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BEFORE READING THE CASE

Inter-American Moot Court Competition AU-WCL
2012 Hypothetical Case
CASE OF THE CHUPANKY COMMUNITY ET AL. V. LA ATLANTIS

1. The State of La Atlantis is an island located in the Americas, with a total area of 73,400 km². It has approximately 9

Nevertheless, there is a major controversy with respect to other groups that were divided during the period governed by the assimilation policy.

4. In 2003, La Atlantis opened its markets and signed various free trade agreements with the main trading powers. The constitutional reform of 2008 recognized for the first time the human rights enshrined in the constitution and in the international treaties to which La Atlantis is a party. It also guaranteed to interpret the instruments in the light most favorable to the individual. Pursuant to a decision of the Supreme Court of Justice in case No. 911/2009, all judges must exercise conventionality control² with the American Convention *ex officio*.

5. According to the 2003 National Development Plan, the State pledged to eradicate extreme poverty within the framework of the United Nations Millennium Development Goals, for which it took various actions to foster development through the public and private sectors. As one of the main actions for generating power on the island, the Energy and Development Commission (hereinafter the EDC), a quasi-governmental entity, issued a call for bids from national and foreign companies for the right to build the Black Swan Hydroelectric Power Station. The power station would have an approximate capacity of 500 MW, and would be fed by the Motompalmo River. After a feasibility study was conducted in November 2003, it was decided that the project would be carried out in the middle of the Chupuncué region. This

10. In January 2005, the EDC decided to grant the concession for the construction of the Black Swan Hydroelectric Power Station to the Turbo Water company (hereinafter TW), with 40% in state capital and 60% split between Tripoli entrepreneurs and foreign capital. The project was divided into three phases. Phase 1: reach agreements with the owners of the affected territories; Phase 2: drainage and construction of reservoirs; Phase 3: irrigation, testing, and operation.

11. In April 2005, the State issued a declaration of public interest with respect to the project area and made a deposit of 50% of the assessed value of the lots in the La Loma community. In June 2005, the EDC began negotiations with various individuals from the communities of La Loma, and offered to give them alternatives (with) [TJETBT1Be

consultation process in November 2007. This delayed Phase 1 of the project. Accordingly, the State created an Intersectoral Committee between government authorities and the TW Company with the capacity to reach agreements with the community. The guidelines to be followed were established at the first meeting with the Council of Elders. In accordance with the customs and practices of the community, consultation processes would be conducted with the community's

had concluded its duties in the consultation process, it would not have the opportunity to visit the community in the next 6 months, but that it would evaluate their petition.

18. On February 30, 2008, the Ministry of the Environment and Natural Resources (hereinafter MENR) designated the organization Green Energy Resources to conduct the environmental impact studies with the participation of independent experts on the subject. The MENR supervised and certified those studies. According to the MENR, the results of the May 14, 2008 report were favorable to the project, mainly in terms of the benefits of the generation of electrical power for the communities. However, with respect to the environment, it specified that the hydroelectric dams could cause minor geological damage, changing the ecosystem in the region, and producing some sediments in the water that are not harmful to human beings. As for the social aspect, it specified that, due to the adjacent communities' relationship with the river, it

Gamboa, went to Tripoli on December 10, 2008 to complain before the EDC and the MENR of the irregularities on the part of the TW Company. They indicated that there had been acts of discrimination against women, in both the consultation process and in the execution of the project, as well as forced labor to the detriment of members of the community. They also warned of other environmental and social harm that had not been considered in the Environmental Impact Study and that are always involved in these types of hydroelectric projects. On December 13, 2008, they managed to get a meeting with the deputy director of the EDC

community itself and the result of its autonomy and free determination as a people. In relation to compliance with the American Convention, it held that their customs and practice must be taken into account, consistent with the Reparations Judgment in the *Case of Aloeboetoe et al. v. Suriname*. It indicated with respect to the employment claims that the competent authority was the employment authority or, if appropriate, the mechanism provided for in the Free Trade Agreement on the issue.

25. On September 26, 2009, the community filed a petition for a constitutional remedy before the Supreme Court of Justice, requesting the suspension of the project based on the detrimental effects on the physical and cultural integrity of the Chupanky and La Loma communities. The Supreme Court denied the petition on the grounds that the various competent authorities complied with the requirements established under the law and under the international standards. It added that the cultural integrity asserted in the claim is not recognized as an autonomous right in the case law of the Inter-American Court.

26. On May 26, 2010, a petition was submitted to the Inter-American Commission on Human Rights. The representatives of the alleged victims claimed violations of Articles 4.1, 5.1, 6.2, 21, 22, 23, 8, 25 and 26 of the American Convention on Human Rights (ACHR) and of the obligations contained in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Pará") to the detriment of the members of the Chupanky and La Loma communities. They also requested that reparations be ordered with an indigenous and gender perspective.

27. In its September 1, 2010 submission of observations to the IACHR, the State of La Atlantis alleged that those rights had not been violated, and that the State had acted properly, in accordance with domestic and international legal provisions, at all times applying the provisions most favorable to the individual and monitoring compliance with the American Convention. The State decided not to file preliminary exceptions.

28. On March 9, 2011, the Commission issued its report on admissibility and merits (Report 969/2011). The IACHR found violations of Articles 1.1, 4.1, 5.1, 6.2, 21, and 25 of the American Convention on Human Rights (ACHR) to the detriment of the members of the Chupanky Community, and violations of Articles 5.1, 21 and 25 to the detriment of the members of the community of La Loma. It recommended that the State of La Atlantis implement various comprehensive reparations measures for both communities, taking into account their cultural characteristics. In addition, pursuant to Article 25 of its Rules of Procedure, the IACHR requested that the State adopt precautionary measures in order to halt the company's work on the project until a decision is issued on the merits.

29. Once the period for compliance with the recommendations and request for precautionary measures had elapsed, pursuant to Article 35 of the Regulations of the Inter-American Court, the

Inter-American Commission on Human Rights brought the *Case of the Chupanky Community et al. v. The State of La Atlantis* before the Inter-American Court on October 4, 2011. In addition, in order to protect the inter-American public interest, it requested that the Court recognize not only the members of the community as victims but also the indigenous community itself as a victim. Finally, based on Article 63.2 of the Convention, the IACHR requested that the Court adopt provisional measures for the benefit of the Chupanky Community, in order to suspend the project until the Court issues its decision in the case.

30. On November 11, 2011, the Court admitted the Commission's report and forwarded it to the parties for them to submit their arguments. It set the hearing date for May 25, 2012, during its Extraordinary Session in Washington, DC, to hear the arguments of the representatives of the victims and the State regarding the merits and reparations in the instant case.

31. With the Constitution of 1994, the State of La Atlantis ratified the main regional and universal instruments on the subject. The 2008 amendment on human rights included the principle that the Constitution must be interpreted in a manner consistent with constitutional norms and the international human rights treaties ratified by the State. On January 1, 1995 it accepted the contentious jurisdiction of the Inter-American Court of Human Rights. It has also participated actively in universal and regional human rights bodies since the 1990s, promoting the environmental and sustainable development agenda in the region.