the National Appellate Court on March 20, 2022 but the court refused to hear the case.[[26]](#footnote-26) The court backed this decision by ruling that there was not enough evidence for another appeal. The Benarnaldo Tribe has exhausted all domestic remedies and is pursuing justice in the IACHR with financial assistance from a non-profit, indigenous resource rights group called Rights and Resources International.[[27]](#footnote-27)

## **II.** **Violations**

### *2.1 American Convention on Human Rights*

The Petitioner asserts the violations of the American Convention on Human Rights, Articles 1 and 12, and consequently requests that the Court order the State to perform *restitutio in integrum,* in line with this convention.

### *2.2 American Declaration of the Rights and Duties of Man*

The Petitioner also alleges violations of Articles 3 and 29 of the American Declaration.

### *2.3 American Declaration on the Rights of Indigenous Peoples*

The Petitioner claims that there have also been violations of Articles 13.1, 19, and 23.1 of the American Declaration on the Rights of Indigenous Peoples.

# **III.** **ARGUMENTS ON THE MERITS**

### **3.1 American Convention on Human Rights**

#### **a. Article 1**

Article 1 of the ACHR dictates that all states subject to the document have the obligation to respect the rights of all citizens.[[28]](#footnote-28) The state of Suppleevia is party to this convention and therefore must abide by this article. By moving the Trillos river, the indigenous people’s right to religion has been violated within the ACHR. By violating article 12, right to religion, article 1 has also been violated. The state of Suppleevia has also failed to uphold several of its own documents which were created for the purpose of upholding the rights of its indigenous citizens.

#### **b. Article 12.2**

Article 12.2 states that “No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.”[[29]](#footnote-29) The people of the Benarnaldo tribe use the river for several important religious traditions.[[30]](#footnote-30) The main tradition we have been informed of was believed to be valuable and sacred enough that the people of the village of Manni changed the time of year which the festival took place.[[31]](#footnote-31) However, the rivers repositioning has cause several problems. People within the village have expressed concern for the sanctity and potency of the ceremony sice the river’s repositioning.[[32]](#footnote-32) An express number is not given, but it has been enough that the discussion of whether the state would or could charge the Benarnaldo people to perform their ritual at the park has not even been broached.[[33]](#footnote-33)

As the river has been clearly tied to the tribe’s heritage for a long period of time, the movement of the river has infringed on the religious and cultural rights of the Benarnaldo people.[[34]](#footnote-34) The state and the MMC have effectively limited the religious freedoms of the Benarnaldo tribe by repositioning the river. The Republic of Suppleevia is a majority vote and stake holder in the MMC, holding a total 60 percent of shares and votes.[[35]](#footnote-35) The state must therefore act on their obligation to protect the rights of the Benarnaldo people into consideration when considering what steps to take in the rejuvenation of the Trillos river.

### 

### **3.3 American Declaration of the Rights and Duties of Man**

#### **a. Article 3**

The American Declaration of the Rights and Duties of Man is a foundational document of the OAS. Within this document, Article 3 outlines the right to religious freedom and worship. This provides the right to maintain one’s religion and religious practices.[[36]](#footnote-36) This right is supported by the National Indigenous Rights Act of 1993 and the Indigenous Protections Act of 2011.[[37]](#footnote-37) These are domestic acts which the Republic of Suppleevia has also failed to uphold.

The Trillos River is widely known to hold religious significance for not only the Manni people as people from several smaller villages will make an effort to visit the Manni for these festivals and rituals.[[38]](#footnote-38) By diverting the river, the rights of the Benarnaldo people have been violated. The MMC created the problem and severely damaged the natural environment but the State, as a majority holder in the company - both in shares as well as in votes - also has a duty to make whole the Berarnoldo pfix the problems it creates without undermining the rights of citizens.

The violation of article 3 of the American Declaration act to strengthen the article 1 and 12 violations of the ACHR. The choice to move the river by the government was a violation of the rights of the indigenous people of the Benarnaldo tribe.

#### 

### **3.2 American Declaration on the Rights of Indigenous Peoples**

#### **a. Article 13.1**

The American Declaration on the Rights of Indigenous Peoples states that “Indigenous peoples have the right to their own cultural identity and integrity and to their cultural heritage, whether tangible or intangible, including historic and ancestral heritage; and to the protection, preservation, maintenance, and development of that cultural heritage” which is seen in article 13.1 of the American Declaration on the Rights of Indigenous Peoples. This article protects Indigenous rights to ancestral and spiritual lands to preserve their heritage.

The Republic of Suppleevia has violated not only Article 13.1 of the American Declaration on the Rights of Indigenous Peoples, but also several of its own documents in this process. Particularly, the state has violated article four of National Indigenous Rights Act of 1993, added by the Indigenous Protections Act of 2011.[[39]](#footnote-39) This article states that all indigenous peoples have the right to maintain their heritage in all its forms. Article one of the original National Indigenous Rights Act of 1993 also dictates the rights of indigenous people to their ancestral lands. This would include the Trillos River as well as all the religious ceremonies associated with it. The natural path of the river was considered essential not only to the community of Manni, but also the entire tribe’s religion.

A case which aligns with this precedent is the case of *Garífuna Punta Piedra Community and its Members v. Honduras.* In this case,the Garífunacommunity was granted rights of ownership over the majority of their ancestral lands. The State also gave ancestral lands to the thirty party members outside of the Garífuna community.[[40]](#footnote-40) This, as well as the State’s failure to uphold its end of the agreement made in 2001 resulted in the death of many community members.[[41]](#footnote-41) The IACHR found that the State had only further hurt the Garífuna people by allowing a mining corporation to use part of their land.

This case has several overlapping factors that make it applicable in the case at hand. Primarily, the use of the land which is promised to them not only by the ACHR and the American Declaration on the Rights of Indigenous Peoples, but also in domestically established documents. Also, establishment of the mine proved detrimental the religion and health of the indigenous community. Fishing was destroyed and birth defects increased by 11%.[[42]](#footnote-42) In this case, there was significant harm done to the indigenous tribe that brought the State to trial. The Garífuna precedent and the case at hand today is the issue of religion. The issue of religion only furthers the violations committed by the Republic of Suppleevia. The complete damage done is that the establishment of the mine polluted the water. While the initial establishment was not an issue, the Benarnaldo people feel misled as to the detriment that the mine could bring to the community and their health and practices.[[43]](#footnote-43) Furthermore, the people of the tribe were not consulted on the matter of the movement of the river. This river, which not only has purposes in everyday life, but also holds significant value to their religious practices and their cultural identity.

#### **b. Article 23.1**

Article 23.1 of the American Declaration on the Rights of Indigenous Peoples claims that “states shall consult and cooperate in good faith with the indigenous peoples concerned, through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”[[44]](#footnote-44) This means that any actions taken to the relocation or realignment of indigenous land must be discussed and consulted with the indigenous peoples that it affects. It also means that any good pay the agreements should be upheld. To this end, the Republic of Suppleevia has failed not only in regards to the American Declaration on the Rights of Indigenous People, but has also failed in its actions to uphold National Indigenous Rights Act of 1993 and the Indigenous Protections Act of 2011.[[45]](#footnote-45) Article 5 of the National Indigenous Rights Act of 1993-- which was explicitly added by the indigenous protection act of 2011--states that the State must consult with the indigenous peoples on actions taken towards or about their lands. This includes actions that may be detrimental to their well-being or the natural environment in which they reside.[[46]](#footnote-46)

To this end, the state failed to properly inform the Benarnaldo people of the potentially extremely detrimental impacts that opening the mine on the Trillos River might have on their land. The indigenous people feel as though they were misled on the effects of the establishment of this mine.[[47]](#footnote-47) However, what is worse is the fact that the indigenous people were never consulted on the movement or redirection of the river.[[48]](#footnote-48) This violates not only domestic agreements that the country has signed on to, but also neglects the International agreement that is the American Declaration on the Rights of Indigenous Peoples.

A case that what represent the president of this current situation is the case of the *Kichwa Indigenous People of Sarayaku v. Ecuador*. The facts of this case are that the State allowed a private oil company to explore and exploit the land of the Kichwa Indigenous people without their consent or permission. This agreement allowed the oil company to be extremely invasive upon the lands, acting in ways that were detrimental to the land. These actions included the use of things like high-powered explosives in several parts of the lands. This was an express failure on the State's part to abide by its agreements.[[49]](#footnote-49) The violation was not accepted before and it should not be accepted now.

The key difference between these two cases is the fact that we are talking about the relocation of a river as opposed to the establishment of a mine. The indigenous people of the Benarnaldo tribe have no problems with the establishment of the mine, however poses its grievances with the lack of information given to them and the relocating of the river without their consent.[[50]](#footnote-50) As explained in Article five of the Indigenous Protections Act of 2011, they have a right to consultation and consent to such actions. This right is furthered by article 23.1 of the American Declaration on the Rights of Indigenous Peoples. The fact of the case is that the Benarnaldo people were not consulted on whether or not they were consulted on the movement of not just a river, but on a central part of their heritage, culture, and religion.

## **Request for Relief**

For the foregoing reasons, the petitioner respectfully asks that the court:

1. Apply all recommendations of the Inter-American Commission on Human Rights
   1. Recognize the Benarnoldo tribe’s right to land given to them through the National Indigenous Rights Act of 1993
   2. Recognize that through the National Indigenous Protections Act of 2011, no displacement from the Benarnoldo tribe’s lands in which they practice their religious rituals should be allowed.
2. Instruct the creation of a long-term fund in case of future bauxite, lithium, and similar cases of pollution which could harm the environment.
3. Instruct the Republic of Suppleevia to make more consistent environmental check-ups on the environments subject to harm or danger from any mines or deposits.
4. Request a financial compensation for the Benarnaldo people of $USD 2 million as prescribed by the provincial courts.
5. Find in favor of the Benarnaldo tribe in the case at hand by ruling violations of Articles 1 and 12 of the American Convention on Human Rights; Articles 3 of the American Declaration of the Rights and Duties of Man; and Articles 13.1, 19, and 23.1 of the American Declaration on the Rights of Indigenous Peoples.

1. Hypothetical Par. 1.1 [↑](#footnote-ref-1)
2. Hypothetical Par. 1.2 [↑](#footnote-ref-2)
3. Hypothetical Par. 2.1 [↑](#footnote-ref-3)
4. Hypothetical Par. 2.3 [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Hypothetical Par. 2.4 [↑](#footnote-ref-6)
7. Hypothetical Par. 4.1 [↑](#footnote-ref-7)
8. Clarification Question 34 [↑](#footnote-ref-8)
9. Clarification Question 35 [↑](#footnote-ref-9)
10. Hypothetical Par. 4.2 [↑](#footnote-ref-10)
11. Clarification Question 59 [↑](#footnote-ref-11)
12. Clarification Question 5 [↑](#footnote-ref-12)
13. Hypothetical Par. 4.3 [↑](#footnote-ref-13)
14. Hypothetical Par. 4.4 [↑](#footnote-ref-14)
15. Hypothetical Par. 2.3 [↑](#footnote-ref-15)
16. Hypothetical Par. 2.4 [↑](#footnote-ref-16)
17. Hypothetical Par. 5.1 [↑](#footnote-ref-17)
18. Ibid. [↑](#footnote-ref-18)
19. Hypothetical Par. 5.2 [↑](#footnote-ref-19)
20. Hypothetical Par. 6.1 [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. Hypothetical Par. 7.2 [↑](#footnote-ref-22)
23. Hypothetical Par. 5.1 [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. Hypothetical Par. 5.2 [↑](#footnote-ref-25)
26. Hypothetical Par. 5.3 [↑](#footnote-ref-26)
27. Hypothetical Par. 6.1 [↑](#footnote-ref-27)
28. American Convention on Human Rights Article 1 [↑](#footnote-ref-28)
29. American Convention on Human Rights Article 12.2 [↑](#footnote-ref-29)
30. Hypothetical Par. 2.3 [↑](#footnote-ref-30)
31. Hypothetical Par. 4.3 [↑](#footnote-ref-31)
32. Clarification Question 1 [↑](#footnote-ref-32)
33. Clarification Question [↑](#footnote-ref-33)
34. Hypothetical Par. 3.2 [↑](#footnote-ref-34)
35. Clarification Question 5 [↑](#footnote-ref-35)
36. American Declaration of the Rights and Duties of Man Article 3 [↑](#footnote-ref-36)
37. Hypothetical Par. 2.4 [↑](#footnote-ref-37)
38. Hypothetical Par. 2.3 [↑](#footnote-ref-38)
39. Hypothetical Par. 2.3 [↑](#footnote-ref-39)
40. *Garífuna Punta Piedra Community and its Members v. Honduras* [↑](#footnote-ref-40)
41. *Garífuna Punta Piedra Community and its Members v. Honduras* [↑](#footnote-ref-41)
42. Clarification Question 15. [↑](#footnote-ref-42)
43. Clarification Question 7 [↑](#footnote-ref-43)
44. American Declaration on the Rights of Indigenous Peoples Article 23.1 [↑](#footnote-ref-44)
45. Hypothetical Par. 2.4 [↑](#footnote-ref-45)
46. Ibid. [↑](#footnote-ref-46)
47. Clarification Question 7 [↑](#footnote-ref-47)
48. Clarification Question 12 [↑](#footnote-ref-48)
49. Hypothetical Par. 4.4 [↑](#footnote-ref-49)
50. Clarification Question 7, 12 [↑](#footnote-ref-50)