

STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION

2023-2024

IN THE INTERNATIONAL COURT OF JUSTICE AT
THE PEACE PALACE, THE HAGUE

Case Concerning Oil Extraction Activities in the DRI

THE SOVEREIGN STATE OF ARINGUV

v.

THE SOVEREIGN STATE OF REPLOMUTÉ

ON SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE MEMORIAL FOR THE APPLICANT
ARINGUV

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	3
TABLE OF ABBREVIATIONS.....	6
QUESTION PRESENTED	8
A. WHETHER REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW BY FAILING TO PREPARE AN EIA WITH RESPECT TO THE PROPOSED OIL EXTRACTION?.....	8
B. WHETHER REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI?	8
STATEMENT OF JURISDICTION.....	9
STATEMENT OF FACTS.....	10
SUMMARY OF PLEADINGS	14
A. REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW BY FAILING TO PREPARE AN EIA WITH RESPECT TO THE PROPOSED OIL EXTRACTION.....	14
B. REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI	14
PLEADINGS.....	15
A. REPLOMUTE HAS VIOLATED INTERNATIONAL LAW BY FAILING TO PREPARE AN EIA WITH RESPECT TO THE PROPOSED OIL EXTRACTION.....	15
1. <i>Replomuté violated international law when it failed to conduct an EIA.</i>	15
2. <i>Replomuté violated the UNFCCC and the Paris Agreement when it failed to conduct an EIA with respect to climate change.</i>	19
3. <i>Replomuté violated CBD, CMS, and CIL by failing to conduct an EIA that considered the Project's impact on the RMG and their habitat.</i>	22
B. REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI	27
1. <i>Replomuté has a responsibility to Aringuv under customary international law.</i>	27
2. <i>Replomuté is indirectly responsible through its coercion of the DRI.</i>	28

INDEX OF AUTHORITIES

TREATIES, CONVENTIONS, & CONFERENCES

TREATIES

- Agreement on the Conservation of Gorillas and their Habitats, 2007 [Gorilla Agreement].....22, 24
- Responsibility of States for Internationally Wrongful Acts, Resolution 58.83, December 2001.26

CONVENTIONS

- African Convention on the Conservation of Nature and Natural Resources, 1969 [Algiers Convention].....22, 25
- Convention on Biological Diversity, Jun 5, 1992, 1760 U.N.T.S 79 [CBD].....12, 22, 23
- Convention on Environmental Impact Assessment in a Transboundary Context, Mar. 25, 1991, 1989 U.N.T.S 309
[Espoo Convention) 12, 13, 21, 24, 26
- Convention on Migratory Species, Resolution 12.21, Jun. 23,1979 [CMS].....13, 19, 20, 23
- Paris Agreement, opened for signature 22 April 2016, 55 I.L.M. 1 (2016).....16, 17, 25
- United Nations Framework Convention on Climate Change, Sept. 5, 1992, 1771 U.N.T.S. 107 [UNFCCC] 12, 16, 21
- Vienna Convention on the Law of Treaties [VCLT]24

CONFERENCES

- Conference of the Parties, 21st Sess., COP 21 (Paris France, 2015)16
- Declaration on the United Nations Conference on the Human Environment (1972) [Stockholm Declaration]12
- U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, UN Doc.
A/CONF.151/26 (Vol. 1), (Jun. 14, 1992) [*Rio Declaration*]..... 12, 14, 15, 18, 20, 21
- United Nations Conference on the Human Environment, Stockholm, Sweden, June 5-16, 1972 (50th anniversary
event).18, 24

JUDICIAL DECISIONS

<i>Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica/Nicaragua)</i> , Judgment, 6 December 2015 [<i>Nicaragua</i>].	14
<i>Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)</i> , ICJ Reports, 2015.	14
<i>Gabčíkovo-Nagymaros Project</i> (Hungary/Slovakia), Judgment, 1997, I.C.J. Rep. 1, (September 25)	15, 22
<i>Nuclear Tests (New Zealand v. France)</i> , Case, 1995, Order I.C.J. Rep. 288, (September 22)	14
<i>Pulp Mills on the River Uruguay (Argentina/Uruguay)</i> , Judgment, 2010, I.C.J. Rep. 14, (April 20) [<i>Pulp Mills</i>].	14

REPORTS

CBD, <i>Cooperation with Other Conventions and International Organizations and Initiatives</i> , UNEP/CBD/COP/6/INF/15 (Mar. 14, 2002).	23
CMS Secretariat, <i>Range States Classification</i> . UNEP/CMS/ScCAP/Doc.7 (13 June 2009).	23
CMS, <i>Guidelines for Assessing Listing Proposals to Appendices I and II of the Convention</i> , UNEP/CMS/Resolution 11.33 (2017) at 2.	20
ILC Report (2001) GAOR A/56/10, commentary to Article 7	13
Yearbook of the International Law Commission, 2001, vol. II, Part Two.....	26

BOOKS

Ved P. Nanda & George Pring, <i>International Environmental Law & Policy for the 21st Century</i> 60 (2003). 12, 13, 15, 20, 22	
---	--

ESSAYS, ARTICLES, & JOURNALS

Alan Boyle, <i>Developments in International Law of EIA and their Relation to the Espoo Convention</i> (2012).....	13, 15
--	--------

Elisa Ruozi, *The Obligation to Undertake an Environmental Impact Assessment in the Jurisprudence of the ICJ*, 8
European Journal of Risk Regulation (Cambridge Univ. Press 2017)14, 15

Overview, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/threats/oil-and-gas-development> (last visited
Nov. 3, 2023)21

The impact of climate change on our planet's animals INTERNATIONAL FUND FOR ANIMAL WELFARE (Feb, 28,
2022), <https://www.ifaw.org/journal/impact-climate-change-animals>.....21

TABLE OF ABBREVIATIONS

1.	1981 Agreement	1981 oil extraction and pipeline Agreement between Replomuté and the DRI
2.	Algiers Convention	African Convention on the Conservation of Nature and Natural Resources
3.	CBD	Convention on Biological Diversity
4.	CIL	Customary international law
5.	CMS	Convention on the Conservation of Migratory Species of Wild Animals
6.	ILC Draft Articles	ILC Draft Articles on Responsibility of States for Internationally Wrongful Act
7.	DRC	Democratic Republic of Ibirunga
8.	Espoo Convention	Convention on Environmental Impact Assessment in a Transboundary Context
9.	Gorilla Agreement	Agreement on the Conservation of Gorillas and Their Habitats
10.	ICJ	International Court of Justice
11.	ILC	International Law Commission
12.	IUCN	International Union for Conservation of Nature
13.	NDC	Nationally Determined Contribution
14.	NGOs	Non-governmental organizations
15.	Project	Replomuté's oil mining activities and oil pipeline project
16.	Revised African Convention	Revised African Convention on the Conservation of Nature and Natural Resources
17.	RMG	Royal Mountain Gorilla (<i>Gorilla ibirungai royali</i>)

18.	Stockholm Conference	1972 United Nations Conference on Human Environment at Stockholm
19.	UN	United Nations
20.	UNCED	1992 United nations Conference on Environment and Development at Rio de Janeiro
21.	UNFCCC	United Nations Framework Convention on Climate Change
22.	USD	United States dollar
23.	VCLT	Vienna Convention on the Law of Treaties
24.	WSSD	2002 World Summit on Sustainable Development at Johannesburg

QUESTION PRESENTED

- A. WHETHER REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW BY FAILING TO PREPARE AN EIA WITH RESPECT TO THE PROPOSED OIL EXTRACTION?**

- B. WHETHER REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI?**

STATEMENT OF JURISDICTION

In accordance with Article 40, paragraph 1 of the Statute of the ICJ, the states of Aringuv and Replomoté have submitted the following dispute to the ICJ. By Special Agreement, both parties have agreed to submit their dispute relating to mountain gorillas and impact assessment to the Registrar of the Court by a Joint Notification dated 24 July, 2023.

The Registrar of the Court addressed a notification to the parties on 31 July, 2023 pursuant to Article 26 of the Rules of the Court. Therefore, Aringuv and Replomoté have accepted the jurisdiction of the Court pursuant to Article 36(1) of the Statute of the ICJ. Aringuv and Replomoté request the Court to adjudge the dispute in accordance with the rules and principles of international law, including any applicable treaties.

The parties have agreed to accept the Judgment of the Court as final and binding upon them.

STATEMENT OF FACTS

Aringuv, a lower-middle income country,¹ shares its eastern border with the DRI, a low-income country, in Central Africa.² Replomuté is a high-income developed country in Europe.³

Aringuv, the DRI, and Replomuté are each members of the UN⁴ and parties to the VCLT,⁵ CMS,⁶ CBD,⁷ Paris Agreement,⁸ and Statute of the ICJ.⁹ Each are parties to the UNFCCC, with Aringuv and the DRI being Non-Annex I parties and Replomuté being an Annex I party.¹⁰ Aringuv and the DRI are parties to the Gorilla Agreement¹¹ and the Algiers Convention.¹² Aringuv is also a party to the Revised African Convention.¹³ All three have signed the Espoo Convention, but only Aringuv has not ratified it.¹⁴

The RMG is a species of mountain gorilla found only in Aringuv and the DRI.¹⁵ There are two populations of RMG. The northern population occupies a transboundary national park and frequently crosses between Aringuv and the DRI. The southern population occupies a national

¹ Record ¶2.

² Record ¶1.

³ Record ¶3.

⁴ Record ¶4.

⁵ Record ¶5.

⁶ Record ¶8.

⁷ Record ¶7.

⁸ Record ¶13.

⁹ Record ¶4.

¹⁰ Record ¶13.

¹¹ Record ¶9.

¹² Record ¶11.

¹³ *Id.*

¹⁴ Record ¶12.

¹⁵ Record ¶9.

park in the DRI and is rarely sighted in Aringuv. The RMG is included in Appendix I of the CMS and is classified as critically endangered on the IUCN Red List of Threatened Species.

In 1981, Replomuté entered into an agreement with the DRI to allow the Lenoir Corporation, a corporation wholly owned and operated by Replomuté, the right to explore and extract oil from an area in the DRI inhabited by the southern population of the RMG and to construct a pipeline for oil transport in the DRI.¹⁶ Prior the agreement, the DRI completed an EIA that was consistent with its national laws, but which did not consider the impact on the RMGs, their habitat, or climate change.

The Lenoir Corporation has suspended and restarted its activities in the DRI twice, halting its construction from 1987-2003¹⁷ and 2006-2009.¹⁸ In February 2012, Lenoir announced plans to begin oil extraction from the DRI upon completion of the pipeline, which was anticipated to be in August of 2014.¹⁹ At that time, local and international NGOs expressed concern to the DRI, and asked Lenoir to abandon the project since it would encompass the habitat of the southern population of the RMG.²⁰

In May of 2012, a military coup occurred in DRI. DRI's new leader declared their intention to withdraw from the 1981 Agreement because it was in violation of the Gorilla Agreement. DRI asked Replomuté to establish a \$50 million (USD) fund to compensate DRI for the

¹⁶ Record ¶17.

¹⁷ Record ¶18.

¹⁸ Record ¶19.

¹⁹ Record ¶20.

²⁰ Record ¶21.

environmental and societal impacts.²¹ Replomuté invoked the 1981 Agreement’s mandatory arbitration provision. The Arbitral panel ordered the DRI to allow Lenoir to continue the project or to be subject to \$825 million (USD) in penalties.²² The project continued, the pipeline was 80% complete,²³ and Replomuté established a “Friendship Fund” for economic development to be administered by both governments.²⁴

In November of 2017, Aringuv elected a new president.²⁵ In May of 2018, Aringuv contacted Replomuté to express concern about the DRI project and its impact on the RMG and climate change.²⁶ The two countries went into discussions and negotiations for several months.

In a series of diplomatic notes throughout 2018²⁷ and 2019,²⁸ Aringuv requested that Replomuté conduct an EIA that considers the Project’s impact upon the RMGs and climate change. Aringuv claimed that Replomuté has a duty to do so under the Revised African Convention,²⁹ Article 14.1(a) of the CBD,³⁰ and Article 4.1(f) of the UNFCCC.³¹ Aringuv also claimed that the Project was done through coercion of the DRI.³²

In 2020, the COVID-19 pandemic began, and Replomuté suspended activity on the 98% complete pipeline.³³ In April of 2022, Replomuté informed Aringuv that it would resume

²¹ Record ¶22.

²² Record ¶23.

²³ Record ¶24.

²⁴ Record ¶23.

²⁵ Record ¶25.

²⁶ Record ¶26.

²⁷ Record ¶27.

²⁸ Record ¶28-31.

²⁹ Record ¶27.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Record ¶32.

pipeline construction planned to be finished with the pipeline by June of 2022.³⁴ In May of 2022, Aringuv requested that the DRI revoke Lenoir's permits for the pipeline.³⁵

Aringuv and Replomuté began negotiations facilitated by the Government of Uganda. The parties agreed to institute proceedings at the ICJ.³⁶

³⁴ Record ¶33.

³⁵ Record ¶34.

³⁶ Record ¶35.

SUMMARY OF PLEADINGS

A. REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW BY FAILING TO PREPARE AN EIA WITH RESPECT TO THE PROPOSED OIL EXTRACTION.

Replomuté has violated international law by failing to conduct an EIA that considers the impact of its Project on the RMGs, their habitat and climate change. Specifically, Replomuté has ignored its clear mandates under the Paris Agreement, the UNFCCC, the CBD and the CMS.

B. REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI.

By forcing DRI to fulfill the 1981 treaty, Replomuté is causing DRI to breach its treaty obligations to Aringuv as a party to the Algiers convention. Replomuté is failing to comply with the protections for the environment and endangered species by rendering the area where it is drilling and constructing the oil pipeline noncompliant. Further, Replomuté coerced DRI into continued agreement with the Project through severe economic pressure.

PLEADINGS

A. REPLOMUTE HAS VIOLATED INTERNATIONAL LAW BY FAILING TO PREPARE AN EIA WITH RESPECT TO THE PROPOSED OIL EXTRACTION.

Replomuté, as a developed country, has the responsibility of fully complying with international treaties and CIL. At every turn, Replomuté has chosen to shirk its obligations and take advantage of the DRI's economic instability. Replomuté has refused to conduct an EIA that considers the Project's impact on climate change and the RMGs. Such a refusal amounts to a violation of international law.

1. Replomuté violated international law when it failed to conduct an EIA.

Replomuté has a duty to conduct an EIA for activities it undergoes that "are likely to have a significant adverse impact on the environment."³⁷ Such a duty has been established in some form by the Rio Declaration, CBD, and UNFCCC, all of which Replomuté is a party to.³⁸ The only EIA conducted for Replomuté's Project was done in 1981 by the DRI in conformance with DRI's national laws.³⁹ The DRI EIA took into account only those impacts on humans including water usage and waste and did not consider any environmental or species impact.⁴⁰

³⁷ U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (Vol. 1), annex I, Principle 17 (Jun. 14, 1992) [hereinafter *Rio Declaration*]; See Convention on Environmental Impact Assessment in a Transboundary Context, Art. 2(2), Mar. 25, 1991, 1989 U.N.T.S. 309 [hereinafter *Espoo Convention*]; Convention on Biological Diversity, Art. 14(1)(a), Jun. 5, 1992, 1760 U.N.T.S. 79 [hereinafter *CBD*]; United Nations Framework Convention on Climate Change, Art. 4(1)(f), Sept. 5, 1992, 1771 U.N.T.S. 107 [hereinafter *UNFCCC*]; Declaration on the United Nations Conference on the Human Environment (1972) Principles 13, 14, 15 [hereinafter *Stockholm Declaration*]; Ved P. Nanda & George Pring, *International Environmental Law & Policy for the 21st Century* 60 (2003).

³⁸ *Rio Declaration*, Principle 17; *CBD*, Art. 14(1)(a); *UNFCCC*, Art. 4(1)(f).

³⁹ Record ¶17.

⁴⁰ *Id.*

Replomuté, the DRI, and Aringuv signed to and/or ratified the Rio Declaration, the Espoo Convention, CBD, and UNFCCC eleven years after the DRI's EIA was conducted.⁴¹ However, the Project was stalled in 1987 and did not resume until 2003, eleven years after Replomuté's EIA treaty obligations were in place.⁴² Despite this, Replomuté failed to conduct an EIA that addressed environmental, transboundary, or species impacts, thus violating the clear obligations set forth by the Rio Declaration, CBD, and UNFCCC.⁴³ Moreover, the Project's immense passage of time and continuous breaks between activity enhances Replomuté's complete relinquishment of its duty to continuously monitor the Project and minimize its adverse impacts.⁴⁴ Thus, Replomuté clearly violated its treaty obligations under the Rio Declaration, CBD, and UNFCCC.

Replomuté owes a duty under the Espoo Convention to conduct an EIA where there is likely to be a significant transboundary impact.⁴⁵ Replomuté claims that it is not required to follow the Espoo Convention's mandate to conduct an EIA for activities that will have a transboundary impact because Aringuv is not a party to the Espoo Convention.⁴⁶ Despite this argument, traditional customary law accepts the general mandate of requiring an EIA when a proposed activity may have a significant adverse impact in a transboundary context.⁴⁷ Further, in

⁴¹ See *id.* at ¶¶ 7, 12, 13, 17.

⁴² Cf. *id.* at ¶¶ 7, 12, 13, 17, 18.

⁴³ *Rio Declaration*, Principle 17; CBD Art 14(1)(a); UNFCCC Art. 4(1)(a).

⁴⁴ CBD, Art. 14(1)(a); see *Convention on Migratory Species*, Resolution 12.21, Art. 3, Jun. 23, 1979 [hereinafter CMS]; Alan Boyle, *Developments in International Law of EIA and their Relation to the Espoo Convention*, ("In cases involving complex projects, where the time between initial authorisation and eventual operation is prolonged, it may be necessary to conduct several EIAs - or at least to review and revise the initial EIA - before a plant is authorised to commence operations."); Nanda *supra* note 37 at p. 137.

⁴⁵ Espoo Convention, Art. 7 provides: "Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment."

⁴⁶ Record ¶ 28.

⁴⁷ See ILC Report (2001) GAOR A/56/10, commentary to Article 7, at pp. 402-5:

Pulp Mills, the ICJ held that even where the States are not parties to the Espoo Convention, the guidelines “had to be taken into account” “as guidelines issued by an international technical body.”⁴⁸ This duty of due diligence is reaffirmed in the *San Juan River* joined cases, where the court held that the obligation to conduct an EIA was a “continuous” one, that a state must utilize the EIA to monitor the effect of the project throughout its life.⁴⁹ Thus, even if the Espoo Convention is not binding, international customary law still requires Replomuté to take the Espoo Convention’s transboundary EIA mandate into consideration, which it has not done.

Regardless of a transboundary impact, the duty to conduct an EIA where a project may have a significant adverse impact on the environment has ripened into CIL due to the acceptance of the custom in numerous treaties and conventions⁵⁰ and based on the ICJ’s decisions in *Nuclear II*, *Pulp Mills*, and *Nicaragua*.⁵¹ CIL requires that an EIA take into account the impacts

“(7) . . . such an assessment should contain an evaluation of the possible transboundary harmful impact of the activity. In order for the States likely to be affected to evaluate the risk to which they might be exposed, they need to know what possible harmful effects that activity might have on them. (8) The assessment should include the effects of the activity not only on persons and property, but also on the environment of other States. The importance of the protection of the environment, independently of any harm to individual human beings or property is clearly recognized.”

See also Elisa Ruozi, *The Obligation to Undertake an Environmental Impact Assessment in the Jurisprudence of the ICJ*, 8 *European Journal of Risk Regulation* 158, 162 (Cambridge Univ. Press 2017) (Citing *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica/Nicaragua)*, Judgment, 6 December 2015 [hereinafter *Nicaragua*]).

⁴⁸ *Pulp Mills on the River Uruguay (Argentina/Uruguay)*, Judgment, 2010, I.C.J. Rep. 14, ¶205 (April 20) [hereinafter *Pulp Mills*].

⁴⁹ *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, ICJ Reports, 2015.

⁵⁰ *Rio Declaration*, Principle 19; Ruozi, *supra* note 47 at 160, 162 “[T]he obligation to perform an EIA is deemed to have acquired customary nature. . . . In its judgment, the Court fully recognized the customary nature of the obligation to perform an EIA by describing it as ‘a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law’”.

⁵¹ *Pulp Mills*, at ¶ 104; *Nicaragua*, at ¶ 104; *Nuclear Tests (New Zealand v. France)*, Case, 1995, Order I.C.J. Rep. 288, (September 22), Dissenting opinion of Judge Weeramantry, at ¶ 344 [hereinafter *Nuclear II*]; Ruozi, *supra* note 47 at 162 (“In the words of the [*Pulp Mills*] Court, “where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource”, an EIA has to be performed”).

to the environment including any adverse impact on species and their habitat.⁵² Thus, because the Project needed continuous monitoring⁵³ and because DRI's EIA was substantively deficient, Replomuté violated CIL.

Replomuté also has an affirmative duty to complete a sufficient EIA under the precautionary principle.⁵⁴ Replomuté would argue that the DRI's EIA was sufficient to fulfill its treaty and CIL obligations.⁵⁵ The precautionary principle encourages states to continually use precaution in activities that may cause harm to the environment, and it places the evidentiary burden on Replomuté to prove no risk of damage.⁵⁶ Replomuté has failed to show that there will be no risk of damage. To the contrary, there is significant likelihood that there will be a significant impact on the RMG, since the project encompasses the southern RMG's habitat. Thus, the precautionary principle requires that Replomuté complete an EIA.

⁵² Alan Boyle, *Developments in International Law of EIA and their Relation to the Espoo Convention 5* (2012). (“while the ‘specific content’ of each EIA is for the state to determine, there must be an EIA and it must have regard to “the nature and magnitude of the proposed development and its likely adverse impact on the environment”) (citing *Pulp Mills* at ¶205).

⁵³ See Ruozi, *supra* note 47 at 162 (“[T]he principle played an important role in the case at issue, and underscored its nature as a continuing process that should take place as long as the project is in operation. Such a statement was justified not only by EIA being a “dynamic principle”, but also by considerations of prudence, as any project can have unexpected consequences, especially if great in size and scope. According to the Judge, the customary nature of continuous monitoring as part of the obligation to carry out an EIA found support in international and domestic practice and, from a theoretical point of view, on an EIA being a specific application of the larger general principle of caution. (Citing *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment, 1997, I.C.J. Rep. 1, (September 25), Separate opinion of Judge Weeramantry, at 111.

⁵⁴ Rio Declaration, Principle 15; see Nanda *supra* note 37 at 59.

⁵⁵ Record ¶28.

⁵⁶ *Rio Declaration*, Principle 15.

2. Replomuté violated the UNFCCC and the Paris Agreement when it failed to conduct an EIA with respect to climate change.

The initial purpose of the UNFCCC was to stabilize greenhouse gasses to the extent that prevents harm to the climate system, and allow ecosystems to naturally adapt to the changing climate as we move toward sustainable development.⁵⁷ As a state party, Replomuté was obligated to publish and regularly update regional programs that incorporate measures to mitigate climate change.⁵⁸ Conducting an EIA would permit Replomuté to perform the functions of this function, thus furthering the purpose and object of this convention.⁵⁹

In its 21 Session, UNFCCC created the Paris Agreement to enhance the consensus between states to address climate change, with a specific goal of addressing the rising temperature.⁶⁰ In regard to the impacts of Replomuté's oil extraction activities on climate change, Replomuté has essentially ignored their duty to properly address and mitigate the threat of climate change under the Paris Agreement.⁶¹ The Preamble of the Paris Agreement recognizes the urgent threat of climate change and the importance of "ensuring the integrity of all ecosystems...and the protection of biodiversity...when taking action to address climate change."⁶² Article 2(1)(a) of the Paris Agreement sets a goal of limiting the increase in global average temperature to well below 2°C and the temperature increase to 1.5°C.⁶³ Conducting an EIA is a fundamental step towards understanding the effect of emissions and how to best reduce it, in addition to assessing the adequacy of measures taken to achieve this goal.⁶⁴ Furthermore,

⁵⁷ UNFCCC Art. II.

⁵⁸ *Id.* at Art. IV.

⁵⁹ *See id.*

⁶⁰ UNFCCC, Conference of the Parties, 21st Sess., COP 21 (Paris France, 2015).

⁶¹ Paris Agreement, opened for signature 22 April 2016, 55 I.L.M. 1 (2016).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *See id.*

Article 4(4) of the Paris Agreement states that developed countries should take the lead in climate change by undertaking economy-wide emission reduction.⁶⁵ As a sovereign state categorized as a high-income country, Replomuté has the duty to take the lead in reducing emissions, but it is hard to imagine that Replomuté's oil extraction activities comply with this provision.⁶⁶ However, Replomuté could easily prove otherwise if they honestly conduct an EIA showing they are in compliance, that their oil extraction activities do indeed reduce emissions economy-wide.⁶⁷

Article 7 of the Paris Agreement continues to spell out in great detail the duty of developed countries to consider the needs of developing countries that are particularly vulnerable to the adverse effects of climate change in the context of pursuing the temperature goal referred to in Article 2.⁶⁸ There is clear advocacy for international cooperation when considering the needs of developing countries, especially for countries like DRI, who are particularly vulnerable to the adverse effects of climate change.⁶⁹ The purpose of an EIA in this context serves one similar to the one aforementioned, to assess a state's likely impact a proposed activity has on the environment.⁷⁰ However, Replomuté's oil extraction activities would further burden DRI as a developing country with respect to their vulnerability to the adverse effects of climate change.⁷¹ Replomuté has a duty to mitigate the effects of climate change especially through international cooperation so it can be speculated that Replomuté's delay in conducting an EIA not only

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ *See id.*

⁶⁸ *See id.*

⁶⁹ *See id.* at Art. VII.

⁷⁰ *See id.*

⁷¹ *See id.*

violates the Paris Agreement, but also proves that their oil extraction activities most likely has adverse effects on the environment with respect to climate change.⁷²

- i. Replomuté has a moral responsibility to conduct EIAs with respect to its oil extraction activities.

At the Earth Summit in Rio in the summer of 1992, Replomuté, Aringuv, and DRI took part in discussions about the agenda for environmental protection and sustainable development.⁷³ During the conference, it is stressed that the protection of the environment should be an integral part to development and should not be addressed in isolation.⁷⁴ States shall use EIAs as a national instrument for activities that are likely to have a significant adverse impact on the environment.⁷⁵ Replomuté plan for oil extraction activities is one of the many activities that result in greenhouse gas emissions, which is one of the key culprits of climate change. Although the convention itself is not binding on the states, they are nevertheless important moral principles that should be guiding the states when taking action in regard to policies and economic development.⁷⁶ In the Rio+20 and Stockholm+50 Conventions, there were discussions about the need to address climate change, as well the consequences of climate change such as the ever rising global temperature, and calls for cooperation between national and local authorities.⁷⁷ Although these conventions and conferences do not bind Replomuté with the obligation to conduct an EIA, it still has a moral duty to cooperate and conduct an EIA for the benefit of

⁷² *See id.*

⁷³ *Rio Declaration.*

⁷⁴ *Id.* at Principle 4.

⁷⁵ *Id.* at Principle 17.

⁷⁶ *See id.*

⁷⁷ *Rio Declaration*; United Nations Conference on the Human Environment, Stockholm, Sweden, June 5-16, 1972 (50th anniversary event).

addressing climate change with the international community.⁷⁸ In addition to the binding obligations under the UNFCCC and Paris Agreement, it can be determined that Replomuté failed their binding obligations to conduct and neglected their moral responsibility to conduct an EIA with respect to the oil extraction activities.⁷⁹

3. Replomuté violated CBD, CMS, and CIL by failing to conduct an EIA that considered the Project’s impact on the RMG and their habitat.

i. RMGs are a migratory species and are thus covered by the CBD and CMS.

RMGs are listed in Appendix I of CMS⁸⁰ which contains only species, subspecies, or specific parts of a species that are considered migratory.⁸¹ Species are only included within Appendix I of CMS where the “best scientific evidence available [] indicates that the species is endangered.”⁸² Replomuté’s claim that the RMG is not a migratory species is without merit and based only on the fact that the RMG is “rarely” seen in Aringuv.⁸³ Moreover, Replomuté’s argument that the RMG was not properly classified is a blatant violation of VCLT art. 38(1) on treaty interpretation that treaties “shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

Commented [1]: Is this okay here? you can move if you want, was not sure where it would fit best

⁷⁸ *See id.*

⁷⁹ *See id.*

⁸⁰ Record ¶ 9.

⁸¹ CMS, Appendix I(a).

⁸² *Id.* at Art. III (2).

⁸³ Record ¶ 30.

According to the CMS, “Migratory Species” means the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries.⁸⁴ Further guidance was provided by CMS for the terms “cyclically” and “predictably.”⁸⁵ Cyclically “relates to a cycle of any nature, such as astronomical (circadian, annual etc.), life or climatic, and of any frequency.”⁸⁶ Predictably “implies that a phenomenon can be anticipated to recur in a given set of circumstances, though not necessarily regularly in time.”⁸⁷ Based on these expansive definitions and interpretations of the meaning of “migratory species,” it is clear that the southern population of RMG is migratory. Phrases such as “any nature,” “any frequency,” and “not necessarily regular in time” suggest that no amount of migratory behavior be excluded, even if rare. The fact that the RMG’s migration across the Aringuv border could “be anticipated to recur in a given set of circumstances” and that such migration has occurred in the past at “any frequency” is sufficient to qualify the RMG as a migratory species.

Further, under the precautionary principle, the RMG must be classified as a migratory species.⁸⁸ CMS makes a reference to the precautionary principle within its interpretive guidance of the meaning of migratory species.⁸⁹ Specifically, CMS states that “by virtue of the precautionary approach and in case of uncertainty regarding the status of a species, the Parties shall act in the best interest of the conservation of the species concerned.”⁹⁰ The precautionary

⁸⁴ CMS, Art. I(1)(a).

⁸⁵ CMS, *Guidelines for Assessing Listing Proposals to Appendices I and II of the Convention*, UNEP/CMS/Resolution 11.33 (2017) at 2.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *See id.*

⁸⁹ *See id.*

⁹⁰ *See id.*

principle has been widely accepted as a fundamental principle of international law.⁹¹ It stands for the notion that States must use caution prior to engaging in activities that can potentially cause harm to the environment even in the absence of scientific evidence.⁹² Although the RMG has only been seen in Aringuv “rarely,” the precautionary principle and the precautionary mandate in the CMS justifies the RMG’s classification as a migratory species even if there is not clear scientific evidence or proof of such migration. The slight number of sightings are enough to warrant such a level of precaution. Moreover, the fact that the Project encompasses the primary habitat of the southern RMG suggests that it may be forced to cross into Aringuv much more consistently as its habitat deteriorates.⁹³

ii. The migratory nature of the RMG’s means there is likely to be a significant transboundary impact.

The migratory nature of the southern RMGs coupled with the fact that Replomuté’s Project is included in Appendix I of the Espoo convention signifies the likelihood of a transboundary impact.⁹⁴ As such, both the Espoo Convention and CIL require that Replomuté conduct an EIA that considers the transboundary impact of the Project. Since the DRI’s initial

⁹¹ Rio Declaration, Principle 15; *see* Nanda *supra* note 37 at 59.

⁹² UNFCCC Art. 4.1(f); *Rio Declaration*, Principle 15; *see* Nanda *supra* note 37 at 59.

⁹³ *Overview*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/threats/oil-and-gas-development> (last visited Nov. 3, 2023) (“Specifically, oil and gas exploration and development causes disruption of migratory pathways, degradation of important animal habitats, and oil spills.”); *The impact of climate change on our planet’s animals* INTERNATIONAL FUND FOR ANIMAL WELFARE (Feb. 28, 2022), <https://www.ifaw.org/journal/impact-climate-change-animals> (“Ecosystems may become uninhabitable for certain animals, forcing wildlife to migrate outside of their usual patterns in search of food and livable conditions”).

⁹⁴ Espoo Convention, Art. 1(viii) (“Transboundary impact” means any impact, not exclusively of a global nature within an area under the jurisdiction of a Party caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party.”); *see* Nanda *supra* note 37 at 161 (“Migratory animals are among the most vulnerable of all species, for if even one country in their range does not protect them, they can be threatened with extinction.”).

EIA did not consider the RMGs or their habitat, the transboundary impact was not considered. Thus, Replomuté has violated its obligations under the Espoo Convention, and in the alternative, under CIL by failing to conduct an EIA that considered the transboundary impact.

iii. Even if RMGs were not migratory species, they should have been included in the EIA based on fundamental principles of CIL.

Even if RMGs were not migratory species, they should have been included in the EIA because Replomuté has a duty to protect endangered species. Being that the species exists only within the DRI and Aringuv, Aringuv has a special biodiversity interest in the RMG.⁹⁵ Further, as a party to CBD, Replomuté has a duty to conserve biodiversity.⁹⁶ Being that the southern population of the RMG is more than half the size of the northern population, and the fact that both are on the IUCN Red List of Threatened Species strengthens the incentive to conserve the species.⁹⁷ To that point, even if not binding on Replomuté, the Gorilla Agreement and the Algiers Convention enhance the severity and necessity of RMG protection, especially since Replomuté was aware that DRI was a party to the Algiers Convention prior to the Project.⁹⁸ Moreover the “no-harm” rule requires that Replomuté not cause or allow harm outside its borders.⁹⁹ By not protecting the RMGs from the Project within the DRI and by causing the DRI to violate its own treaties, Replomuté would be violating this fundamental principle of CIL.

⁹⁵ See Nanda *supra* note 37 at 163 (“The global commons “creates an obligation for states to use these common areas in a way that benefits humankind as a whole.”).

⁹⁶ CBD, Preamble, Art. 14.

⁹⁷ See *id.* at 33 n. 62 (discussing the 1978 UNEP Draft Principles of Shared Natural Resources “which would apply the principle to all natural resources shared by two or more states”).

⁹⁸ Agreement on the Conservation of Gorillas and their Habitats, Art. II, 2007 [hereinafter Gorilla Agreement]; African Convention on the Conservation of Nature and Natural Resources, Art. II, VII, 1969 [hereinafter Algiers Convention].

⁹⁹ See *id.* at 22 (“In the *Gabcikovo-Nagymaros Dam Case*, the Court . . . stated, ‘It is primarily in the last two decades that safe-guarding the ecological balance has come to be considered an ‘essential interest’ of all States.’”).

iv. Replomuté has violated CBD and CMS with respect to the RMGs.

Replomuté, Aringuv, and the DRI are parties to CMS and CBD.

CMS requires that parties “take appropriate and necessary steps to conserve [migratory] species and their habitat.”¹⁰⁰ CBD aims to “conserve and sustainably use biological diversity,” and implements a requirement to conduct an EIA to consider and minimize an activity’s adverse effects on biological diversity.¹⁰¹ By not conducting an EIA that considered impacts on biological diversity, and the RMG, Replomuté has violated its duties under CBD and CMS.¹⁰²

Replomuté has claimed that it does not have to comply with CMS because it is not a Range State. However, the term “Range State” has more than one definition under CMS. One definition of Range State includes any party that can exercise jurisdiction over a Range State territory.¹⁰³ While DRI is in control of its own territory as a sovereign State, Replomuté has made it clear that it will continue with the agreement regardless of DRI’s decision to not comply with the agreement.¹⁰⁴ Through this action, Replomuté is exercising jurisdiction over the territory and is thus a Range State under CMS. Therefore, Replomuté has violated CMS by not conducting an EIA which considers the RMG and their habitat.

Even if Replomuté a Range State, they must still comply with the Appendix I Articles in CMS. Replomuté must comply with Appendix I of CMS because it is also a party to CBD. CMS and CBD have an “evolving partnership” that mandate a collaborative implementation.¹⁰⁵ Thus,

¹⁰⁰ CMS, Art II(1).

¹⁰¹ CBD, Preamble, Art. 14.

¹⁰² CMS, Art. II(3)(b).

¹⁰³ CMS Secretariat, *Range States Classification*. UNEP/CMS/ScCAP/Doc.7 (13 June 2009).

¹⁰⁴ Record ¶¶ 22-23.

¹⁰⁵ CBD, *Cooperation with Other Conventions and International Organizations and Initiatives*, UNEP/CBD/COP/6/INF/15 (Mar. 14, 2002).

Replomuté must, as both a party to CMS and CBD, follow the conventions in a collaborative way and comply with CMS to fulfill its obligations under CBD, which it has failed to do.¹⁰⁶

B. REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI.

1. **Replomuté has a responsibility to Aringuv under customary international law.**

Replomuté also has obligations to Aringuv under the VCLT in the CMS and CBD, which must be kept under the jus cogens norm reiterated in VCLT Art. 26. *Pacta sunt servanda*. As aforementioned, DRI owes a responsibility to Aringuv under CMS as range states for the RMG and Replomuté forced DRI to breach their treaty duties through the 1981 agreement.

By forcing DRI to fulfill the 1981 treaty, Replomuté is causing DRI to violate VCLT Art. 29. The treaties which DRI entered into after VCLT “unless a differentiation intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.”¹⁰⁷ This means the environmental and species protections DRI agreed to in subsequent treaties would be rendered moot as the area where Lenoir is drilling and constructing the oil pipeline would not comply.¹⁰⁸

Before the 1981 agreement, DRI became a party to the Algiers Convention when it entered into force in 1969. Under that treaty, “the Contracting States recognize that it is

¹⁰⁶ Id.

¹⁰⁷ VCLT, Art. 29.

¹⁰⁸ Gorilla Agreement; Espoo; Stockholm Principles 1, 4, 21, 24.

important and urgent to accord a special protection to those animal and plant species that are threatened with extinction, or which may become so, and to the habitat necessary to their survival.” Algiers requires contracting states with conservation areas¹⁰⁹ to “(a) protect those ecosystems which are most representative of and particularly those which are in any respect peculiar to their territories; (b) ensure conservation of all species and more particularly of those listed or may be listed in the annex to this convention.” Gorillas are listed as Class A protected species under that convention.

Replomuté went into the 1981 agreement aware of DRI’s duties under the Algiers Convention. By forcing the completion of the oil pipeline and harm to the endangered RMG, Replomuté is causing DRI to break its treaty obligations to protect the conservation areas, which are ecosystems of the RMG, assuming the RMG is a gorilla under the convention.

Furthermore, higher-income countries have a duty to lower-income countries to help them adapt and address climate change. This has been recognized in the Paris Agreement under Articles 7¹¹⁰ and 9.¹¹¹

2. Replomuté is indirectly responsible through its coercion of the DRI.

Replomuté coerced DRI to sign the agreement, which used DRI’s national standards for an EIA rather than the generally accepted international standards under customary international

¹⁰⁹ Algiers Convention, Art. III (d) (“Conservation area” means any protected natural resource area, whether it be a strict natural reserve, a national park or a special reserve”).

¹¹⁰ Paris Agreement Art. 7 (6) (“Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.”).

¹¹¹ Paris Agreement Art. 9 (1) (“Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.”).

law.¹¹² The 1981 agreement is an example of coercion of another state under the ILC's Responsibility of States for Internationally Wrongful Acts. Under Article 18, "a State which coerces another State to commit an act is internationally responsible for that act if: (a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and (b) the coercing State does so with knowledge of the circumstances of the act."¹¹³ The ILC's Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, notes that coercion can take the form of serious economic pressure, "provided that it is such as to deprive the coerced State of any possibility of conforming with the obligation breached."¹¹⁴ DRI's history of colonialism, civil war, and political corruption have hindered its economic development, leading it to be classified as a low-income country by the World Bank.¹¹⁵ DRI lacked a variety of choices to economically develop, coercing it to accept the 1981 agreement from Replomuté against its best interests.¹¹⁶

¹¹² See Espoo Convention.

¹¹³ Responsibility of States for Internationally Wrongful Acts, Resolution 58.83, Art. 18, 12 December 2001.

¹¹⁴ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, Art. 18 (3).

¹¹⁵ Record ¶ 1.

¹¹⁶ See *id.*

SUMMARY OF ARGUMENTS

Aringuv respectfully requests this Court to adjudge and declare that:

- A. As a procedural matter, Replomuté has violated international law for its failure to perform an EIA with respect to the proposed oil extraction activities.
- B. As a substantive matter, Replomuté has violated international law with respect to its oil extraction activities.

Respectfully submitted,
AGENTS FOR APPLICANT