**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 STATE**

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# **STATEMENT OF FACTS**

The Benarnoldo tribe is an indigenous group in Suppleevia composed of approximately 50,000 members concentrated along the Talberto river.[[1]](#footnote-1) One of their larger villages is the Manni village which was set up on the Trillos river.[[2]](#footnote-2) In 2005 the Martín Mining Conglomerate (MMC) which is majority owned by the government opened a mine upstream of Manni known as the Trillos river mine.[[3]](#footnote-3) At that time an environmental impact report was conducted by MMC which showed potential environmental risks common to all mine operations.[[4]](#footnote-4) That study was shared with the Manni village elders along with “Economic impact reports, a statement of potential risks including mine safety and ecological impacts, and other information on the agreements to employ local tribesmen.”[[5]](#footnote-5) The village elders came to an agreement with MMC which allowed them to build the mine in exchange for the mine employing at least 500 workers from Manni.[[6]](#footnote-6) The Trillos river mine currently employs 750 workers from Manni and MMC employs more than 5,000 Benarnoldos throughout the region.[[7]](#footnote-7)

In 2013 the Suppleevian government issued a report that “sediment pollution and runoff (from the Trillos river mine) had rendered the Trillos river and adjacent lake essentially dead,” the report declared the Trillos river unfit for “human consumption or contact.”[[8]](#footnote-8) During this time the Benarnoldo tribe continued to hold their river based ceremonies including drinking fermented beverages made from river water despite the safety warnings issued by the government.[[9]](#footnote-9) At some point the government put up signs in both the national and tribal language warning against drinking the water.[[10]](#footnote-10)

In 2016 the government began the “Trillos Rejuvenation Program,” which hoped to reoxygenate the Trillos and restore the dying wildlife and flora.[[11]](#footnote-11) The project cost US$50 million but by 2018 was determined not to have been a success.[[12]](#footnote-12) Its most significant other plan having failed, the government then proceeded with the most drastic solution to resolving this ecological crisis, the 2018 river diversion project.[[13]](#footnote-13) Under this plan the Trillos was diverted three miles south of the Trillos river mine and combined with a secondary stream before going over a waterfall and rejoining the riverbed two miles south of Manni.[[14]](#footnote-14) This did mean that Manni no longer sits along the river which now runs three miles east and two miles south of the village.[[15]](#footnote-15) This project was successful in measurably reducing the amount of pollution and water contamination in the river. The Benarnoldo council was kept informed by the government at all steps in this process, but the government's environmental protection department was the final decision maker as the land had been declared a public utility.[[16]](#footnote-16) A series of meetings were held where the tribe offered input but did not have decision making power.[[17]](#footnote-17)

In 2021 the Benarnoldo tribe filed suit in the provincial court accusing MMC of polluting sacred waters and the Republic of Suppleevia of acting improperly by acting without regards to the religious rights of the tribe.[[18]](#footnote-18) The court found MMC to be at fault and ordered it to pay two million dollars to the tribal council but did not rule against the state.[[19]](#footnote-19) MMC appealed and cited its financial contribution of 50 million dollars towards the recovery effort as well as its investments in Manni.[[20]](#footnote-20) The appellate court overturned the provincial courts judgment and that decision was upheld by the national court.[[21]](#footnote-21) The Benarnoldo tribe then received assistance from Rights and Resources International to file its claim with the Inter-American Commission on Human Rights which referred the case to the Inter-American Court of Human Rights (IACHR).[[22]](#footnote-22)

**LEGAL ANALYSIS**

**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 1983.[[23]](#footnote-23)

**Exhaustion of Remedies**

The case was initially filed as a formal complaint to the provincial courts. The claim was that the Republic of Suppleevia and MMC had acted inappropriately by not only polluting the waters but by also acting without regard for the religious rights of the Benarnoldo tribe. This court found in favor of the Benarnoldo tribe on November 5, 2021. The court found MMC at fault for polluting the river but did not find the state violated the tribe’s rights. MMC filed an appeal to the Super-Provincial Court, citing money that they had donated to the rejuvenation programs and river relocation program. 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. The court justified this decision by claiming that there was not enough evidence to begin another appeal. The Benarnoldo 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.

**Alleged Violations**

**American Convention on Human Rights**

The Petitioner has alleged that the Republic of Suppleevia has failed in its duty to ensure that “No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs,” as established in articles 12.2 and 1 of the American Convention on Human Rights (ACHR).[[24]](#footnote-24) This is incorrect. The state did not violate the religious rights of the community because the ceremony can still be conducted with the river in its new position.[[25]](#footnote-25) At most some unspecified individuals believe that the ceremony will be less potent, not that the ceremony will fail. This does not rise to the level of a violation of the ACHR’s protections for religious liberty. For that matter even if the court were to rule that the states actions violated article 12.1 the states restriction on religious liberty would be permissible.

This kind of restriction is explicitly exempted from the protections in article 12.1 by the ACHR. Article 12.3 of the ACHR 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.”[[26]](#footnote-26) The state's actions were clearly made with the intent of improving in part the water quality in the Manni village and other communities that depend on the Trillos river. This effort has been successful where previous efforts had failed as water sources now show a measurable decline in pollution and contamination.

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

The Petitioner alleges that the State has violated sections 13.1, 13.2, 19.1, 19.3, and 23.1 of the American Declaration on the Rights of Indigenous Peoples which it has not. Article 13.1 for instance protects indigenous culture which is not at risk in this case.[[27]](#footnote-27) At most some cultural practices might be impacted by the river diversion but the “cultural heritage” of the Benarnoldo tribe is unaffected. Article 19 both 19.1 and 19.3 protects the rights of indigenous peoples to have a healthy environment and be “ protected against the introduction, abandonment, dispersion, transit, indiscriminate use, or deposit of any harmful substance” which is the exact reason the Republic of Suppleevia undertook the river diversion project.[[28]](#footnote-28) As statements by MMC show an environmental impact study was done before the mine opened and when the damage to the Trillos river became apparent the State acted to protect both public health and the environment.

The Petitioner has also alleged violations of article 23.2 which requires the state to consult with the indigenous tribes before adopting measures that may affect them.[[29]](#footnote-29) However the Petitioner has adopted a definition of consultation that would allow the tribe to veto the actions of the government to which the state objects. The International Labor Organization which has some experience with the consultation procedure proposes reading consultation to mean “ that an attempt should be made in good faith to obtain the consent of the peoples concerned before undertaking exploration and exploitation activities in their territories, without indicating that they should have a veto over government decisions.”[[30]](#footnote-30) The state kept the Benarnoldo tribe informed about its rejuvenation projects and hosted meetings where tribe members could offer input. Therefore, it has met its obligations under article 13.2.

As to the Petitioners claim that their Article 23.1 right to representation was violated it is clearly wrong. The Tribe has its own governing council and chief to deal with their internal governance and participate in the national political system along with all other Suppleevian citizens.

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

The Petitioner has alleged that the state has violated Article 3 of the American Declaration of the Rights and Duties of Man which protects religious freedom.[[31]](#footnote-31) However this is substantially like Article 12.1 of the ACHR and subject to the same arguments. The state did not violate the tribe's religious rights. Even if for the sake of argument, the state is said to have committed a violation the exemptions in article 12.3 cover the state in its attempt to preserve public health. The Petitioner also alleges that the state violated articles 29 of the Declaration which it could not have. Article 29 is in chapter 2 of the Declaration which lays out the duties of citizens not their rights and is not applicable to states.[[32]](#footnote-32)

**REQUEST FOR RELIEF**

The State requests that the IACHR dismiss this case or find the state not at fault.

The State also requests that the IACHR uphold the judgments of the Suppleevian Super-Provincial Appellate Court and National Court.

1. Hypothetical II.1 [↑](#footnote-ref-1)
2. Hypothetical II.3 [↑](#footnote-ref-2)
3. Hypothetical III.1 [↑](#footnote-ref-3)
4. Clarification 13 [↑](#footnote-ref-4)
5. Clarification 13 & 34 [↑](#footnote-ref-5)
6. Hypothetical IV.1 & Clarification 55 [↑](#footnote-ref-6)
7. Clarification 58 [↑](#footnote-ref-7)
8. Hypothetical IV.2 [↑](#footnote-ref-8)
9. Hypothetical IV.3 [↑](#footnote-ref-9)
10. Clarification 59 [↑](#footnote-ref-10)
11. Hypothetical IV.3 [↑](#footnote-ref-11)
12. Hypothetical IV.3 [↑](#footnote-ref-12)
13. Clarification 3 [↑](#footnote-ref-13)
14. Hypothetical IV.4 [↑](#footnote-ref-14)
15. Hypothetical IV.4 [↑](#footnote-ref-15)
16. Clarification 12 & 21 [↑](#footnote-ref-16)
17. Clarification 21 [↑](#footnote-ref-17)
18. Hypothetical V.1 [↑](#footnote-ref-18)
19. Hypothetical V.1 [↑](#footnote-ref-19)
20. Hypothetical V.2 [↑](#footnote-ref-20)
21. Hypothetical V.2&3 [↑](#footnote-ref-21)
22. Hypothetical VI [↑](#footnote-ref-22)
23. Hypothetical VII.1 [↑](#footnote-ref-23)
24. ACHR 1, 12,1 [↑](#footnote-ref-24)
25. Clarification1 [↑](#footnote-ref-25)
26. ACHR 12.3 [↑](#footnote-ref-26)
27. ADRIP 13.1 [↑](#footnote-ref-27)
28. ADRIP 19.3 [↑](#footnote-ref-28)
29. ADRIP 23.2 [↑](#footnote-ref-29)
30. CEACR General Observation, 2010, published 2011. [↑](#footnote-ref-30)
31. ADRDM 3 [↑](#footnote-ref-31)
32. ADRDM 29 [↑](#footnote-ref-32)