# 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**

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# STATEMENT OF FACTS

The Benarnoldo tribe is an ancient people who have lived and occupied land located in the Republic of Suppleeevia for thousands of years. This tribe is the sixth largest indigenous tribe in the country with over 50,000 occupants.1 The Bernarnoldo tribe has shown itself to be a pillar of the indigenous community within the country and, in the past, has made extensive agreements with the local government to ensure that the rights of native peoples would always be upheld.

These human rights protection agreements incorporate the National Indigenous Rights Act of 1993, acknowledging the indigenous tribes’ rights to these lands. Additionally, The Indigenous Protection Act of 2011 was introduced to increase these rights between the Benarnoldo tribe and the Suppleevian Government.2

The Martín Mining Conglomerate (MMC) is the largest mining company in Suppleevia, as the government owns 60 percent of the mining company.3 The Trillos River Mine was established in 2005 and managed by the MMC in the Benarnoldo tribal region. The mining company promised to employ 500 people.4 Tribal festivals and rituals are observed in the Trillos River, particularly the Manni annual Prayer to the Waters, which is the most significant tribal religious event for the tribe. Pilgrims from other villages reach the river, at Manni, where they ritually cleanse themselves the river and drink fermented brewed drink from the river and local plants. Through the securing of abundant amounts of fish and bountiful harvests for the villages, these rituals are said to be pleasing to the ancestral gods.5

In 2013, A Pollution Report was filed by the Suppleevian government suggesting that there had been sediment pollution and runoff seen in the Trillos River. Oxygen levels in the

1 Hypothetical Section I

2 Hypothetical Section IV

3 Hypothetical Section III Part 1

4 Hypothetical Section IV Part 1

5 Hypothetical Section II Part 3

water was depleted to the point that only algae could survive there, killing the adjacent lakes and all fish residing within. In 2013, it was noted that due to these complications with the river, the water was unsuitable for human contact or consumption. There were indications of withering and dying plants and animals between 2013-2016 to demonstrate this to be a problem.6 In 2016, the Rejuvenation Project was created to help solve the problem in the river. $50 million USD was invested in rejuvenating the lake water through the means of cleansing plants and the lake’s immediate injection of ozone. In 2018, nevertheless, there were no indications of improvement in the lake water, and it still remained unfit for human use.7 During this time, The Benarnoldo tribe was still using the river for their rituals and festivals in the spring since the glacial runoff cleared the dangerous algae blooms.8 The government had issued warnings in regard to the use of the lake water through the placement of signs and an announcement from MMC.9 Through the 2018 Park Project and 2021 Report, the state government provided $60 million USD and received a donation from MMC of $50 million to begin the improvement of water conditions. The project primarily concentrated on redirecting the river water from upstream over a grassland north of Manni, then constructing a waterfall oxygenating water from rushing downstream. These processes compressed the duration for the water to disperse and drain downstream. In January 2021, the report illustrated that there was a consequential reduction in pollution in the Trillos River. Regardless, the water in front of the village had parched, and the main channel is now running through the waterfall, bypassing the village. A provincial park was established around the waterfall, becoming a successful ecotourism destination, turning a profit in 2022.

6 Hypothetical IV Part 2

7 Hypothetical IV Part 4

8 Ibid.

9 Clarification Question 5

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The results of this clean-up effort have severely impacted the tribe's way of life. The river no longer runs through their ancestral lands and now lies two miles south of their settlements, effectively isolating them from their sources of income and center of culture.

# LEGAL ANALYSIS

## Admissibility

* 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.

## Exhaustion of Domestic Remedies

The case started out at the Provincial Court, where the Benarnoldo tribe filed a complaint against the Republic of Suppleevia and MMC, stating that they violated agreements in regard to their rights which ruled in favor of the tribe on October 4th, 2021.10 However, in the

Super-Provincial Appellate Court, MMC appealed this decision, conveying evidence of their financial contributions to the clean-up efforts with the river. As a result, the super-provincial Appellate Court overturned the Provincial Court’s decision in March 2022.11 On March 20, 2022, the tribe filed an appeal with National Court, which was ultimately denied. The National Court asserted that the Super-Provincial Court’s decision on the case was conclusive and was the case was not heard at this level.12 The National Court believed there was insufficient evidence regarding the case, which brought the Benarnoldos to the conclusion not to initiate another appeal.13 As a result, the Benarnoldos had exchausted their domestic remedies.

10 Hypothetical Section V Part 1

11 Hypothetical Section V Part 2

12 Hypothetical Section V Part 3

13 Hypothetical Section V Part 3

## Violations

In the IACHR’s findings for the Republic of Suppleevia, the Petitioner argues that the State has committed violations against freedom of conscience and religion. There were also violatons against the American Declaration of the Rights of Indigenous Peoples and the Rights and Duties of Man.

The Petitioner asserts violations of Articles 1 and 12 of the American Convention on Human Rights (ACHR). There have also been violations of Articles 13.1 and 19.1 of the American Declaration on the Rights of Indigenous Peoples (ADRIP). Finally, the petitioner asserts the violation of Article 3 of the American Declaration on the Rights and Duties of Man (American Declaration).

# ARGUMENTS ON THE MERITS

## American Declaration on the Rights of Indigenous Peoples

## Article 13.1

In the case, *Garífuna Punta Piedra Community and its Members v. Honduras,* the Garífuna community were granted rights of ownership over the farming land. Nevertheless, the compromise did not incorporate possessing the entirety of the ancestral lands. The State administered ancestral lands of the third party members outside of the Garífuna community, not fulfilling the obligations of the 2001 agreement. There was clash between those of the third party and the Garífuna Community, resulting in the death of one of its members. The State failed

to investigate what orchestrated the death. In 2014, the Community was harmed further by having their ancestral lands administered by a mining company. 14 The Republic of Suppleevia and the MMC have brought about limitations to the Bernaroldo tribe’s cultural heritage and identity in a way that is tangible. The river is part of the cultural heritage and identity of the tribe. The conservation and supervision of the lands to convey the heritage to forthcoming generations. The State is obligated to follow these rights toward indigenous peoples.

## Article 19.1

In the case *Caso Comunidad la Oroya vs. Peru*, the State was held responsible for alleged damages caused to a group of residents of the Community of La Oroya. Peru’s

non-compliance with its international obligations allowed the mining activity to generate high levels of contamination. These circumstances have impacted the health of presumed victims. The State failed to comply with its obligation to act with due diligence in the execution of these duties to regulate and supervise the behavior of private and state companies with respect to their potential impact on the human rights of the inhabitants of the community. The State did not adopt appropriate measures to address the risks caused by environmental pollution on children’s health in the community. Overall, the State failed to comply with its immediate obligations regarding the right to a healthy environment and achieving a full realization of the rights of indigenous peoples.15 The Republic of Suppleevia and the MCC failed to give the indigenous people the right to live in harmony with nature and be in a healthy, safe, and sustainable environment. The damage that could be done to the environment was already known and studied. Birth effects went up by 11 percent after the mine began operations. 16

14 Garífuna Punta Piedra Community and its Members v. Honduras;

<https://iachr.lls.edu/cases/garifuna-punta-piedra-community-and-its-members-v-honduras>; Access date 3/26/23

15 Caso Comunidad la Oroya vs. Peru; <https://www.corteidh.or.cr/docs/tramite/comunidad_la_oraya.pdf>; Access date 3/30/23

16 Clarification Question 15

There was no monitoring until 2013, allowing hazardous practices of the bauxite and lithium mining company 8 miles above the village of Mannito accumulate in the environment, particularly damaging the Trillos River.17

## Article 23.2

In the case, *Kichwa Indigenous People of Sarayaku v. Ecuador*, the State presented a permit to a private oil company to carry out an exploration phase on the territory belonging to the Kichhwa people without their consent and permission. The exploration phase included the use of high-powered explosives in several parts of the indigenous lands. The State did not guarantee the rights of the Kichwa Indigenous People of Sarayaku because the exploration phase limited their rights of their cultural expression.18 It is evident that judicial guarantees and protections were violated.

Similarly, in this case, the State is obligated to collaborate in good faith with the indigenous people, primarily through acquiring free and prior authorization before adopting and executing legislative or administrative measures that could affect them. The State contributed US$ 60 million and received a donation from the MMC of $50 million for the Park Project of 2018; it ultimately resulted in the construction of a provincial park.19 The Tribe was consulted about the construction of the provincial park but was not given the power to veto the decision. There was also a waterfall assembled that would redivert the water back to rejoin the existent riverbed two miles south of the Manni. The diversion of the river and the creation of the park, violated the Benarnoldos’ rights to practice their traditional religion.

17 Hypothetical Section IV Part 1

18 Kichwa Indigenous People of Sarayaku v. Ecuador;

<https://iachr.lls.edu/cases/kichwa-indigenous-people-sarayaku-v-ecuador>; Access date 3/26/23

19 Hypothetical Section IV Part 4

## Article 3.1 American Convention on Human Rights

## Article 1

The Republic of Suppleevia and the MMC did not adequately explain the severity of pollution and severe conditions in the lands to the indigenous people. Without this knowledge, they were unable to voice their own concerns adequately, per the rights given to them by the Indigenous Protection Act of 2011.20 This violation will be made valid through the violation of other articles. The IACHR has an obligation to respect the rights of all people.

## Article 12.2

In the *Kichwa Indigenous People of Sarayaku v. Ecuador* case, the State’s activities of permitting a private oil company to carry out an exploration project that would end up placing high-powered explosives in their lands of cultural and ritual. This infringes on their freedom of religion in their place of culture and religion. The Republic and the MMC have brought about limitations to the religious freedoms of those in the Bernaroldo Tribe by diverting a river that is essential to their traditions. The tribe uses the rivers to celebrate rituals tied to their religious beliefs. The Republic of Suppleevia owns 60% of the mining cooperation, which means they have the majority vote. If the religious ceremony is carried out with the river in its new position, many are concerned that the sanctity of the ceremony is less potent and even violated. The river is clearly an influential part of the village’s heritage, and they feel as if they were misled by the company’s actions.

## American Declaration on the Rights and Duties of Man

## Article 3

In the case, *Caso Comunidad la Oroya vs. Peru,* it was through the damages made due to mining activity creating contamination that the lands of the Community of La Oroya that place of worship and culture of the community was infringed upon. The Republic and the MMC were

20 Hypothetical Section II Part 4

hindering the rights of the Benarnoldo tribe's right to express their religious faith freely, both in public and private. Thus, this Article has been violated by actions of the State.

## 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. Through the 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 making of a long-term fund to cover the costs of bauxite and lithium mine waste exposures for the Benarnoldos particularly those in the village of Manni.