**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 BENARNOLDO TRIBE,**

*Petitioner*

**v.**

**“THE REPUBLIC OF SUPPLEEVIA & THE MARTÍN MINING CONGLOMERATE”**

*State*

**MEMORIAL FOR THE STATE**

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\*As reported by IACHR Press Office at <https://oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/105.asp>

\*\*[www.ojp.gov/ovc/publications/bulletins/children/pg5.html](http://www.ojp.gov/ovc/publications/bulletins/children/pg5.html)

**STATEMENT OF THE FACTS**

***Factual Background***

The Republic of Suppleevia is located in the north central portion of South America and is a medium sized country in terms of land mass and population. It has a population of roughly 22 million people and has an area of 150,000 square miles[[1]](#footnote-1). Approximately 70 percent of the population lives in urban areas, and while they tend to be of a higher socioeconomic class compared to rural people, poverty is at an all time low[[2]](#footnote-2). While Suppleevia is made up primarily of those who identify as mestizo (mixed indigenous and white), there is a sizable minority of indigenous people that make up 20% of the population. While 85% of the country is Roman Catholic, there’s a large subsection of indigenous people who hold traditional animist beliefs[[3]](#footnote-3). The Benarnoldo tribe is the sixth largest indigenous tribe in Suppleevia, with around 50,000 members[[4]](#footnote-4).

The Benarnoldo tribe is located along the Talberto River and its tributaries, living in small communities along the riverbanks[[5]](#footnote-5). The tribe’s predominant religion is a subset of indigenous animist beliefs and rituals centered around the rivers[[6]](#footnote-6). The Benarnoldo tribe has various annual festivals and weekly rituals, the most important of which, the annual Prayer to the Waters, is held in Manni, the largest village among the tribe[[7]](#footnote-7). Manni is located along the 22 mile Trillos River, a tributary of the Talberto River. In the Prayer to the Waters religious event, 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.

The government of Suppleevia has worked to preserve the rights of indigenous peoples in its borders, granting the Benarnoldo tribe, which has a population of 50,000 inhabitants, one delegate in the 100-member unicameral legislature, and an additional two other representatives from the province, ensuring that Benarnoldoan voices are fairly represented in the government[[8]](#footnote-8). The Suppleevian government also passed the National Indigenous Rights Act of 1993, which recognized, among other provisions, the right of the tribe to “own communal indigenous lands in perpetuity, and are considered inalienable and indivisible unless declared as a public utility by the power of the State”. The Indigenous Protection Act of 2011 furthered this by declaring rights 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” and “to preserve and promote the natural environment in which they reside”[[9]](#footnote-9)

Over the past 30-40 years, the quality of life in Manni has grown substantially due to increased business investment in the region, spurred on by the Martin Mining Conglomerate. The Martin Mining Conglomerate (MMC), the largest mining company in Suppleevia, is a hybrid enterprise, being publicly traded but with the state owning a 60% majority in the company[[10]](#footnote-10). MMC is among the largest public companies in the world, with a revenue of $52.2 billion USD and a net income of $10 billion in 2021[[11]](#footnote-11). In 2005, the MMC began planning the construction of a new mine in the region, and approached the village elders and tribal council with the plan. Upon the elders and council giving an informal approval, the MMC constructed the Trillos River Mine, a bauxite and lithium mine 8 miles upriver from Manni and the largest in the region[[12]](#footnote-12). The mine generates an estimated $700-750 USD annually[[13]](#footnote-13). With the development of the mine, the MMC has also invested in the region, employing roughly 60% of men 18-35 and paying well above the national average for unskilled labor[[14]](#footnote-14). This has rippled throughout the community, with most villages gaining running water, electricity, and even satellite television.

In 2013, the Suppleevian government released its first report on the state of the environmental impacts of the mine[[15]](#footnote-15). The report that indicated that sediment pollution and runoff had effectively killed the Trillos River and adjacent lake, and that oxygen levels had dropped so much that only algae could live there[[16]](#footnote-16). The algae covered the river and lake for ten months out of the year, only clearing with runoff in early spring[[17]](#footnote-17). The report also found the water unfit for human consumption or contact, and marked the start of a gradually worsening environmental crisis. Throughout this period, the Benarnoldo tribe held their river festivals to March (from October) to accommodate the shift in rivers, despite the government’s repeated warnings about the safety of holding the festival at all considering the state of the river[[18]](#footnote-18).

In 2016, the Suppleevian government initiated the Trillos Rejuvenation Program, which directed $50 million into wetland restoration in the area, including planting cleansing plants and directly injecting ozone into the lake. However, by the 2018 follow up report, the water quality had not improved and still remained ‘unfit for human or animal use’[[19]](#footnote-19). In 2018, Suppleevia began a project to divert river water from upstream over a plateau five miles north of Manni, creating a waterfall which would then be rediverted back to rejoin the existing riverbed two miles south of Manni where it would empty into the lake[[20]](#footnote-20). For this project, the government contributed $60 million, while the MMC donated $50 million[[21]](#footnote-21). The diversion emptied fresh water from a secondary river upstream to assist in cleaning the Trillos, and the waterfall existed to help oxygenate the water flowing downstream and shorten the time for water in the lake to circulate and drain downstream[[22]](#footnote-22). In a 2021 follow up report, the Suppleevian government found that there was a significant decrease in the pollution levels of the Trillos and associated lake; however, the portion of the Trillos running directly in front of the village dried up, leaving the main channel flowing three miles to the east and two to the south[[23]](#footnote-23). The government constructed a provincial park around the waterfall, which has become a successful tourist destination, with construction underway for an ecotourism resort and several other park installations[[24]](#footnote-24).

On October 4, 2021, the Tribal Council of Benarnoldo filed a legal complaint in the provincial court against both the Republic of Suppleevia and the Martin Mining Conglomerate. The Provincial Court ruled against the MMC, fining the conglomerate two million USD to paid directly to the council; however, the provincial court did not find the state at fault[[25]](#footnote-25). The Martin Mining Conglomerate appealed the decision to the Super-Provincial Appellate Court, citing its financial contributions and investment in the Manni village. The appeal worked, and in March 2022, the super-provincial court overturned the provincial court’s decision[[26]](#footnote-26). Though the tribe filed an appeal on March 20, 2022 to the national court, the court refused to hear the case, citing insufficient evidence to begin another appeal[[27]](#footnote-27).

### **LEGAL ANALYSIS**

#### **1. ADMISSIBILITY**

##### **1.1 Statement of Jurisdiction**

The Republic of Suppleevia ratified the American Convention on Human Rights in 1969; the Geneva Conventions and additional protocols in 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[[28]](#footnote-28). Therefore, Suppleevia is bound to abide by the American Convention on Human Rights and its court.

**2. LEGAL ANALYSIS**

**2.1 The State Did Not Violate Article 3**

The state did not violate Article 3 Section 1 of the American Declaration on the Rights and Duties of Man or any of the subsequent sections. The article states that “Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private”[[29]](#footnote-29). The state took did not place any sort of restrictions on the practice of religion, and in fact took steps to protect indigenous religious practices, as evidenced by the 2011 Indigenous Protection Act wherein it enshrines “the right to maintain and ameliorate spiritual, cultural, linguistic, and economic identity and traditions”[[30]](#footnote-30). The state, when dealing with the environmental fallout, sought to take minimally invasive actions in efforts to clean up the river, to negligible effect.

**2.2 The State Did Not Violate Article 9**

The State did not violate Article 9 of the American Declaration on the Rights and Duties of Man. This article states that “Every person has the right to the inviolability of his home.”[[31]](#footnote-31) Suppleevia specifically tried noninvasive measures in terms of cleaning up the river, and while the state did have to move the river, it was ultimately necessary in the interest of preserving the lives of the indigenous communities. Given that the river water was not safe to drink for both humans and animals, the state had a mandate to preserve the health and well-being of the environment and to promote actions which cleaned the river.

The state regrets the pollution, however, the state notes that it was unaware of any elevated risk compared to other mines. The state notes that the environmental report done prior to the opening of the mine showed no elevated risks compared to the eleven other mines operating in the Benarnoldo region[[32]](#footnote-32)[[33]](#footnote-33). The state also notes that those mines have not resulted in substantial ecological damages, given that they are not part of the present suit. Thus, the state maintains that the environmental damage done by the present mine was not foreseen by the state nor the company, hence the actions the state took to resolve the crisis. The state notes that during this time, the company also followed state regulations regarding proper disposal of waste, and the whole of these actions suggests that the company and the state attempted to interact with the Benarnoldo tribe in good faith during the construction and operation of the mine.[[34]](#footnote-34)

**2.3 The State Did Not Violate Article 11**

The Republic of Suppleevia did not violate Article 11, which states that “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.[[35]](#footnote-35)” When the mine was open, there was no unusual risks of pollution; moreover, when the state did the environmental report in 2013, they took actions in order to alleviate the crisis, first by planting cleansing plants and injecting ozone, and then upon the failure of those efforts, by diverting the river[[36]](#footnote-36)[[37]](#footnote-37)[[38]](#footnote-38). The state and the corporation operated with the express desire to preserve indigenous health upon the realization of the crisis; evidenced by the combined $160 million spent by both parties with the goal of environmental cleanup[[39]](#footnote-39).

Articles 18 and 19 of the Declaration of Indigenous Rights help provide much needed nuance towards the case. Clause 1 of Article 18 says that “Indigenous peoples have the collective and individual right to the enjoyment of the highest attainable standard of physical, mental, and spiritual health.”[[40]](#footnote-40) The state, though unaware of the environmental damages initially, a point which the state does cede, does point out its efforts towards revitalizing the river in the interest of preserving the health and well-being of the Benarnoldo people and their environment. Neither the state of Suppleevia nor the MMC foresaw the full scope of the environmental impact; however, both acted with due diligence in acting promptly to resolve the crisis.

Article 19, Clause 1 of the Declaration of Indigenous Rights says that “Indigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the rights to life and to their spirituality, cosmovision, and collective well-being.”[[41]](#footnote-41) The state has reaffirmed this, both in its own laws as well as its actions. The MMC as a corporation made agreements with the Benarnoldo tribe for rights to construct on the land, in which the tribe had the same information the corporation did in terms of the risk assessment[[42]](#footnote-42)[[43]](#footnote-43). When the crisis hit, the state and corporation acted jointly to provide redress to the tribe through mitigation efforts. Article 19 emphasizes the state’s responsibilities in ensuring the well-being of the environment, and the state operated with due care and diligence, given that environmental disasters cannot simply be ignored once discovered, lest problems worsen.

The state contends that it attempted to provide opportunities to preserve indigenous rights at every step in the construction of the mine, the operation, and the subsequent crisis. Both the company and state used the available data in the risk assessment of the project; and while the government admits that it had incomplete data, it had no way of knowing the scope of the subsequent fallout. And, once the state did know, it took all available steps for mitigation and prevention. The state first put up signs across the river, warning the Benarnoldo tribe against consuming and interacting with the river, which the tribe ignored due to religious rituals.[[44]](#footnote-44) Furthermore, while statistics with birth defects went up by 11% during this time, the Republic of Suppleevia contends that this issue could have been at least mitigated in part if the indigenous people utilized the healthcare system brought to the village, which indigenous people do not use[[45]](#footnote-45). While the government respects their rights to not participate, it notes that statistics are severely skewed based on the lack of accurate data, and that health problems that could be fixable with proper care often go untreated due to the religious objections of the Benarnoldo tribe.[[46]](#footnote-46)

**2.4 The Suppleevian Government Inherently Considers Indigenous Voices**

The structure of government in Suppleevia actively ensures Indigenous voices are heard in the government. Given that the Republic of Suppleevia is a unicameral legislative branch, and includes two representatives from each of the 40 districts, of which the Benarnoldo tribal lands consist of one, as well as indigenous delegates from each of the ten largest tribes, the Benarnoldo tribe was inherently consulted through the means of representative democracy[[47]](#footnote-47). The state would contend that this meets the definition of consultation, as it notes the impracticality of consulting with every individual; rather, the elected officials of the tribe and inhabitants serve as representatives of the will of the tribes, one which proportionally far outweighs the actual population of the Benarnoldo tribe[[48]](#footnote-48). The Republic of Suppleevia inherently considers all indigenous people through its unique style of government, and if tribal leaders were dissatisfied with their representatives who are elected to accurately convey their voices, they have the ability to elect new leadership[[49]](#footnote-49). The failure of a representative to not represent their constituents effectively is not a failure of the state, it is the failure of the representative, and the state empowers indigenous people through constitutional mechanisms to replace them.

Clause 4 of Article 29 of the Declaration of Indigenous Rights states 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 and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, or other resources.”[[50]](#footnote-50) The state highlights the clause “through their own representative institutions”, which specifically refers to states that have wholly separate forms of government, in which the Republic of Suppleevia does not have. Indigenous peoples are intertwined with the Republic’s government, and thus the representative institutions are the representatives themselves[[51]](#footnote-51). In cases where the tribe is not easily accessible, or where there are crises, it is the representatives who are the de facto voice of the tribe. The state points to its own Indigenous Rights Act of 2011, which lists “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”[[52]](#footnote-52). The state contends that the consultation would have occurred at the representative level, rather than solely at the tribal level, due to unique governmental structure of the Republic of Suppleevia which enables indigenous representation in the legislature. The state argues that this form of consultation is still valid, noting that tribal representatives are elected by the tribe itself, and that the district representatives also consider the Benarnoldoan interests[[53]](#footnote-53). Furthermore, the Indigenous Rights Act of 2011 also ensures “The right to preserve and promote the natural environment in which they reside”, a right which, in times of crisis, requires the state to protect at all costs[[54]](#footnote-54). The point of a representative government is to ensure that governments can make tough decisions and respond rapidly, which the Suppleevian government does while still making sure that indigenous voices are heard.

The state argues that the unique style of the Suppleevian government means that consultation inherently occurs as part of the Suppleevian democratic process. Any actions done by the government would necessarily need to have the consultation of the legislature, even if it were simply a budgetary action, legislators would have had knowledge of the project and an input in it. Indigenous representatives and local representatives are elected to provide the government with input for precisely situations like these, as evidenced by the Suppleevian government’s adoption of the Indigenous Rights Acts of 1993 and 2011. The actions of the Suppleevian government support the conclusion that the state has always been a pioneer of indigenous rights, and to presume that the state’s actions were hostile flies in the face of the longstanding principles and evidence provided above. If representatives did not adequately voice the opinions of their district and tribe, that is the fault of the individuals, and the state regrets that the tribe was not accurately represented by their elected officials.

**2.5 The Actions of the State Were Necessitated by the Circumstances**

The state and petitioner seem to differ in terms of what the perceived violations were. The petitioner would like to portray the state as malicious and attempting to harm indigenous people and their cultures. However, this is simply not the case. The Republic of Suppleevia has, throughout the years, continually reaffirmed its commitment towards indigenous rights, passing laws expressly for that purpose. The state includes indigenous representation in the government to ensure indigenous tribes like the Benarnoldo are heard and considered[[55]](#footnote-55).

What the case comes down to is ultimately a difference in values. The state contends that it had considered and attempted every feasible opportunity for environmental cleanup, and only the drastic action of diverting the river was able to rectify the damage. The state argues that, in the conflict of religious actions versus environmental actions which inherently impact the quality of life of the indigenous population, as well as the flora and fauna of the region, environmental preservation had to be the first priority. Article 12, Clause 3 of the American Convention on Human Rights states that “Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others”[[56]](#footnote-56). The state contends that it adhered to the ACHR in the efforts of environmental preservation in its actions.

While the state regrets the unfortunate situation, it had to act in a way that ensured the survival of the indigenous population. The alternatives, which would be continued ignorance, or further stalling in the hopes of a miracle solution, had far too high of a human and environmental cost. The Benarnoldo tribe, too, has shown a willingness to be flexible with religious rites, as the tribe has been able to be flexible with the time of year of the ceremony, and the state is saddened that the tribe has not been understanding of the severity of the crisis[[57]](#footnote-57). The state also would like to point out the substantial impact of water pollution in the region. While the Benarnoldo villages have running water, the state notes that water pollution impacts the flora and fauna of the region. The Benarnoldo tribe, before the mine opened, used the river for a food source, as did a substantial amount of fauna[[58]](#footnote-58). With the river pollution, not only was it harmful for humans, but it was fatal for fish, as well as damaging to the wetlands and other surrounding areas[[59]](#footnote-59). The tragedy is that the state is attempting to rectify environmental issues, and that the petitioner seems to neglect the whole point of the religious festival, which is to ensure plentiful fish and harvests[[60]](#footnote-60). The state’s goal in diverting the river is to clean it, so that the indigenous people can continue to have religious festivals and to bring the ecosystem back into balance; the state regrets the petitioner’s misplacement of priorities but insists that the state operated with the best of intentions and operated with the best information available at the time.

The state has always reaffirmed its commitment towards indigenous rights and preservation; it was a signatory to many of the hemispheric declarations on the matter[[61]](#footnote-61). It has promoted indigenous voices in its unique government structure, providing guaranteed representatives for the ten largest indigenous tribes, and voices in the other elected officials of the district, meaning that indigenous voices are uniquely amplified in the government. The state has allowed indigenous peoples full participation in the government and has passed key legislation ensuring their rights are honored. The MCC’s collaboration with the Benarnoldo tribe in the development of the mine substantially improved the economic well-being of its members[[62]](#footnote-62). And when the state realized the extent of the damage, it took actions designed to preserve the indigenous environment and prevent further decay. The state provided multiple resources and warnings to the Benarnoldoans, who unfortunately did not effectively utilize the many existing mechanisms the state had in place to assist them[[63]](#footnote-63). The state regrets that, despite its efforts, that a miscommunication of goals developed between the tribe and state. However, when religious values clash with something as inherent to survival as ensuring clean water and a clean environment, the needs of the whole ecosystem must take first priority. The state wishes to have good relations restored between itself and the Benarnoldo tribe, and hopes that the tribe elects representatives who will best represent them in the government.

**Request For Relief**

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

1. Uphold the decision of the super provincial appellate court that the Suppleevia National Court allowed to stand.
2. Amend the definition of “consult” to except states which explicitly provide indigenous representation in democracies from tribal veto powers and recognize the representatives as the primary mediators between tribes and the state in such arrangements.

1. Hypothetical Case §I¶2 [↑](#footnote-ref-1)
2. Hypothetical Case §I¶2 [↑](#footnote-ref-2)
3. Hypothetical Case §I¶2 [↑](#footnote-ref-3)
4. Hypothetical Case §II¶1 [↑](#footnote-ref-4)
5. Hypothetical Case §II¶1 [↑](#footnote-ref-5)
6. Hypothetical Case §II¶3 [↑](#footnote-ref-6)
7. Hypothetical Case §II¶3 [↑](#footnote-ref-7)
8. Hypothetical Case §I¶4 [↑](#footnote-ref-8)
9. Hypothetical Case §II¶4 [↑](#footnote-ref-9)
10. Hypothetical Case §III¶1 [↑](#footnote-ref-10)
11. Hypothetical Case §III¶1 [↑](#footnote-ref-11)
12. Hypothetical Case §IV¶1 [↑](#footnote-ref-12)
13. Hypothetical Case §IV¶1 [↑](#footnote-ref-13)
14. Hypothetical Case §II¶2 [↑](#footnote-ref-14)
15. Hypothetical Case §IV¶2 [↑](#footnote-ref-15)
16. Hypothetical Case §IV¶2 [↑](#footnote-ref-16)
17. Hypothetical Case §IV¶2 [↑](#footnote-ref-17)
18. Hypothetical Case §IV¶3 [↑](#footnote-ref-18)
19. Hypothetical Case §IV¶3 [↑](#footnote-ref-19)
20. Hypothetical Case §IV¶4 [↑](#footnote-ref-20)
21. Hypothetical Case §IV¶4 [↑](#footnote-ref-21)
22. Hypothetical Case §IV¶4 [↑](#footnote-ref-22)
23. Hypothetical Case §IV¶4 [↑](#footnote-ref-23)
24. Hypothetical Case §IV¶4 [↑](#footnote-ref-24)
25. Hypothetical Case §V¶1 [↑](#footnote-ref-25)
26. Hypothetical Case §V¶2 [↑](#footnote-ref-26)
27. Hypothetical Case §V¶3 [↑](#footnote-ref-27)
28. Hypothetical Case §VII¶2 [↑](#footnote-ref-28)
29. ADRDM 3.1 [↑](#footnote-ref-29)
30. Hypothetical Case §II¶4 [↑](#footnote-ref-30)
31. ADRDM 9 [↑](#footnote-ref-31)
32. Clarification 33 [↑](#footnote-ref-32)
33. Clarification 34 [↑](#footnote-ref-33)
34. Clarification 29 [↑](#footnote-ref-34)
35. ADRDM 11 [↑](#footnote-ref-35)
36. Clarification 34 [↑](#footnote-ref-36)
37. Hypothetical Case §IV¶3 [↑](#footnote-ref-37)
38. Hypothetical Case §IV¶4 [↑](#footnote-ref-38)
39. Hypothetical Case §IV¶3, §IV¶4 [↑](#footnote-ref-39)
40. ADIR 18 [↑](#footnote-ref-40)
41. ADIR 19.1 [↑](#footnote-ref-41)
42. Hypothetical Case §IV¶1 [↑](#footnote-ref-42)
43. Clarification 34 [↑](#footnote-ref-43)
44. Clarification 59 [↑](#footnote-ref-44)
45. Clarification 15,37 [↑](#footnote-ref-45)
46. Clarification 37 [↑](#footnote-ref-46)
47. Hypothetical Case §I¶4 [↑](#footnote-ref-47)
48. Hypothetical Case §II¶1 [↑](#footnote-ref-48)
49. Hypothetical Case §I¶4 [↑](#footnote-ref-49)
50. ADIR 29.4 [↑](#footnote-ref-50)
51. Hypothetical Case §I¶4 [↑](#footnote-ref-51)
52. Hypothetical Case §II¶4 [↑](#footnote-ref-52)
53. Clarification 50 [↑](#footnote-ref-53)
54. Hypothetical Case §II¶4 [↑](#footnote-ref-54)
55. Hypothetical Case §I¶4 [↑](#footnote-ref-55)
56. ACHR 12.3 [↑](#footnote-ref-56)
57. Clarification 1 [↑](#footnote-ref-57)
58. Hypothetical Case §II¶2 [↑](#footnote-ref-58)
59. Hypothetical Case §IV¶2 [↑](#footnote-ref-59)
60. Hypothetical Case §II¶2 [↑](#footnote-ref-60)
61. [↑](#footnote-ref-61)
62. [↑](#footnote-ref-62)
63. [↑](#footnote-ref-63)