TEAM 2411

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS

QUESTIONS RELATING TO MOUNTAIN GORILLAS AND IMPACT ASSESSMENT (ARINGUV V. REPLOMUTÉ)

ARINGUV
APPLICANT

V.

REPLOMUTÉ
RESPONDENT

MEMORIAL FOR THE APPLICANT

THE 28rd STETSON MOOT COURT COMPETITION
2023-2024

TABLE OF CONTENTS

目录

INDEX OF AUTHORITIES

JUDICIAL DECISIONS

TREATIES & CONVENTIONS

ESSAYS, ARTICLES, AND JOURNALS

BOOKS

(2007).

INTERNATIONAL DOCUMENTS

Articles on the Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 49, U.N. Doc. A/RES/56/83 (Dec.12, 2001).	Paras. 2; 3
Rio Declaration on Environment and Development, June 14, 1992, 31 I.L.M. 874	Para. 23
Nicholas Ashford, et. al., Wingspread Statement on the Precautionary Principle, WORLD HEALTH ORGANIZATION 1 (1998)	Para. 31
IUCN, Guidelines for Applying the Precautionary Principle, INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE 1, (2007)	Para. 31

QUESTIONS PRESENTED

I.

DID THE FAILURE OF REPLOMUTÉ TO PREPARE AN EIA WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE REGION VIOLATES INTERNATIONAL LAW?

II.

DID THE ACTIONS OF REPLOMUTÉ WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI VIOLATE INTERNATIONAL LAW?

STATEMENT OF JURISDICTION

Aringuv and Replomuté have submitted by Special Agreement their differences concerning questions relating to Environmental Impacts Assessment and oil extraction project, and transmitted a copy thereof to the Registrar of the International Court of Justice ("Court"). The Registrar acknowledged receipt of the notification of the Parties regarding this matter. Therefore, Aringuv and Replomuté have accepted the jurisdiction of the Court pursuant to Article 40(1) of the Statute.

STATEMENT OF FACTS

The Democratic Republic of Ibirunga ("DRI") and Aringuv are both developing countries in Africa and share their board line.[1] DRI is a low-income country with a history of colonialism by European states, whose economy mainly relies on agriculture.[2] DRI has comparatively abundant oil resources, which directly relate to the extraction project in disputes.[3] Meanwhile, Replomuté is a developed European country among the world's leaders in gross value of industrial output through its mining and ore industry, the world's largest importers of crude oil.[4]

DRI and Replomuté signed a contract about building a pipeline and extracting oil in 1981, granted the Lenoir Corporation, a corporation wholly owned and operated by the government of Replomuté, the right to explore, extract, and transport oil from the area inhabited by the southern population of the Royal Mountain Gorilla.[5]

DRI once tried to quit from the contract, but the expensive penalties sentenced by the arbitration tribunal of more than 825 million approximately 1/5 of the annual total income of DRI tightly limited its choices.[6] DRI can do nothing but acquiesce Replomuté to continue the projects. The project was suspended three times due to civil war, Ebola pandemic, and coups, it has not finished until today.[7]

---

1 Paras. 2, record.
2 *Ibid*, para. 1.
3 *Ibid*, para. 17.
4 *Ibid*, para. 3.
5 *Ibid*, para. 9, 17.
6 *Ibid*, para. 1, 23.
7 *Ibid*, para. 18, 19, 23, 32.

There are two groups of gorillas namely the north part and the south part.[8] The majority of the Royal Mountain Gorilla is in the northern part, around 640 individuals live in a transboundary national park under the jurisdiction of Aringuv and DRI. The southern population of the Royal Mountain Gorilla, about 295 individuals, occupies a national park in the DRI. The Royal Mountain Gorilla is included in Appendix I of the Convention on Environmental Impact Assessment in a Transboundary Context ("CMS") and is classified as critically endangered on the IUCN Red List of Threatened Species.

Local and international nongovernmental organizations ("NGOs") expressed their serious concern about the adverse impacts that might be imposed to the gorilla habitats, furthermore, the CMS Secretariat emphasized the negative impacts on the Royal Mountain Gorillas that would likely occur as a result of oil extraction activities.[9]

During the process of this project, all of DRI, Ariguv, and Replomuté have signed the Convention on Biological Diversity ("CBD") in 1993, the Convention of Migratory Species of Wild Animals in 1983, the United Nations Framework Convention on Climate Change ("UNFCCC") in 1992.[10] Ariguv and DRI signed the African Convention on the Conservation of Nature and Nature Resources ("Algiers Convention") in 1969, and Agreement on the Conservation of Gorillas and their Habitats ("Gorilla Agreement") in 2007, while Replomuté did not sign both. Replomuté and DRI have signed the Convention on Environmental Impact

[8] *Ibid*, para. 9.
[9] *Ibid*, para. 21.
[10] *Ibid*, para. 11, 12, 13 ,14.

Assessment in a Transboundary Context ("Espoo Convention") respectively, Ariguv signed it but has not ratified it yet.

DRI once conducted an Environmental Impacts Assessment ("EIA") without concern for biological diversity and climate change in 1981.[11] Aringuv and Replomuté have exchanged diplomatic letters several times about the project and environmental protection but remained in disagreement not only from a legal perspective but also in facts of adverse impact on the southern population of the Royal Mountain Gorilla. During the negotiation, Replomuté did not suspend the project in dispute.

[11] *Ibid*, para. 17.

SUMMARY OF ARGUMENT

ISSUE 1:

Aringuv claims that the failure of Replomuté to prepare an EIA with respect to the proposed oil extraction activities in the region violated international law.

Firstly, the Espoo Convention, CBD, and UNFCCC shall be applied to this case. According to Article 5, 8 of the Article on Responsibility of States for Internationally Wrongful Acts, state- owned entities' actions can be attributed to states. The Lenoir Corporation is a state-owned entity, and presented its administrative nature. Thus, the acts of Lenoir Corporation could be attributed to Replomuté. Since Aringuv and Replomuté are both contracting party of CBD and UNFCCC, these two conventions shall directly applied in this case. Even if Aringuv has signed the Espoo Convention but did not ratify it yet, the Espoo Convention is still legally operative in this case because Aringuv has repressed its intention to be bound by it by actively fulfilled obligations under the Espoo Convention.

Secondly, Replomuté did violate the Espoo Convention, CBD and UNFCCC by not conducting EIA concerning biological diversity and climate change.

Replomuté did violate Article 2,3 of the Espoo Convention, Article 14 of CBD and Article 4, 1, (f) of UNFCCC by not conducting EIA concerning biological diversity and climate change.

The oil extraction activities between DRI and Replomuté have potentially significant

adverse impacts on the biological diversity and climate change, and the Espoo Convention explicitly regulated that to conduct oil extraction project, the Environmental Impacts Assessment is needed. And the proposed activities are directly under the jurisdiction of Replomuté, indicating that Replomuté is the better party to conduct an EIA or update it pursuant to not only national law but also current binding conventions.

ISSUE 2:

Aringuv submits that Replomuté has violated the international law. Replomuté shall take both the direct responsibility and indirect responsibility for its violation of treaty and customary international law.

Firstly, Replomuté shall take the direct responsibility for its violation on treaty obligations. Replomuté violated its duty to promote the conservation and sustainable use of biological diversity as mandated by Art.6(a) of CBD by insisting on continuing the oil extraction activities which encompass the primary habitat of the southern population of the Royal Mountain Gorilla. Further, Replomuté violated its duty to notify and co-operate stipulated in Art. 14. 1(c) of CBD by not consulting with Aringuv on the oil extraction activities.

Secondly, Replomuté shall take the direct responsibility for its violation on customary international law. We submits that Replomuté violated the precautionary principle because it engaged in a potentially risky activity without first proving that the action posed no harm.

Thirdly, Replomuté shall take the indirect responsibility for its coercion on DRI.

"Coercion" comprised not only the threat or use of force, but also economic and political pressures. Replomuté has coerced the DRI in the present case by use of the economic presses and DRI has violated the CMS and Gorilla Agreement. Thus, Replomuté shall be responsible for its coercion on DRI.

ARGUMENT

ISSUE 1: REPLOMUTÉ FAILED ITS OBLIGATION OF CONDUCTING OF VALID ENVIRONMENT IMPACT ASSESSMENT.

I. Replomuté Is The Obliged Entity To Conduct EIA.

1. Since the Leonir Corporation's actions can be attributed to Replomuté, Aringuve、DRI and Replomuté are both contracting party of CBD and UNFCCC, and these two conventions could directly applied in this case.[12] As for the Espoo Convention, Replomuté is its contracting party,[13] Aringuv has signed but did not ratified it yet.[14] Since Aringuv has repressed its intention be bound by it, the Espoo Convention shall be legally operative in this case.[15]

A. The Lenoir Corporation's acts can be attributed to Replomuté.

2. Among multiple international law practices, it is common that acts of a state-owned entity can be attributed to the state.[16] The Article on Responsibility

[12] Paras. 7, 14, record.

[13] *Ibid*, para. 12.

[14] *Ibid*.

[15] *Ibid*, para. 26.

[16] Maffezini v. Kingdom of Spain, Award on Jurisdiction, ICSID Case No. ARB/97/7, para 75 (Jan. 25, 2000); Noble Ventures, Inc. v. Romania, Award, ICSID Case No. ARB/01/11, para 69-70; Eureko B.V. v. Republic of Poland, Partial Award and Dissenting Opinion, 33-34.

of States for Internationally Wrongful Acts regulates two main criteria for such attribution: (1) Internationally wrongful act, (2) the SOE was under the control of the state or the act is exercising the elements of governmental authority.[17]

3. In this case, firstly, Replomuté has committed an Internationally wrongful act of breaching its international treaty obligations under the Espoo Convention, CBD, and UNFCCC by not conducting EIA.[18] Secondly, the direct constructor is the Lenoir Corporation, a state-owned entity wholly owned and operated by the government,[19] which could be classified as a public entity because its entire ownership is held by the government.[20] Furthermore, the embassy of Replomuté's action of sending diplomatic letters in defense of the Lenoir Corporation indicates its administrative nature.[21] Thus the acts of the Lenoir Corporation shall be attributed to Replomuté.

B. The Espoo Convention is legally operative in this case.

[17] Art. 5; Art. 8, Article on Responsibility of States for Internationally Wrongful Acts.

[18] *Ibid*, Art. 2.

[19] Para.17, record.

[20] Para.4 , p.43, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries

[21] Para.17, record; Phillips Petroleum Company Iran v. The Islamic Republic of Iran, ibid., vol. 21, p. 79 (1989); Petrolane, Inc. v. The Government of the Islamic Republic of Iran, Iran-U.S. C.T.R., vol. 27, p. 64, at p. 92 (1991).

4. The court has held that an unperfected legal act such as an unratified treaty can be valid concerning relative situations.[22] Even though Aringuv did not ratify the Espoo Convention,[23] which made it an unperfected legal act,[24] Aringuv has delivered its clarifying intention of honoring the Espoo Convention by actively promoting negotiations,[25] sending several diplomatic letters,[26] contributing its genuine hope and great efforts in assistance of Replomuté to contribute to the protection of biological diversity and conduct valid EIA in respect of protecting the environment as the core of Espoo convention.

5. Besides, among the practices of states, it has never been questioned that treaties may enter into force without ratification, in fact, German Judge cites a number of cases where courts have upheld the validity of agreements in the form of exchanges of notes, despite the fact that they were not ratified.[27] And from a perspective of history, the ratification is just a limit of non-diligent agents who may act beyond their authority,[28] the treaties can be legally operative before the

---

[22] Nuclear Tests (Austl. v. Fr.), 1974 I.C.J. 253 (Dec. 20).

[23] Para.12, record.

[24] Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahr.) 2001 I.C.J. - (Mar. 16) 87, available at http://www.icjcij.org/icjwww/idocket/iqb/iqbframe.htm.

[25] Para.26, record.

[26] *Ibid*, Paras. 27, 29, 31.

[27] Baden, Bavaria, Saxony and Wurttemberg v. German Reich, Judgment, Annual Digest, 1929-30, Case No. 217, pp. 215-23.

[28] Harvard Research in International Law, in American Journal of International Law, 29 (1935), Suppl, pp. 799-812.

ratification if the nations have shown their intention to be bound.[29] In this case, there is no suspicion of over-authority, and Aringuv has presented its genuine intention of participating as mentioned above, it may practice the very rights and obligations of the Espoo Convention.

II. Replomuté Violated Its Treaty Obligation To Conduct EIA.

A. Replomuté violated its obligation to conduct EIA under the Espoo Convention.

6. The Espoo Convention clearly states that the party of origin has to conduct EIA when it comes to making projects that may cause significant adverse transboundary harm,[30] moreover, oil extraction has been explicitly enlisted in Appendix I as a project that may cause significant adverse transboundary harm.[31] However, Replomuté violated its obligation to conduct to EIA while Aringuv and relevant parties have informed it of the potentially devastating outcome of the project multiple times.[32]

7. Since Replomuté is a contracting party of the Espoo Convention,[33] and Replomuté's state-owned entity, the Leonor Corporation is the direct constructor

---

[29] P.C.LJ., Series A, No. z, at p. 57.

[30] Art. 2, 3, Convention on Environmental Impact Assessment in a Transboundary Context, Feb. 25, 1991, 1989 U.N.T.S. 309. [hereinafter Espoo Convention]

[31] Appendix I, Espoo Convention.

[32] Paras. 21, 27, 29, 31, record.

[33] *Ibid*, Para. 12.

of this project,[34] and the fact that the project is basically controlled by Replomuté itself: (1) DRI has tried to drop out from this ongoing project,[35] (2) as the only developed country, Replomuté outperforms the least developed country DRI in factual control of this project.[36] As as mentioned above, the corporation is under the control of the Replomuté and has shown its administrative nature.[37] Thus, the construction is under the jurisdiction of Replomuté, therein, Replomuté is the party of origin under the Espoo Convention,[38] and it is obliged to conduct EIA in accordance with the Espoo Convention.

B. Replomuté Violated its Obligation to Conduct EIA Under CBD.

8. Aringuv and relevant parties have informed Replomuté many times that the project in dispute may affect the southern population of gorillas devastatingly.[39] As a contracting party of CBD, Replomuté is obliged to develop its strategies for conservation or maintain the sustainable use the biological diversity,[40] and

[34] *Ibid*, Para. 17.

[35] *Ibid*, Para. 22.

[36] *Ibid*, Paras. 1, 3.

[37] *Ibid*, Paras. 17, 21, 27, 29, 31.

[38] Art. 1, Espoo Convention.

[39] *Ibid*, Paras. 21, 27, 29, 31.

[40] Art. 6, Convention on Biological Diversity, art. 6(a), June 5, 1992, 1760 U.N.T.S. 79. [hereinafter CBD]

introduce appropriate methods to conduct EIA, which shall take biological diversity into account.[41]

9. However, Replomuté continuously denies the highly possible happened adverse environmental impacts,[42] refuses to conduct EIA,[43] insists on proceeding with the project in dispute,[44] and explicitly represses that it will not fulfill its obligation by statement and action. Thus, Replomuté violated its obligations under CBD.

C. Replomuté Violated its Obligation to Conduct EIA Under UNFCCC.

10. UNFCCC regulates that parties shall take climate change considerations into account, and explicitly states that appropriate methods shall be made such as environmental impact assessment.[45]

11. Instead of duly fulfilling its obligation, Replomuté failed to conduct an EIA concerning climate change[46] and insisted on its project,[47] which is highly likely to cause a devastating impact on the environment as mentioned above. Therein, it

---

[41] *Ibid*, Art. 14.

[42] Par.30, record.

[43] *Ibid*, Para. 28.

[44] *Ibid*, Para. 33.

[45] Art. 4, 1, (f), United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107. [hereinafter UNFCCC]

[46] Para. 17, record.

[47] *Ibid*, Para. 33.

violated its obligation of conducting EIA concerning climate change under the UNFCCC.

D. EIA in Dispute Does Not Meet With Current Standard.

1. Conducting EIA is a continuous obligation.

12. The court held that the obligation of conducting EIA is continuous,[48] the obliged entity has to monitor the whole process of the project, and when new conditions arise, updating the EIA is necessary.[49]

13. Considering the fact that the EIA in dispute was made in 1981,[50] Replomuté was obliged to update the EIA, when it came to 1983 the CMS, 1992 the UNFCC, 1993 the CBD, 1997the Espoo Convention, 2016 the Annex I of UNFCC started binding Replomuté. Even excuse the reasonable limit of factual business, the Lenoir Corporation had very opportunities to conduct valid EIA when it twice paused the operation of construction in 2003 and 2009 respectively.[51] But it failed to do so.

---

[48] Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, ICJ Reports 2010, p.104, paras.275-276.

[49] Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, ICJ Reports 2015, p.720, para.154.

[50] Para. 17, record.

[51] *Ibid*, Para 18, 19.

2. EIA's content can not be decided merely by national law.

14. The court once clarified that, even though in most situations, it is national autonomy to determine most contents of an EIA, states shall take several generally accepted considerations into account, which were enlisted in the Espoo Convention as follows: **(a)** A description of the proposed activity and its purpose **(b)** A description of alternatives **(c)** A description of the environment likely to be significantly affected **(d)** A description of mitigation measures to keep adverse environmental impact to a minimum and ex cetra.[52]

15. In this case, Replomuté never once conducted an EIA, and the mere EIA in dispute ignores the adverse impact on biological diversity and climate change,[53] which does not meet with standards from currently biding conventions to Replomuté.

E. Replomuté is the Better Party to Conduct EIA.

16. Contrary to what Replomuté may argue, Replomuté is the better party to conduct EIA. Since DRI and Replomuté are both contracting parties of the Paris Agreement.[54] Firstly, DRI once conducted EIA.[55] The principle of common but differentiated responsibilities recognizes that developed countries have historically contributed more to environmental degradation and have a greater

[52] Appendix II, Espoo Convention.

[53] Para. 17, record.

[54] *Ibid*, Para. 13.

[55] *Ibid*, Para. 17.

capacity to address environmental issues than developing countries. In this case, concerning the fact that Replomuté is the only developed country and DRI was enlisted as the least developed country, Replomuté has more capability to control this project, meanwhile, Replomuté is more appropriate to conduct EIA. Thus the Replomuté should be reckoned as a better party to conduct EIA.

ISSUE 2: THE ACTIONS OF REPLOMUTÉ WITH RESPECT TOTHE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI VIOLATES INTERNATIONAL LAW.

I. Replomuté Shall Take The Direct Responsibility For Its Violation On Treaty Obligations.

A. Replomuté violated its duty to promote the conservation and sustainable use of biological diversity as mandated by Art.6(a) of CBD.

17. Art. 6. (a) of CBD requires each contracting party to develop national programmes for the conservation and sustainable use of biological diversity, especially adapt for this purpose existing programmes which shall reflect the measures set out in CBD relevant to the Contracting Party concerned.[56]

18. In the present case, Replomuté acted contrary to this mandate by insisting on continuing the oil extraction activities which encompass the primary habitat of the southern population of the Royal Mountain Gorilla.[57] It indicates that Replomuté did not take measures to conserve the biodiversity, rather, it neglected the importance of endangered species and their habitats.[58]

---

[56] Art. 6(a), CBD.

[57] Para. 21, record.

[58] *Ibid*.

B. Replomuté violated its duty to notify and co-operate stipulated in Art. 14. 1(c) of CBD.

19. Article 14.1(c) of the CBD states that Parties shall consult with other States on activities that are likely to have harmful effects on the other states' biodiversity.[59] Moreover, Article 5 of the CBD asserts that States must cooperate with other Contracting Parties, on matters of mutual interest, for The conservation and sustainable use of biodiversity.[60]

1. The potential to cause harmful effects existed in the present case.

20. Pursuant to the preamble of CBD, the parties could not use the lack of full scientific certainty as an excuse for postponing measures to avoid or minimize such a threat.[61] In other words, to establish a threat of significant reduction or loss of biological diversity, there is no need to depend on full scientific certainty materials.[62]

21. Internationally, the obligation after a risk has been identified includes providing notification to as well as consultations and negotiations with any potentially affected States.[63] If States fail to take these steps, they are internationally

[59] Art. 14. 1(c), CBD.

[60] *Ibid*, Art. 5.

[61] Preamble, CBD.

[62] *Ibid*.

[63] Duvic-Paoli L-AU (2018) Principle of prevention. In: Krämer L, Orlando E (eds) Principles of environmental law. Elgar Encyclopedia of environmental law, vol VI. Edward Elgar Publishing,

responsible for the violation of these obligations irrespective of whether any harm has occurred.[64]

22. In this case, the oil extraction activities would encompass the primary habitat of the southern population of the Royal Mountain Gorilla.[65] Additionally, a few local and international nongovernmental organizations have expressed serious concern about this project,[66] and the NGOs have continued to object to the project to present day.[67] Thus, these accumulate evidence could prove that the harmful effects exists in the present case.[68]

2. Replomuté failed to notify and co-operate with Aringuv with respect to the oil extraction activities.

23. In the case of *Argentina v. Uruguay*, the Court held that states are obliged to sufficiently disclose all necessary information about such activities to potentially

---

Cheltenham, p. 168.

[64] Indicated by ICJ Pulp Mills on the River Uruguay (Argentina v Uruguay) [2010] ICJ Rep 14, para. 204: Am EIA "may" be considered to be a requirement under general international law and, in this case, is separate from due diligence as is indicated by the word "moreover"; differentiation is not as clear as in ICJ Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica) [2015] ICJ Rep 665, para. 104; on this issue see Brunnée (2021), p. 275.

[65] Para. 21, record.

[66] *Ibid*.

[67] A10, Clarifications.

[68] *Ibid*.

affected States in advance.[69] The principle to cooperate also mandates the immediate notification to other States of any activities likely to produce harmful effects on their environment.[70]

24. In the present case, Replomuté did not inform Aringuv of any relevant information concerning the project and the potential to cause transboundary harm to the Royal Mountain Gorilla's habitats.[71] Thus, Replomuté has violated its obligation to notify and co-operate with respect to the oil extraction activities.[72]

---

[69] Case Concerning Pulp Mills on The River Uruguay, Judgment, I.C.J. Rep. 14, ¶105; DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW, AND POLICY 3rd edition 525 (2007).

[70] Principle 18, Rio Declaration on Environment and Development, June 14, 1992, 31 I.L.M. 874. [hereinafter Rio]

[71] Para. 21, record.

[72] *Ibid*.

C. Replomuté violated its duty to endeavour to provide immediate protection for migratory species included in Appendix I of CMS.

25. The purpose of the CMS is conservation and effective management of migratory species.[73] Apart from it, the Parties of CMS acknowledge the need to take action to avoid any migratory species becoming endangered.[74]

26. Replomuté is clearly contrary to such measures. As the non-range state of Royal Mountain Gorillas which has been included in Appendix I of CMS, Replomuté still shall endeavour to provide immediate protection for migratory species.[75]

1. The Royal Mountain Gorilla is the subject of CMS.

27. In the sense of CMS, "Migratory species" means the entire population or any geographically separate part of the population of these species, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries.[76] Further, Appendix I of CMS shall list migratory species which are endangered.[77]

---

[73] Preamble,

Convention on the Conservation of Migratory Species of Wild Animals, 3 June 1979, 1651U.N.T.

S. 333. [hereinafter CMS]

[74] Art. II. 2, CMS.

[75] *Ibid*.

[76] Art. I.1. (a), CMS.

[77] *Ibid*, Art. III. 1.

28. In the present case, the Royal Mountain Gorilla is included in Appendix I of the CMS and is classified as critically endangered on the IUCN Red List of Threatened Species.[78] Thus, the Royal Mountain Gorilla could be included in the range of "Migratory Species" and further the CMS shall apply.

2. Replomuté failed to fulfill its obligation to provide immediate protection for the Royal Mountain Gorilla as the Non-Range State.

29. Art. II of CMS requires the parties to provide immediate protection for migratory species included in Appendix I.[79] Even if Replomuté is not the Range State for the Royal Mountain Gorilla, it still need to provide immediate protection for them as the contracting party.[80]

30. However, in this case, under the circumstance that the proposed activities will likely have a devastating impact on the critically endangered Royal Mountain Gorilla,[81] Replomuté ignored this likelihood and continued the proposed activities, imposing adverse impacts on the Royal Mountain Gorilla further.[82] Thus, this action is contrary to the protection obligation under Art. II of CMS.

---

[78] Para. 9, record.

[79] Art. II. 3. (b), CMS.

[80] *Ibid*.

[81] Paras. 21, 27, record.

[82] *Ibid*.

II. Replomuté Shall Take The Direct Responsibility For Its Violation On Customary International Law.

A. Replomuté violated the precautionary principle.

31. The precautionary principle requires that when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.[83] It also mandates states to anticipate, avoid, and mitigate threats to the environment.[84] This has two elements:***(1)first***, there must be a potentially risky activity; ***(2)second***, the proponent has the burden of proving that its proposed act poses no risk to the environment or human health.[85]

32. In this case, Replomuté endangers the gorillas because the disturbance of their habitats, which would lead to unforeseen movements of these endangered gorillas.[86] Given the threat posed by the activities in dispute, Replomuté had the burden of proving that its actions would not harm the environment.

---

[83] Nicholas Ashford, et. al., *Wingspread Statement on the Precautionary Principle*, WORLD HEALTH ORGANIZATION 1 (1998).

[84] IUCN, *Guidelines for Applying the Precautionary Principle*, INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE 1, (2007) .

[85] Daniel Bodansky, et. al., *Oxford Handbook of International Law*, 598 (2007).

[86] Paras. 9, 21, record.

33. Thus, Replomuté violated the precautionary principle because it engaged in a potentially risky activity without first proving that the action posed no harm.[87]

III. Replomuté Shall Take The Indirect Responsibility For Its Coercion On DRI.

A. Coercion Comprised Not Only The Threat Or Use Of Force, But Also Economic And Political Pressures.

34. Art. 18 of Draft Articles on States Responsibility provides that a State which coerces another State to commit an act is internationally responsible for that act if: (a) the act would be an internationally wrongful act of the coerced State; and (b) the coercing State does so with knowledge of the circumstances of the act.[88]

35. Nowadays, more countries argued that coercion comprised not only the threat or use of force, but also economic and political pressures. The Vienna Conference issued a Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties, which condemned the exercise of such coercion to procure the formation of a treaty.[89]

36. The problem was noted in the International Court in the *Fisheries Jurisdiction (United Kingdom v. Iceland) case*.[90] The Court acknowledges that there are moral and political pressures which cannot be proved by the so-called

---

[87] *Ibid*.

[88] Art. 18, Draft Articles on States Responsibility.

[89] Art. 52, Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties, The United Nations Conference on the Law of Treaties.

[90] Malcolm N. Shaw, International Law(Ninth Edition), p.1836.

documentary evidence, but which are in fact indisputably real and given rise to treaties and conventions claimed to be freely concluded and subjected to the principle of *pacta sunt servanda*.[91]

B. Replomuté has coerced the DRI in the present case.

37. To be considered economic coercion, the measures taken shall be coercive in nature, meaning that they are intended to influence the behavior of the target state or entity.[92] To be specific, this kind of coercion is reflected by a threatened or actual imposition of economic costs by a state on a target with the objective of extracting a policy concession.[93]

38. In this case, even if DRI's president has declared that DRI would like to withdraw from the 1981 DRI-Replomuté agreement, DRI is still being forced to acquiesce in the oil extraction activities that damage the environment, which is a policy concession.[94] The high compensation for arbitration failure can also be seen as a form of economic coercion, as it is a threat of economic costs if the country does not comply with the demands of the other country.[95]

ICJ Reports, 1973, p. 3; 55 ILR, p. 183.[91]

Derek W. Bowett, International Law and Economic Coercion, 16 VA. J. INT'l L. 245 (1976), [92] p.249.

[93] *Ibid*.

[94] Para. 23, record.

[95] *Ibid*.

C. DRI has violated the Treaty Obligation.

1. DRI failed to fulfill its obligation to provide the conservation measures for gorillas in the Gorilla Agreement.

39. The Gorilla Agreement requires the parties to ensure the protection of the sites and habitats for gorillas occurring in their territory.[96] Both Aringuv and DRI are the contracting parties of the Gorilla Agreement.[97]

40. In this case, the DRI failed to conserve the protection of the gorillas habitats with the awareness that the oil extraction activities would cause negative impacts to the Royal Mountain Gorillas.[98] Thus, DRI's actions have constituted the violation of the Gorilla Agreement.

2. DRI failed to fulfill its obligation to conserve those habitats of the species which are of importance in removing the species from danger of extinction on the CMS.

41. Art. III. 4 of CMS requires Parties that are Range States of a migratory species listed in Appendix I to endeavour: a) to conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction; b) to prevent, remove,

---

[96] Art. III. 2. (b), Agreement on the Conservation of Gorillas and their Habitats, June 1 2007, 2545 U.N.T.S. 57. [hereinafter Gorilla Agreement]

[97] Para. 9, record.

[98] *Ibid*, para. 21.

compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species.[99]

42. Conversely, DRI did not prevent or minimize the adverse effects of activities for Royal Mountain Gorilla's habitats successfully, which indicates that it has violated the obligation provided in CMS.[100]

43. To sum up with, Replomuté Shall Take the Indirect Responsibility For its Coercion on DRI.

[99] Art. III, CMS.

[100] Record, para. 23.

CONCLUSION AND PRAYER FOR RELIEF

Applicant, Aringuv, respectfully requests the Court to adjudge and declare that:

1. The failure of Replomuté to prepare an EIA with respect to the proposed oil extraction activities in the region violates international law; and

2. The actions of Replomuté with respect to the proposed oil extraction activities in the DRI violate international law.

Respectfully submitted,

AGENTS FOR THE APPLICANT