Moot Court Competition in Sustainable Development Law
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The Rugendas population versus the Republic of Tamoio

a) Context – the Republic of Tamoio and the town of Rugendas

1. The Republic of Tamoio is located in South America. The country became independent from Spain in the 18th century along with several other Spanish colonies. The country has around 35 million inhabitants and its capital, of Saint Clare of Tamoio. Historically, it has had an unstable political system, with several military coups d’état. Nowadays, it is generally considered a democratic country, but there are several claims that the ruling party is manipulating local elections to remain in power. Tamoio took part in the negotiation process for the Organization of American States (OAS) Charter in 1948. More recently, it has ratified all the Inter-American treaties on human rights, as well as most of the United Nations' treaties on the subject (International Covenant on Economic, Social and Cultural Rights 1966, and International Covenant on Civil and Political Rights 1966). Specifically, it ratified the American Convention on Human Rights on August 4, 1990 and acknowledged the jurisdiction of the Inter-American Court of Human Rights in July of 1991.

2. The Republic of Tamoio is largely located in the Coroado Mountains, a continuous range of highlands along the western coast of South America. The Kaigang River originates in the Coroado Mountains. It is 1,000 kilometers-long. After descending through the Coroado Mountains, the Kaigang River passes through several cities, including the capital Saint Clare of Tamoio. The city of Saint Clare of Tamoio is the largest in the country with approximately 3 million inhabitants. The city is located close to the Kaigang spring in the high part of Coroado Mountains.

3. Along the Kaigang River there are several other medium-sized and small towns varying from 20,000 to 100,000 citizens. The town of Rugendas is located around 100 kilometers downriver in the lower part of Coroado Mountains. More specifically, the city is located inside the Carajá Valley. The valley is known for the high mountains surrounding the town. Rugendas depends on the Kaigang River for fresh water and electricity. The majority of its population (Rugendas has approximately 95,000
inhabitants) is considered to be living below the poverty line as defined by the World Bank. The town is fairly urbanized and its population usually commutes to Saint Clare of Tamoio to work in its heavy industry.

b) Facts of the case:

4. The country of Tamoio has suffered from bad macroeconomic management for the last ten years and it is currently on the verge of asking the International Monetary Fund (IMF) for a bailout. Facing severe foreign investments outflows, Tamoio decided to launch, in 2004, a bold international strategy to bring new foreign investment to its unstable economy by promising tax breaks, exportation incentives, cheap land procurements, and easy access to its unexplored mineral resources. The Coroado Mountains are known for their large deposits of lithium (Li), copper (Cu) and lead (Pb). The most promising mining sites for these metals are located inside the Carajá Valley, close to Kaigang River, and Rugendas.

5. However, there was no extraction of lead or lithium in that area until 2005. In that year, the European company called Volta Batterias decided to install its first South American battery plant close to the site where lithium and lead could be extracted. The company launched two separate factories, one for lithium batteries and another for lead-acid batteries. According to the Tamoion Energy Policy Act of 1999, all foreign private companies interested in investing in any sort of energy supply should create a joint venture with the Tamoion government in which the country should own 51% of the stocks. In January 2006, Volta Batterias decided to invest in Tamoio creating the joint venture called Tamoio-Volta Batterias.

6. At the same time, the Tamoio’s Secretary of Development (TSD) allowed the state-owned mining company – Tamoio’s Mining Company (TMC) – to extract copper, lead and lithium from those sites and eventually sell them on the international market. The construction of both factories was finished by December 2008. By the time the factories were fully-operational, however, Tamoio-Volta Batterias was using all of TMC’s lead and lithium production.
7. The country of Tamoio has a long history of environmental policies, but weak enforcement. However, since 2002 the government has started to improve the enforcement of its environmental legislation through a series of regulations issued by a new environmental agency created in that same year – The Tamoion Environment Institute (TEA). Tamoio’s environmental legislation, specifically the law governing the environmental licensing for new industries (The Tamoion Environment Act of 2001), clearly sets forth procedures for the construction of factories. The law made the preparation of environmental impact statements a requirement, stating that all new industrial facilities must perform environmental impact assessments according to the TEA regulations, prior to beginning construction. The assessment must account for several environmental impacts such as GHG emissions, heavy metal emissions (water and air), and deforestation. It must also incorporate demands from local populations affected by the factories and responses to those demands. These studies must be carried out by a private independent consulting company; acceptable companies are listed in a separate ordinance by the TEA (Or.101). The TEA then must analyze the assessment within six months of receipt, and approve it or provide comments for improvement. If the project is approved, the company will have approximately six months from the date of approval to start building the new facility.

8. Tamoio-Volta Batterias finished the environmental impact assessment in February of 2007. The assessment made by a consulting company from Saint Claire of Tamoio listed in TEA’s regulations included studies of heavy metal emissions (water and air) and deforestation, as well as the demands from the Rugendan people, such as the reforestation of Kaigang River’s banks. The studies of heavy metal emissions had showed that the construction of the plants would not affect the Rugendianese people. TEA issued the environmental license in May 2007 (Lic.201) allowing Tamoio-Volta Batterias to build its factories in the high mountains of Carajá Valley, 200 meters away from the Kaigang River bank.

9. Following issuance of the TEA license, Rugendianese NGOs issued formal objections to the consultation process. They said that the local population had not been properly consulted in the license preparation process, especially because the license was expedited in such a short amount of time. They also claimed that Tamoio-Volta’s proposal for reforestation of Kaigang River banks was insufficient for the proper
revitalization of the river bank. The license caused great anger among the Rugendas population.

10. In June of 2007, the NGO filed a lawsuit in local courts asking for a revocation of Tamoio-Volta’s license and also an injunctive order to stop all construction. In December 2007 the trial court of Saint Claire of Tamoio decided in favor of Tamoio-Volta Batterias, holding that the company had taken all measures to account for Rugendas people’s demands. In the meantime, the joint venture started to build the factories.

11. The Rugendianese NGO’s appealed the decision. On April 30th, 2008, the appellate court found that the plaintiffs’ allegations had merit and issued an injunctive order to stop construction on the site. The appellate court had also issued a T$ 2 million fine¹ to Tamoio-Volta Batterias.

12. The Tamoio-Volta Company appealed to the Tamoio Supreme Court, arguing that the construction should continue because the Rugendas population had not presented any concrete evidence of irreversible negative impacts created by the factories’ construction and operation. Furthermore, the government alleged that stopping construction with an injunctive order violated the state’s sovereignty as owner of natural resources, and that the benefits created by the factories would be of great importance for the Tamoio population as a whole. Specifically, the government argued that the factories were essential to stimulate economic growth through exportation since the joint venture had unique advantages vis-à-vis similar industries abroad due to the close and ready access to lithium and lead deposits.

13. On August 13th, 2008, the Supreme Court ruled in favor of the Tamoio-Volta Batterias,upholding the decision of the lower court and reversing the appellate court decision. Accordingly, the Court invalidated the injunction order and allowed construction to continue. The Supreme Court argued that the construction of such factories would greatly improve the economic growth of Tamoio and that Rugendianese demands were properly included in the process.

¹ Approximately USD500.000.
14. In January 2010, several public hospitals in Rugendas started to report cases of children with nerve damage caused by lead poisoning. The first tests indicated that 250 children and 100 adults had elevated lead concentration in their blood. Immediately, the Tamoio’s Secretary of Mining and Natural Resources (TSMR) released technical reports issued by TEA on the nonexistence of heavy metal concentration in the Kaigang River waters. They argued that during the construction of the Tamoio-Volta plants, all measures were taken to protect the river from lead and lithium contamination.

15. However, local authorities (Rugendas) reported they were not sure if the lead pollution was coming from the river itself or, if it was more likely coming from the smoke produced by Tamoio-Volta’s factories located in the high mountains of the valley. They also claimed that Tamoion government did not disclose all of the possible health implications of building such factories. Since the factories were located inside Carajá Valley. The mountains may have prevented the wind from thoroughly dissipating the air pollution that was causing health problems in the local population.

16. Immediately, the local NGOs jointly filed a lawsuit in the local court asking for the government and the company to stop all operations at Tamoio-Volta’s factories. It also asked for reparation to the people affected by the pollution.

17. The government said that the factories could continue to operate at their lowest capacity until the causes of the health problems could be properly determined by the national authorities. However, due to the urgency, in March 2010 the trial court decided that all operations should stop immediately to avoid further health detriment to the population.

18. The Tamoion government appealed but in April 2010 the appellate court upheld the trials court’s holding, ruling in favor of ceasing all operations until the national authorities could find out if the factories were the cause of the population’s various health problems, and how to control them. The Tamoion government appealed to the Supreme Court.
19. Meanwhile, the Tamoio’s Secretary of Mining and Natural Resources had repeatedly produced technical reports indicating that the excessive smoke from the factories could be causing the lead poisoning in Rugendianese communities, although they needed more studies to know with certainty.

20. In January 2011, the Supreme Court ruled in favor of Tamoio-Volta factories and allowed operations to restart at full capacity. They said again that the joint venture was very important to national development and that the local communities could not impede the creation of jobs and tax revenue. However, the Supreme Court also decided that the Tamoion government should take necessary measures to stop the pollution and poisoning from happening, including investing in more environmentally friendly equipment in the factories that would prevent pollution to happen again.

21. Due to this unfavorable judicial decision, the Rugendianese representatives began to search for another possible legal recourse.

c) Proceedings before the Inter-American system

22. On March 6th, 2011, the Rugendianese NGO filed suit with the Inter-American Commission on Human Rights (IACHR). Specifically, they alleged that the Tamoion government was in violation of the articles below with respect to the victims of pollution:

   i) Articles 4 (right to life), 5 (physical integrity), 8, (fair trial) 11 (honor), 13 (freedom of thought and expression), 25 (judicial protection), all in consonance with Art. 1.1 of the American Convention on Human Rights (Pact of San José, Costa Rica);
      ii) Article 11 (healthy environment) of the Protocol of San Salvador.

23. On March 20th, the IACHR found the petitioners’ request admissible and gave Tamoio three months to respond to the allegations. On May 20th, the Tamoio government again contended that it had not committed any human rights violations and that all judicial and administrative procedures had been strictly followed in accordance
with the legal requirements. Tamoio also noted that plans for the factories were outlined and published in the license, in accordance with the TEA requirements.

24. The Commission initially tried to reach a friendly settlement in accordance with Article 40 of the Commission’s rules of procedure (Rules of Procedure of the Inter-American Commission on Human Rights) and Article 48, f, of the American Convention on Human Rights.

25. However, since the commission was not successful in brokering a settlement and the State did not comply with the recommendations of its report, the commission submitted the case to the Inter-American Court (in accordance with Article 45.1 of its Rules of Procedure). The Commission found a violation by Tamoio of Articles 4, 5, 8, 13, and 25 together with Article 1.1 of the American Convention on Human Rights.

26. For their part, the victims’ representatives submitted to the court several documents, which included their arguments and requests, as well as supporting evidence. They restated their contention that Tamoio was guilty of violating its obligations, including Article 11 of the Protocol of San Salvador, and should be held accountable.

General issues to consider:

1. Did the Tamoion government fail to comply with international and domestic legal requirements by not providing for public consultation prior to making the decision to proceed with the project?

2. Under established and evolving principles of international and domestic law, did the Tamoion government fail to respect the rights of the Rugendianese people by not involving them more fully in the environmental review process prior to public approval?