

2016 INTER-AMERICAN HUMAN RIGHTS  
MOOT COURT COMPETITION

Case of Edmundo Camana *et al.*,  
Pichicha and Orífuna peoples v. Santa Clara

I. History of Santa Clara

1. Santa Clara is an independent State in the Americas that shares its northern border with the Confederation of Bristol and its southern border with the Republic of Madruga. According to the last official census, 62% of its population is identified as White, 23% as Hispanic, and 7% as Afro-descendant. The rest of the population consists of native peoples (5%) and descendants of Asian immigrants (3%).

2. Santa Clara currently has a population of 95 million inhabitants and a surface area of 9 million square kilometers. Its Gross Domestic Product (GDP) and Human Development Index (HDI) are comparable to countries like Germany. Its official language is English, and based on the Constitution of 1982, its system of government is a federal parliamentary monarchy. The Legislature consists of an Upper Chamber and a Lower Chamber, and the duties of Head of State and Government are exercised by the Prime Minister.

agreement was signed. In 1831, the first Constitution was adopted and the nine colonies of New Britain became the Constitutional Monarchy of Santa Clara.

7. After its independence, Santa Clara underwent an accelerated process of industrialization and became an economic power. At the beginning of the 19<sup>th</sup> Century, its extractive enterprises expanded into other countries in the Americas, Africa, and Asia. In the 1990s, 80% of mining investments in Latin America and the Caribbean were traded on the Toronga Stock Exchange, in the capital of Santa Clara. Although Brazilian, Chinese, and Swiss companies have expanded their investments in the region, 70% of all stocks in the mining industry in Latin America and the Caribbean are still traded on the Toronga Stock Exchange.

8. For several decades now, the governments of Santa Clara have promoted measures designed to encourage the expansion of their mining companies into other countries. One of them was the creation of a Public Foreign Investment Fund in 1990, for purposes of making subsidized loans for companies from Santa Clara to expand in foreign countries. From the time of its creation, 90% of the US \$40 billion managed by the fund has benefitted the foreign investments of Santa Clara's principal mining companies, including Miningcorp S.A. and Silverfield S.A.

9. Santa Clara acceded to the OAS Charter in August 1962, and in February 1980 deposited its ratification instrument for the American Convention on Human Rights, as well as the instrument accepting the contentious jurisdiction of the Inter-American Court of Human Rights (Inter-American Court). Santa Clara has ratified all existing human rights treaties and protocols of the Inter-American System of Human Rights (IAHRS). It is a party to most of the universal human rights treaties, having signed the United Nations Declaration on the Rights of Indigenous Peoples, and ratified Convention 169 of the International Labor Organization. Santa Clara has not made any reservations to, or denounced, any international human rights instrument.

## II. Relations between Santa Clara and the Republic of Madrugá

10. The Republic of Madrugá is one of the five countries that were part of the Viceroyalty of Cordel, having gained its independence in September 1837. Madrugá's G D P and HDI are comparable to those of a developing Latin American country and its population of 23 million people consists mainly of indigenous people, descendants of Spaniards, and Afro-descendants. There are some Orifuna communities, descendants of African slaves, and native peoples of Central America and the Caribbean along its northern coast. The Orifunas migrated to Madrugá from other parts of the continent in the late 18<sup>th</sup> Century, settling in the high valley and estuary of the Doce River. From the time of their arrival in northern Madrugá, the Orifuna people have used the Doce River to irrigate subsistence crops and transport merchandise, and for small-scale fishing. More recently, some eco-tourism projects were implemented through the construction of small cabins in the Doce River estuary, all of which are managed by the Orifuna communities.

11. Like Santa Clara, the Republic of Madrugá has signed and ratified all the human rights instruments of the IAHRS, and in 1999 it recognized the contentious jurisdiction of the Inter-American Court. The Inter-American Court has issued a total of 45 judgments and 25 orders of provisional measures against Madrugá. According to the most recent Annual Report

of the Court, 90% of the reparations measures ordered in those judgments have been met with total noncompliance, and 10% have been complied with in part.



administrative audits by the Madrugan authorities, which Miningcorp's legal representatives considered arbitrary.

22. Human rights organizations in Madrugua have criticized the lack of investigations into possible links between Miningcorp and unlawful militia groups. They have also identified errors in the calculation of the statute of limitations for the offense of money laundering, which they believe indicates collusion between the company and the Prosecutor's Office. These organizations have underscored that, in the 1990's alone, the actions of the militias had already resulted in the deaths of five hundred social leaders, trade unionists, and persons defending their territory in northern Madrugua, without any militia member or mining company official ever having been convicted.

23. On December 10, 2002, some two million people participated in the National March against Impunity in Madrugua. While delivering a speech in the Main Square of San Blas, Lucía Camana was killed by an unknown person who shot her multiple times and fled. The weapon and were very similar to those used in the murder of the rest of the Camana Osorio family eight years earlier.

24. In January 2004, Lucía Camana's grandparents obtained a favorable decision in a action, thereby gaining access to the case file of the murder investigations. In that file, they found an official letter from the Consul of Santa Clara in the city of San Blas addressed to the Office of the Prosecutor General of Madrugua. The letter stressed that the Constitution of Santa Clara prohibits the extradition of its citizens, clearly implying that it would be impossible to surrender any citizens of Santa Clara who may be under investigation for the murder of Lucía Camana.

25. In February 2006, the organization WikiLeaks published two cables from the Embassy of Santa Clara in Madrugua that reported the disciplinary suspension of David Nelson, a Colonel in the Army of Santa Clara assigned as a Deputy Military Attaché to Madrugua's Embassy from 2000 to 2006. The cables indicated that the disciplinary suspension was based on the fact that Mr. Nelson had held at least three meetings with members of the outlawed Los Olivos militia at Miningcorp's offices in the city of San Blas. In an affidavit signed by David Nelson and transcribed in one of the cables, he denied having collaborated with any kind of unlawful activity, but acknowledged that he had deviated from his duties.

26. In March 2006, Lucía Camana's relatives asked the Office of the Prosecutor General of Madrugua to expand the criminal investigation of Ms. Camana's murder to include David Nelson; however, their request was denied in a decision dated December 2007. The Prosecutor's Office concluded that Mr. Nelson enjoyed immunity from prosecution in the country, because his diplomatic status had not been lifted by the Foreign Ministry of Santa Clara.

27. After more than five years, the investigations remained at the preliminary stage. Given this fact, and in view of the dim prospects for obtaining justice in Madrugua, members of the Camana Osorio family decided to bring civil actions against Miningcorp in Santa Clara. They also filed a criminal complaint against its former financial director, Eliot Klein, as well as Army Coronel David Nelson, for the offenses of murder and conspiracy with unlawful armed

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it made it impossible for the Pampulla Lagoon to be used as a water supply for the Pichicha people and thousands of peasants who live in the area supplied by the lagoon.

38. After that incident, the Federal Water Authority of Santa Clara (FWA) ordered the immediate decontamination of the Pampulla Lagoon and simultaneously ordered the provisional collection of water from the streams located in the area, including the Mandí Stream. On June 15, 2011 Mr. Ricardo Manuín, a lawyer and leader of the Pichicha people, filed an administrative appeal with the President's Office of the FWA, alleging the inviolability of the Mandí Stream. In response, the FWA stated that the emergency situation warranted the exceptional and temporary restriction of the Pichicha people's property rights over the Mandí Stream. In its decision, the FWA stated that the provisional collection of water from other sources would take at least 5 additional days and would entail building excessively costly pipeline and storage systems, which would serve no purpose after the decontamination of the Pampulla Lagoon.

39. On July 30, 2011 Mr. Ricardo Manuín filed a petition for a constitutional remedy [ ] on behalf of the Pichicha Assembly alleging the violation of several fundamental rights as a result of the encroachment, since June 15, 2011, of areas his people consider sacred. On August 10, 2011 the First Federal Civil Court of Toronga issued an injunction ordering the immediate evacuation of civil defense personnel from the sacred areas of the Pichicha people's territory. On August 15, 2011 the works to decontaminate the Pampulla Lagoon were concluded, and on August 20 the injunction was lifted and the action was shelved as moot.

40. Mr. Ricardo Manuín appealed the decision and later filed a constitutional appeal before the Supreme Court of Santa Clara alleging error on the part of the lower court. He sought to obtain a judgment ordering the Government and Silverfield S.A. to pay damages for the irreparable harm caused to sacred sites near the Mandí Stream and, in general, for the breach of the agreements undertaken by the government of Santa Clara during the prior







