

TEAM CODE: 2419

28TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION 2023

BEFORE

THE INTERNATIONAL COURT OF  
JUSTICE LA COUR INTERNATIONALE DE  
JUSTICE  
AT THE PEACE PALACE,  
THE HAGUE,  
NETHERLANDS

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GENERAL LIST NO. 303, YEAR 2023

CASE CONCERNING THE PROTECTION OF MOUNTAIN GORILLAS AND  
IMPACT ASSESSMENT

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THE REPUBLIC OF ARINGUV

(APPLICANT)

v.

THE REPUBLIC OF REPLOMUTE

(RESPONDENT)

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-WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT-

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## LIST OF ABBREVIATIONS

<b>¶</b>	Paragraph
<b>CBD</b>	Convention on Biological Diversity
<b>CMS</b>	Convention of Migratory Species of Wild Animals
<b>DRI</b>	Democratic Republic of Ibirunga
<b>EIA</b>	Environmental Impact Assessment
<b>EU NDC</b>	European Union National Determined Contribution
<b>ICJ</b>	International Court of Justice
<b>ILC</b>	International Law Commission
<b>ILC</b>	International Law Commission
<b>IPCC</b>	Intergovernmental Panel on Climate Change
<b>IUCN Red List</b>	International Union for Conservation of Nature Red List of Threatened Species
<b>NGOs</b>	Non-Governmental Organizations
<b>p/pp</b>	Page
<b>UN</b>	United Nations
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change

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## **QUESTIONS PRESENTED**

- I. Whether the failure of Replomute to prepare an EIA with respect to the proposed oil extraction activities in the region inhabited by the Southern Population of the Royal Mountain Gorillas violates international law.
  
- II. Whether the actions of Replomute with respect to the proposed oil extraction activities in the DRI violate international law.

## STATEMENT OF JURISDICTION

In accordance with Article 40, paragraph 1 of the Statute of the ICJ, the Republic of Aringuv and the Republic of Replomute have submitted by Special Agreement their differences concerning questions in Annex A, including the Clarifications, relating to the differences between them concerning questions relating to Mountain Gorillas and Impact Assessment transmitted a copy thereof to the Registrar of the ICJ on 24th July, 2023.

The Registrar of the Court addressed a notification to the parties on 31<sup>st</sup> July, 2023. Therefore, Aringuv and Replomute have accepted the jurisdiction of the ICJ pursuant to Article 36 (1) of the Statute and 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 respect the decision of this Court.

## SUMMARY OF FACTS

The conflict before the Court is one that relates to sovereign countries, Aringuv and Replete, which are both members of the UN charter, the CBD, CMS among other international treaties. According to the World Bank's classification system, Aringuv is a lower-middle-income country in Africa while Replomute is a high-income country in Europe.

DRI, which has been classified as a low-income country located in Africa, shares a western border with Aringuv. The two counties share a rare species of the Royal Mountain Gorilla which has been classified as critically endangered on the IUCN Red List of Threatened Species. The Royal Mountain Gorillas are only found in the two countries and exists in two distinct populations; the northern and the southern population. The northern population of the gorilla occupies a transboundary national park and its members frequently cross the border between the two countries. The southern population on the other hand occupies a national park in DRI and its members have rarely been sighted in Aringuv.

Replomute and DRI entered into a concession agreement in 1981, which allowed Replomute through Lenoir Corporation, a corporation wholly owned and operated by the government of Replomute the right to explore and extract oil from the area inhabited by the Southern Population of the Royal Mountain Gorilla. This agreement permitted Lenoir Corporation to construct a pipeline to transport oil extracted from DRI to the coastal city in DRI for eventual shipment to Replomute. The construction project is 98% complete as of 2022 despite facing a few challenges in the construction process.

At the point of signing the concession agreement, DRI conducted an EIA in accordance with its national laws. This EIA report however did not take into account the potential impact of the oil extraction to the gorillas, gorilla habitat or climate change. Aringuv avers that the oil extraction activities have an impact on the environment and the Royal Mountain Gorillas. Replomute on the other hand maintains its position that the 1981 EIA conducted by Ibirunga is sufficient.

In May 2012, DRI's new president who ascended into power via a military coup compelled DRI to withdraw from the 1981 DRI-Aringuv concession agreement which compelled Replomute to invoke the mandatory arbitration provision of the DRI-Aringuv agreement. In March 2015, Replomute prevailed in the binding arbitration which ordered DRI to permit Lenoir Corporation to proceed with its oil extraction activities or be subjected to penalties.

In May 2018, Aringuv through its Foreign Affairs Minister contacted Replomute expressing concerns about Replomute's planned oil extraction activities in DRI with respect to the impact on the Royal Mountain Gorilla and the activities' implications for contributing to climate change. Several diplomatic exchanges, periodic informal discussions and negotiations happened between the two countries for several months thereafter.

Among the issues the two countries disagree on is whether the southern Royal Mountain Gorillas are endangered migratory species among other issues. At the heart of the conflict before the court is whether the Republic of Replomute has any procedural obligations based on international law to conduct an EIA and whether the failure to do so violates international law. The court is also



invited to examine whether the actions of Replomute with regard to the proposed oil extraction activities in DRI violates international law.

After peaceful negotiations between Aringuv and Replomute failed, the two countries entered into a Special Agreement to resolve the dispute by instituting proceedings at the ICJ and presenting the above questions.

## SUMMARY OF ARGUMENTS

### **I. Replomute violated international law by failing to prepare an EIA with respect to the proposed oil extraction activities in DRI**

Replomute, DRI and Aringuv are bound by the principle of good faith and as such are bound by their treaty obligations. Replomute being a party to the Espoo Convention is bound to respect the imports of the Convention. An EIA is a continuous procedural requirement. The 1981 report did not focus on the possible impact of the oil extraction activities on the Royal Mountain Gorillas, their habitat and possible effects on the climate. Further Replomute is in breach of the precautionary principle and its obligation to notify and consult before the setting up of the Lenoir Corporation since the two countries share a transboundary natural resource- the Royal Mountain Gorillas.

### **II. The actions of Replomute with respect to the proposed oil extraction activities in DRI violate international law.**

By conducting the proposed oil extraction activities, Replomute will be in breach of its obligations to observe the E.U NDC requirement under the Paris Agreement.

The Royal Mountain Gorillas are a transboundary natural resource as they all belong to a single species and are capable of migrating. The actions of Replomute in DRI have a significant transboundary harm due to possible impact on climate change. Further, Replomute is coercing DRI to commit an internationally wrongful act as at the time of signing the concession agreement, it had not ratified the Gorilla Agreement, the CMS, and the CBD and as such, the obligations outlined under all these treaties were not applicable.

Replomute cannot invoke DRI's state sovereignty as a justification for exploring oil in the area

inhabited by the royal mountain gorillas as DRI has an obligation under the Algiers Convention to  
Conserve the Habitat Inhabited by the Royal Mountain Gorillas.

## ARGUMENTS ADVANCED

### THE APPLICABILITY OF INTERNATIONAL LAW

#### 1) Replomute, DRI and Aringuv are bound by the principle of good faith

The principle of good faith is a rule of customary international law, whose existence is recognized by the ICJ, and as such binding.<sup>1</sup> It is corollary to the doctrine of *pacta sunt servanda* which provides that every treaty in force is binding upon parties and it must be performed by them in good faith.<sup>2</sup>

In the *Gabcikovo-Nagymaros* case, the ICJ held that some rules laid down in the Vienna Convention are considered codification of customary international law. They are binding upon states. A determination of whether the conventions are in force is to be determined pursuant to the law of treaties.<sup>3</sup> In our present case all the states relevant to this case are parties to: the CMS, the CBD, the UNFCCC and the VCLT.<sup>4</sup>

It is thus incumbent upon these parties to enforce the provisions of these conventions in good faith. The binding nature of those obligations has been highlighted by the court in the *Gabcikovo-Nagymaros* case.<sup>5</sup> The principle of good faith forms part of the community of legal orders and which any economic institution may operate.<sup>6</sup>

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<sup>1</sup> Higgins, Rosalyn. "The ICJ, the ECJ, and the Integrity of International Law." *The International and Comparative Law Quarterly*, vol. 52, no. 1, 2003, pp. 1–20. *JSTOR*, <http://www.jstor.org/stable/3663207>. Accessed 9 Nov. 2023.

<sup>2</sup> Article 26 of the Vienna Convention on the Law of Treaties, 23 May 1969, U.N.T.S., vol. 1155, p. 331.

<sup>3</sup> The Gabcikovo-Nagymaros Project (Hungary v Slovakia)1997 ICJ reports, ¶ 46.

<sup>4</sup> ¶ 4, 5, 7, 8 and 13 of the Record.

<sup>5</sup> Gabcikovo-Nagymaros Project (Hungary v Slovakia)1997 ICJ reports ¶ 46-47.

<sup>6</sup> Higgins, Rosalyn. "The ICJ, the ECJ, and the Integrity of International Law." *The International and Comparative Law Quarterly*, vol. 52, no. 1, 2003, pp. 1–20. *JSTOR*, <http://www.jstor.org/stable/3663207>. Accessed 9 Nov. 2023.

## **2) Replomute is bound by the Espoo Convention**

A state party is bound to refrain from acts that would defeat the object and purpose of the treaty when it has signed, ratified or exchanged documents relating to the said convention.<sup>7</sup> The rule is set to prohibit acts that are incompatible with the aims and objectives of an international agreement.<sup>8</sup>

Aringuv has signed the Espoo convention but has not ratified it while Replomute is a party to the said convention.<sup>9</sup>

Replomute in its diplomatic note dated 21 March 2019 rejected the invocation of the Espoo Convention, citing lack of reciprocity.<sup>10</sup>

We contend that Replomute being a party to the Espoo Convention is bound to respect the imports of the Convention and bears legitimate expectations not to defeat the purpose of that convention. While we take cognizance of the context, this does not preclude it from the legitimate expectations embedded in Article 18 of the VCLT.

## **3) Aringuv is bound by the Espoo Convention by virtue of signature**

We contend that the consent of a state to be bound by a treaty may be expressed by; signature, exchange of instruments constituting a treaty, acceptance, approval or accession or by other means agreed by states.<sup>11</sup>

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<sup>7</sup> Article 18 of the Vienna Convention on the Law of Treaties, 23 May 1969, U.N.T.S, vol. 1155, p. 331.

<sup>8</sup> Higgins, Rosalyn. "The ICJ, the ECJ, and the Integrity of International Law." *The International and Comparative Law Quarterly*, vol. 52, no. 1, 2003, pp. 1–20. *JSTOR*, <http://www.jstor.org/stable/3663207>. Accessed 9 Nov. 2023.

<sup>9</sup> ¶ 25 of the Record.

<sup>10</sup> ¶ 28 of the Record.

<sup>11</sup> Article 12 of the Vienna Convention on the Law of Treaties, 23 May 1969, U.N.T.S, vol. 1155, p. 331.

In *Racke CmbH v Hauptzollamt*, the court held that the validity of concession agreements between the European Community and the Federal Republic of Yugoslavia was to be determined using the rules of international law.<sup>12</sup>

The critical point is that any agreement or disagreements between states should be interpreted in light of the VCLT guidelines,<sup>13</sup> which provides that account has to be taken of any relevant rules of international law.<sup>14</sup>

It is our submission that Aringuv has demonstrated willingness to be bound by the Espoo Convention<sup>15</sup> and thus this honorable court should consider the provisions of that convention in resolving the present dispute.

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<sup>12</sup> In *Racke CmbH v Hauptzollamt Mainz*(case C-162/196)1998 ECR.

<sup>13</sup> Higgins, Rosalyn. "The ICJ, the ECJ, and the Integrity of International Law." *The International and Comparative Law Quarterly*, vol. 52, no. 1, 2003, pp. 1–20. *JSTOR*, <http://www.jstor.org/stable/3663207>. Accessed 9 Nov. 2023.

<sup>14</sup> Article 31(3)(c) of the Vienna Convention on the Law of Treaties, 23 May 1969, U.N.T.S, vol. 1155, p. 331 .

<sup>15</sup> ¶ 11 of the Record.

**ISSUE A. THE FAILURE OF REPLOMUTE TO PREPARE AN EIA WITH RESPECT  
TO THE OIL EXTRACTION ACTIVITIES IN DRI VIOLATES INTERNATIONAL**

**LAW**

**THE EIA IS A PROCEDURAL REQUIREMENT BEFORE ESTABLISHING AN  
INDUSTRIAL PROJECT**

**1. The need for consultation with neighboring states in preparation of EIA in a  
transboundary context**

An EIA means the national procedure for evaluating the likely impact of proposed activities on the environment.<sup>16</sup>

States whose activities are likely to cause a significant transboundary impact, shall ensure adequate consultation with the party with which they consider, may be affected as early as possible.<sup>17</sup> It is also incumbent upon the party of origin to conduct a project analysis to determine the significant Impact of the project on the transboundary effects.<sup>18</sup> States have in accordance to the Charter of the United Nations and the Principles of International law the sovereign right to exploit their own resources pursuant to their National Environmental policies and a responsibility to ensure the activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction.<sup>19</sup>

The 1981 EIA conducted by the DRI only focused on the impacts on *nearby human populations* of the likely quantity of water to be used and waste to be produced by the proposed exploration and extraction activities, including the pipeline.<sup>20</sup> (*emphasis added*) The reliance of the Republic

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<sup>16</sup> Article 1 of the Convention on Environmental Impact Assessment in a Transboundary Context, U.N.T.S, Vol. 1989, p. 309. (Espoo Convention)

<sup>17</sup> *Ibid* Article 3.

<sup>18</sup> *Ibid* Article 7.

<sup>19</sup> Article 3 of the Convention on Biological Diversity U.N.T.S, vol. 1760, p. 79.

<sup>20</sup> ¶ 17 of the Record.

of Replomute on this EIA in its refusal to conduct another assessment is wrong, because the previous EIA fails to focus on the Impact the activities have on the Royal Mountain Gorillas.<sup>21</sup> States have an obligation to have a predictive method to ensure the environment is protected.<sup>22</sup>

## **2. The procedural obligation to notify**

States have an obligation to notify and seek consent from parties for whom the activities it pursues pose a potential significant transboundary harm.<sup>23</sup> It is incumbent upon the pursuing states to provide prior and timely notification and relevant information to potentially affected states on activities that pose a transboundary harm.<sup>24</sup> States have an obligation to make information available to other states, this would include matters such as the state of the environment.<sup>25</sup> This honorable court has outlined this obligation to be of "elementary consideration of humanity."<sup>26</sup> Furthermore, it is required that even in the absence of notification, states must enter into consultation with the objective of achieving acceptable solutions regarding the preventive measures to minimize the risk of significant transboundary harm.<sup>27</sup>

In the present case, the Republic of Ibirunga and Replomute did not notify the Republic of Aringuv of its planned 1981 EIA.<sup>28</sup> The report did not focus on the effects the activities would have on the

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<sup>21</sup> *Ibid.*

<sup>22</sup> Appendix II (f) of the Convention on Environmental Impact Assessment in a Transboundary Context, U.N.T.S, vol. 1989, p. 309.

<sup>23</sup> Sands, P. and Peel, J., 2012. *Principles of international environmental law*. Cambridge University Press p.13

<sup>24</sup> Principle 19 of the United Nations Conference on Environment and Development, June 3-14, 1992, Rio Declaration on Environment and Development, U.N. DOC. A/CONF. 151/26 (1992).

<sup>25</sup> Eberston.J.,2009 Access to Information on Environmental Matters, Max Planck Encyclopedia of International Law.

<sup>26</sup> Corfu Channel Case (U.K. v. Alb.), Merits, 1949 I.C.J. 4

<sup>27</sup> Article 9; Article 12 of the International Law Commission Draft Articles on Prevention of Transboundary Harm from Hazardous Activities Yearbook of the International Law Commission, 2001, vol. II, Part Two.

<sup>28</sup> ¶ 17 of the Record.



Ecosystem shared by the two states, especially the Royal Mountain Gorilla.<sup>29</sup>This resulted in the breach of the obligation to notify as emphasized in this court's decision of *Argentina v Uruguay*.<sup>30</sup>

### 3. The necessity of an EIA in a transboundary context

We note that the state of Ibirunga is a neighbor to the republic of Aringuv, the two countries share the ecosystem which include: the air, the gorillas and the habitat to the royal mountain gorillas.<sup>31</sup>As held the case of *Dispute related to Navigation Rights, Costa Rica v Nicaragua*, the requirement under general international law to undertake an environmental impact assessment where there is a risk the proposed industrial activity may have significant impact in a transboundary context, in a particular shared resource has gained so much acceptance in recent years that it may now be considered; a general rule of international law. The failure to undertake such an assessment result in the violation of the doctrine of *due diligence* and *the duty of vigilance and prevention*.<sup>32</sup>

While it is recognized that every state has a right to exercise the sovereignty over its natural resources found within its territorial boundaries, environmental issues relating to those resources are best handled with the participation of the concerned states at the relevant levels.<sup>33</sup>As is evidenced in the facts, the DRI is a neighbor to the Republic of Aringuv.<sup>34</sup> The two countries therefore share an ecosystem. Furthermore, the Royal Mountain Gorillas migrated into and out of

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<sup>29</sup> *Ibid*

<sup>30</sup> Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14 ¶ 83

<sup>31</sup> ¶ 2 of the Record.

<sup>32</sup> Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009, p. 213.

<sup>33</sup> Principle 10 of the United Nations Conference on Environment and Development, June 3-14, 1992, Rio Declaration on Environment and Development, U.N. DOC. A/CONF. 151/26 (1992).

<sup>34</sup> ¶ 2 of the Record.

the two countries.<sup>35</sup> We take cognizance of the fact that the southern Royal Mountain Gorillas have rarely been seen migrating.<sup>36</sup> Despite this fact, the entire species has been categorized as endangered.<sup>37</sup> The fact the state of Aringuv and the DRI are neighboring countries increases the likelihood that industrial activities in either of the country's borders will have climatic effects on the other. Moreover, the sharing of the endangered species of the royal mountain Gorilla poses a compulsory obligation to the party pursuing the activity to engage and consult the other country. The state should ensure that the other state has *consented* to the arrangement.<sup>38</sup> The failure to consult the other state on activities undertaken in the habitat or the surrounding of a transboundary resource amount to a violation of the duty to prevent such activities from interfering with the well-being of the neighboring state.<sup>39</sup>

It is our submission that the continued refusal of Replomute to conduct the EIA to establish the effects of the Lenoir Corporation on the environment and the Southern Royal Mountain Gorillas habitat, violate international law principles and its obligations under the various international law Conventions which it is party to.

#### **4. The Breach of the Precautionary Principle by the Republic of Replomute**

States have an obligation to ensure that Environmental Impact Assessment is conducted prior to undertaking major adaptation and mitigations projects, as well as exploration and production taking into account the impact such activities may have on Migratory species.<sup>40</sup> There is also a

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<sup>35</sup> ¶ 9 of the Record.

<sup>36</sup> *Ibid.*

<sup>37</sup> Appendix I of the Convention on the conservation of migratory species of wild animals, U.N.T.S Vol. 1651.

<sup>38</sup> France v Spain (1957) Arbitral Tribunal 1 November

<sup>39</sup> Trail smelter case (United States v Canada) 16 April 1938 and 11 March 1941 Vol. III pp. 1905-1982.

<sup>40</sup> United Nations Environment Programme Convention on Migratory Species Resolution 12.21, Manila

need to reconcile economic development with the protection of the environment, this is well captured in the concept of sustainable development.<sup>41</sup>

The core of the precautionary principle is two fundamental elements: avoiding anthropogenic harm to human health and the environment through anticipatory, preventive and regulatory control. These activities are restricted until their certainty is largely resolved.<sup>42</sup>

We take cognizance of the need of DRI to use its natural resources for development<sup>43</sup> since it is a middle-income country.<sup>44</sup> This does not however, provide an escape route to its international law precautionary obligation. The fact that Replomute did not put in any precautionary measure as it prepared the EIA is a breach of its international law mandate.

## **5. The Continuous nature of an EIA; the need to focus on the impact on the Royal Mountain Gorillas**

The ICJ in *Nicaragua v Costa Rica* made it clear that; states have an obligation to exercise due diligence in preventing significant transboundary harm. It is requisite that before undertaking activities having the potential to adversely affect the environment of another state, the obligation rests on the state pursuing the activity to have regard to the nature & the magnitude of the project and the context in which it has to be carried out.<sup>45</sup> Further in **Argentina v Nicaragua (pulp Mills case)**, the court dispensed with the obligation to conduct an Environmental Impact Assessment. It held that, the obligation to conduct an EIA is a *continuous* one and monitoring the project's effects

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<sup>41</sup> Gabcikovo-Nagymaros Project (Hungary v Slovakia), Judgment, 1. C. J. Reports 1997, p. 7.

<sup>42</sup> John S. Applegate, Taming The Precautionary Approach, pg.13

<sup>43</sup> Article 3 of the Convention on Biological Diversity U.N.T.S, vol. 1760, p. 79.

<sup>44</sup> ¶ 1 of the Record.

<sup>45</sup> 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, I.C.J. Reports 2015, p. 665 ¶ 153.

on the environment, shall be undertaken where necessary throughout the life of the project.<sup>46</sup>

In 1981 the DRI and Replomute entered into a concession agreement which granted the Lenoir Corporation which is owned by the government of Replomute the right to explore and extract oil in an area inhabited by the Southern Royal Mountain Gorillas, an endangered species as per UNCE Red list.<sup>47</sup> DRI conducted an EIA before the start of the project. The EIA only focused on the impact on the nearby human population of the likely quantity of water to be used and the waste to be discharged. It did not take into account the potential impact the project will have on the Gorillas, the gorilla habitats and the general environmental change it might cause.<sup>48</sup>

The project's footprint is established in the primary habitat of the Royal Mountain Gorillas.<sup>49</sup> It is our submission that this would make it peremptory for the EIA to focus on the effects of the project on the Gorillas. Furthermore, states have an obligation to protect the climate system for the benefit of the present and the future generations of human kind.<sup>50</sup> As such parties are required to take precautionary measures to anticipate, prevent or minimize the cause of climate change and the magnitude of its adverse effects.<sup>51</sup>

As of the foregoing, the EIA conducted in 1981 by the DRI is insufficient. It does not focus on the Gorillas and the effect on the climate of such an enormous project as that of the Lenoir Corporation, it fails to analyze the potential impact of the corporation's activities on the environment, it also fails to anticipate the effects it will have on the Royal Mountain gorillas and their habitat.

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<sup>46</sup> Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14.

<sup>47</sup> ¶ 9 of the Record.

<sup>48</sup> ¶ 17 of the Record.

<sup>49</sup> ¶ 21 of the Record.

<sup>50</sup> Article 3(1) of the United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189.

<sup>51</sup> *Ibid*, Article 3(3).

## 6. The procedural deficiency of the 1981 EIA by the DRI

In the preparation of an Environmental Impact Assessment in the case where a transboundary resource is involved states are obligated to:

Introduce appropriate measures to ensure that the environmental consequences of its proposed activities that are likely to have adverse effects on the biological diversity of another state are taken into account.<sup>52</sup>The state of Replomute in establishing the Lenoir Corporation in the footprints of the Gorillas did not take into consideration the impact such activities will have on the survival of this endangered species.

The state pursuing the industrial activity should consult with the country which its activity is likely to affect in preparation of an EIA.<sup>53</sup>As is borne out of the facts<sup>54</sup> the assessment conducted in 1981 only focused on the effects released on the nearby human population. It failed to focus on the effect such activities will have on the environment and ecosystem of the republic of Aringuv. This demonstrates lack of consultation.

In preparation of an EIA states are obligated to ensure that it has an explicit indication and a predictive mechanism as well as relative assumptions on the environmental data.<sup>55</sup>The purpose of this is to ensure states can predict future changes on the need to protect the environment. The EIA prepared in 1981 does not focus on this key procedural component, it therefore leaves a gap in the protection of transboundary ecosystems.

The EIA should also indicate gaps of knowledge as to the future effects.<sup>56</sup>This will ensure flexibility and opens a possibility to re-evaluate the situation in future. The rejection of the

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<sup>52</sup> Article 14(b) of the Convention on Biological Diversity U.N.T.S, vol. 1760, p. 79.

<sup>53</sup> Article 14(c) of the Convention on Biological Diversity U.N.T.S, vol. 1760, p. 79.

<sup>54</sup> ¶ 17 of the Record.

<sup>55</sup> Appendix II(f) of the Convention on Environmental Impact Assessment in a Transboundary Context, U.N.T.S, Vol. 1989, p. 309. (Espoo Convention).

<sup>56</sup> *Ibid* Appendix II (g).

Republic of Replomute to conduct another EIA<sup>57</sup> is a clear demonstration that the 1981 assessment did not focus on this key element.

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<sup>57</sup> ¶ 28 of the Record.

**ISSUE B. THE ACTIONS OF REPLOMUTE WITH RESPECT TO THE PROPOSED  
OIL EXTRACTION ACTIVITIES IN THE DRI VIOLATES INTERNATIONAL LAW**

**a) The Royal Mountain Gorillas are a transboundary natural resource**

Transboundary natural resources are resources that cross the political boundaries of two or more states. These are natural resources that are divided in their original state by a national frontier or other political boundaries.<sup>58</sup> Conversely, a migratory species is any population that is geographically distinct from the rest of the population of any species, or a sizable section of a species whose members cyclically and predictably cross one or more national jurisdictional boundaries.<sup>59</sup>

The entire species of mountain Gorillas in question are a transboundary natural resource. This is because the northern population of the Royal Mountain Gorilla occupies a transboundary national park and its members *frequently* cross the boundary between Aringuv and DRI.<sup>60</sup> (*emphasis*). While the members of the southern population have been rarely sighted in Aringuv, this does not mean that its members do not migrate. The two populations of the Mountain Gorilla both belong to a single species of *Gorilla ibirungai royali*<sup>61</sup> and as such are capable of migrating.

**b) The actions of Replomute in DRI have a significant Transboundary Harm**

States are responsible for ensuring that activities within its jurisdiction and control do not damage areas beyond their national jurisdiction.<sup>62</sup> This obligation, *sic utere tuo ut alienum non laedas*,

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<sup>58</sup> Been Z & Wadley I, “Common goods and the common good: Transboundary natural resources principled cooperation and the Nile Basin Initiative,” Breslauer Symposium on Natural Resources Issues in Graduate Symposium of Natural Resources Issues in Africa, Center for African Studies, UC Berkeley (2004) at page 3.

<sup>59</sup> Article 1 (1) (a) of the Convention on the conservation of migratory species of wild animals, U.N.T.S Vol. 1651.

<sup>60</sup> ¶ 9 of the Record.

<sup>61</sup> ¶ of the Record.

<sup>62</sup> Article 3 of the Convention on Biological Diversity U.N.T.S, vol. 1760, p. 79; See also Principle 21 of the United Nations Conference on the Human Environment, Stockholm, Swed., June 6-16, 1972, Declaration of the United Nations Conference on Human Development, U.N.DOC. A./CONF. 48/14/REV; Principle 2 and 3 of the United Nations Conference on Environment and Development, June 3-14, 1992, Rio Declaration on Environment and

essentially states that states cannot conduct or permit activities in common spaces or within their territories without taking into account the interests of other states or the preservation of the environment worldwide.<sup>63</sup>

The ICJ has reiterated the duty to prevent transboundary harm by stating that it is every State's obligation not to knowingly allow its territory to be used for acts contrary to the rights of other States<sup>64</sup> and that they should use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State.<sup>65</sup>

On the other hand, a significant harm has been described as something more than detectable, yet it doesn't have to be serious or substantial in that the damage must actually have a negative impact on things like, say, the environment, industry, property, human health, or agriculture in other states. Such negative consequences have to be quantifiable using factual and objective standards.<sup>66</sup>

By allowing the continuation of the oil extraction activities in DRI, there's a possible extinction of the members of the southern population of the Royal Mountain Gorilla. Further the activities have a significant impact on climate change<sup>67</sup> which might in turn affect the Northern Population

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Development, U.N. DOC. A/CONF. 151/26 (1992) and ; See also Clyde Eagleton, *The Responsibility of States in International Law*, (New York: New York University Press. 1928) at pp 80.

<sup>63</sup> Jervan Marte. "The prohibition of transboundary environmental harm. An analysis of the contribution of the International Court of Justice to the development of the no-harm rule." *An Analysis of the Contribution of the International Court of Justice to the Development of the No-Harm Rule* (August 25, 2014). Pluri Courts Research Paper 14-17 (2014). Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2486421](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2486421) Accessed on 28th October 2023.

<sup>64</sup> Trail smelter case (United States v Canada) 16 April 1938 and 11 March 1941 Volume III pp. 1905-1982s see also Corfu Channel Case (U.K. v. Alb.), Merits, 1949 I.C.J. 4, at ¶ 22.

<sup>65</sup> *Pulp Mills on the River Uruguay (Argentina v Uruguay) Judgement*, ICJ Reports 2010 p. 56 at para 101; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (I), pp. 241-242, para. 29).

<sup>66</sup> Art. 2 International Law Commission Draft Principles on the Prevention of transboundary harm from hazardous activities, with commentaries (2001), Session 56, UN doc. A/56/10. See also Separate opinion of Judge Bhandari at para 21: *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, I.C.J. Reports 2015, pp. 665.

<sup>67</sup> ¶ 26 of the Record.



of the Royal Mountain Gorilla which occupy a transboundary national park between DRI and Aringuv.<sup>68</sup> This would have an impact on the tourism sector of Aringuv which has a strong and growing wildlife tourism industry,<sup>69</sup> which can in turn have a negative impact on its economy as mountain gorilla tourism tends to create several benefits to the host communities<sup>70</sup> including job creation, development of infrastructure, improved living conditions,<sup>71</sup> poverty reduction among other benefits.<sup>72</sup>

**c) The Republic of Replomute failed to observe the E.U NDC Requirement**

Aringuv, Replomute and DRI are parties to the UNFCCC.<sup>73</sup> Parties to this convention ought to take precautionary principle in order to prevent and minimize the causes of climate change and limit its adverse effects, and are required to promote the right to sustainable development.<sup>74</sup> Annex 1 parties to the Paris Agreement have an obligation to continue taking the lead in greenhouse gas emissions reduction by undertaking economy wise absolute emissions targets.<sup>75</sup> It is also incumbent upon developed countries to build the capacity of the developing countries.<sup>76</sup>

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<sup>68</sup> ¶ 9 of the Record.

<sup>69</sup> ¶ 2 of the Record.

<sup>70</sup> Muresherwa, G., Makuzva, W., Dube, C. N., & Amony, I. (2022). The management of mountain gorilla tourism in Uganda: Are the socio-economic benefits realized? *The Journal for Transdisciplinary Research in Southern Africa*, 18(1) at pp 3 Available at doi: <https://doi.org/10.4102/td.v18i1.1136> Accessed on 09 November 2023.

<sup>71</sup> Nielsen H, Spenceley A. *The success of tourism in Rwanda: Gorillas and more*. Washington DC: World Bank; 2011. Available at

[https://documents1.worldbank.org/curated/en/304221468001788072/930107812\\_201408252032416/additional/634310PUB0Yes0061512B09780821387450.pdf](https://documents1.worldbank.org/curated/en/304221468001788072/930107812_201408252032416/additional/634310PUB0Yes0061512B09780821387450.pdf) Accessed on 09 November 2023.

<sup>72</sup> Haywantee Ramkissoon (2023) Perceived social impacts of tourism and quality-of-life: a new conceptual model, *Journal of Sustainable Tourism*, Vol. 31, No. 2, pp 442–459 Available at <https://doi.org/10.1080/09669582.2020.1858091> Accessed on 09 November 2023.

<sup>73</sup> ¶ 13 of the Record.

<sup>74</sup> Article 3 of the United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189.

<sup>75</sup> *Ibid*, Article 4(4).

<sup>76</sup> *Ibid*, Article, 11.

The EU's NDC became its NDC when the EU ratified the Paris Agreement in October 2016 with a target of at least 40% economy wide reduction of greenhouse gas emissions by 2030.<sup>77</sup> The domestic reduction should be up to the level of 55% fit.<sup>78</sup>

In *R v Heathrow Airport Ltd*, the supreme Court of the UK, held that pursuant to commitments by the UK to reduce greenhouse gas emissions, its EIA regulations, should undertake the assessment of the project to include any significant greenhouse gas emissions<sup>79</sup> and that the failure to focus on future development the government had an inchoate response to the change, and failed in its obligation. Further in *Urgenda v Netherlands*,<sup>80</sup> all three Netherlands courts directed state policy on the pressing issue of climate change in very clear and precise terms. The judgments enjoined the state to reduce, by the end of 2020, annual Dutch greenhouse gas emissions by 25%, when measured against the emission levels of 1990.<sup>81</sup> The court was of the opinion that states failed to reduce greenhouse gas emissions by failing to conform with the EU ambitious project of continuous reduction of greenhouse gas in the Netherlands.<sup>82</sup>

The IPCC in its Fourth Assessment Report published in 2007, explained that a 1°C to 2°C increase in global mean temperature above 1990 levels (about 1.5 to 2.50C above pre industrial) poses significant risks to many unique and threatened systems including many biodiversity hotspots<sup>83</sup>.

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<sup>77</sup> Update of the NDC of the European Union and its members States, submission by Spain and European Commission on Behalf of the European Union and its Member states, Madrid 16 October 2023 ¶ 2.

<sup>78</sup> *Ibid* at ¶ 4.

<sup>79</sup> R (on the application of Friends of the Earth Ltd and others) v Heathrow Airport (2020) ¶ 161.

<sup>80</sup> Urgenda Foundation v the Netherlands [2015] HAZA C/09/00456689 para.76.

<sup>81</sup> Gerhard van der Schyff, 'The Urgenda Case in the Netherlands on Climate Change and the Problems of Multilevel Constitutionalism' (2020) 6 Constitutional Review pp210-240 Available at <https://consrev.mkri.id/index.php/const-rev/article/view/622> Accessed on 02 November 2023.

<sup>82</sup> Urgenda Foundation v the Netherlands [2015] HAZA C/09/00456689 at ¶76.

<sup>83</sup> IPCC, 2007: Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, pp 19. Available at <https://www.ipcc.ch/report/ar4/syr/> Accessed on 02 November 2023.

The proposed oil extraction and exploration in the habitats of the southern royal mountain Gorillas, would result in an increase in greenhouse gas emissions.<sup>84</sup> Replomute, which is a developed country,<sup>85</sup> has an obligation under the Paris Agreement to reduce the possibility of any increase in greenhouse gas in order to meet the 2°C global average of temperature.<sup>86</sup> It has therefore failed in its obligation to protect climate from destruction.

**d) Replomute is Coercing DRI to Commit an Internationally Wrongful Act**

Article 18 of the *ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001* is concerned with the issue of coercion deliberately exercised in order to procure the breach of one State's obligation to a third State. In such cases the responsibility of the coercing State with respect to the third State stems not from its act of coercion, but rather from the wrongful conduct resulting from the action of the coerced State.<sup>87</sup>

The ICJ has described coercion as “the defining element” and “the very essence” of unlawful intervention.<sup>88</sup>

By forcing DRI to abide by the terms of the 1981 concession agreement,<sup>89</sup> Replomute is coercing DRI to commit an internationally wrongful act as at the time of entering the Agreement, DRI did not conduct an EIA which highlighted the impacts of the oil extraction activities to the gorillas, gorilla habitat or climate change.<sup>90</sup> Further, DRI and Aringuv signed and ratified the Gorilla

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<sup>84</sup> ¶ 17 of the Record.

<sup>85</sup> ¶ 3 of the Record.

<sup>86</sup> Article 2 of the of the United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189.

<sup>87</sup> United Nations Legislative Series, “Materials on The Responsibility of States for Internationally Wrongful Acts” Second Edition New York 2023, at page 236. Available at <https://legal.un.org/legislativeseries/book25.shtml> Accessed on 13th October 2023.

<sup>88</sup> Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America), Merits, Judgement, I.C.J Reports 1986 p.14 at ¶ 205.

<sup>89</sup> ¶ 17 of the Record.

<sup>90</sup> ¶ 17 of the Record.

Agreement in 2007,<sup>91</sup>the CMS in 1983, and the CBD in 1993 and as such, at the point of signing the concession agreement<sup>92</sup> the obligations outlined under all these treaties were not applicable.

We submit that DRI has the international obligation to ensure that it complies with all its international obligations as per the principle of good faith<sup>93</sup> and as such has to abide by the following obligations:

**i. DRI has a positive obligation under the CBD to protect the area inhabited by the Royal Mountain Gorilla**

By allowing the oil extraction activities, DRI has breached Articles 1, 5, 8 and 10 of the CBD, which mandates member States to cooperate<sup>94</sup> and ensure the conservation and sustainable use of biological resources.<sup>95</sup>

States are obliged to promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings.<sup>96</sup> This obligation especially applies to degraded ecosystems and threatened species<sup>97</sup>. To this end, the cumulative adverse impacts and risks of human activities to biodiversity must at least be minimized.

**ii. DRI has breached the provisions of the Gorilla Agreement**

DRI and Aringuv are parties to the Gorilla Agreement having ratified it in 2007.<sup>98</sup> They have a duty to cooperate and take coordinated measures to maintain gorillas in a favorable conservation status, taking into account the precautionary principle.<sup>99</sup>

Parties to the Gorilla Agreement have an obligation to take coordinated measures to maintain

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<sup>91</sup> ¶ 9 of the Record.

<sup>92</sup> ¶ 17 of the Record.

<sup>93</sup> Article 26 of the Vienna Convention on the Law of Treaties, 23 May 1969, U.N.T.S, vol. 1155, p. 331.

<sup>94</sup> Art. 5; Art. 10(e) of the Convention on Biological Diversity U.N.T.S, vol. 1760, p. 79.

<sup>95</sup> *Ibid*, Art. 1; Art. 8(c); Art. 10(c).

<sup>96</sup> *Ibid*, Art. 8(d).

<sup>97</sup> *Ibid*, Art. 8(f); Art. 10(d).

<sup>98</sup> ¶ 9 of the Record.

<sup>99</sup> Article II of the Agreement on the Conservation of Gorillas and their Habitats (Gorilla Agreement).

gorillas in a favorable conservation status.<sup>100</sup> They are mandated to identify sites and habitats for gorillas occurring within their territory and ensure their protection, management, rehabilitation and restoration of their sites.<sup>101</sup>

**iii. DRI has an obligation under the CMS to conserve the migratory species of the Royal Mountain Gorilla**

Under the CMS, read with Resolution 3.1, a country can be considered a Range State only when a significant proportion of geographically separate population of that species occasionally occurs in its territory.<sup>102</sup>

Species of the Royal Mountain Gorilla occur in both DRI and Aringuv<sup>103</sup> and as such both are range parties and are bound by the obligations under the CMS

Aringuv, Replomute and DRI are parties to the Convention on the Conservation of Migratory Species since 1983.<sup>104</sup> DRI and Replomute has an obligation to take necessary steps to conserve migratory species<sup>105</sup> and ought to provide immediate protection for migratory species<sup>106</sup> with an aim of preventing, reducing and controlling factors that are endangering or are likely to further endanger species.<sup>107</sup>

**e) In any case, DRI has an obligation under the Algiers Convention to conserve the habitat inhabited by habited the Royal Mountain Gorillas**

DRI has been a party to the Algiers Convention since 1969<sup>108</sup> and a s such is bound by it.

The relationships between Parties to the Algiers Convention and Parties to the Revised African

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<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*, Article III (2) (b).

<sup>102</sup> CMS Resolution 3.1, 2009. Available at

[https://www.cms.int/sites/default/files/document/Inf\\_03\\_Res\\_3\\_1\\_E\\_0.pdf](https://www.cms.int/sites/default/files/document/Inf_03_Res_3_1_E_0.pdf) Accessed on 19th October 2023.

<sup>103</sup> ¶ 9 of the Record

<sup>104</sup> ¶ 8 of the Record.

<sup>105</sup> Article II (1) of the Convention on the conservation of migratory species of wild animals, U.N.T.S Vol. 1651.

<sup>106</sup> *Ibid.*, Article II (3) (b).

<sup>107</sup> *Ibid.*, Article III (4) (c).

<sup>108</sup> ¶ 11 of the Record.

Convention on the Conservation of Nature and Natural Resources shall be governed by the provisions of the Algiers Convention.<sup>109</sup>

DRI is not a party to the Revised African Convention on the Conservation of Nature and Natural Resources but is a party to the Algiers Convention while Aringuv is a party to both Conventions.<sup>110</sup>

The relationships between DRI and Aringuv are governed by the provisions of the Algiers Convention.

Parties to the Algiers Convention have an obligation to accord a special protection to those animal species that are threatened with extinction, or which may become so, and to the habitat necessary to their survival and where such a species is represented only in the territory of one Contracting State, that State has a particular responsibility for its protection.<sup>111</sup> Further, contracting states have an obligation to conserve all the species in their habitats.<sup>112</sup>

Replomute seeks to conduct oil exploration activities in the area inhabited by the Southern Population of the Royal Mountain Gorilla.<sup>113</sup> Further, Local and International NGO's have expressed serious concerns to DRI and Replomute and the CMS secretariat about the negative impacts to the Royal Mountain Gorillas that would likely occur as a result of the oil extraction.<sup>114</sup>

The Royal Mountain Gorillas have been classified as a critically endangered species and have been classified on the IUCN Red List of Threatened Species. Presently, only 295 individuals of the Southern population are left.<sup>115</sup>

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<sup>109</sup> Article XXXIV of the Revised African Convention On the Conservation of Nature and Natural Resources, adopted by the 2nd Ordinary Session of the Assembly Maputo, Mozambique - 11 July 2003 Entered into force on 23 July 2016.

<sup>110</sup> Para 11 of the Record.

<sup>111</sup> Article VIII of the African Convention on the Conservation of Nature and Natural Resources (Algiers Convention), 1969.

<sup>112</sup> Article X of the African Convention on the Conservation of Nature and Natural Resources (Algiers Convention), 1969.

<sup>113</sup> ¶ 17 of the Record.

<sup>114</sup> ¶ 21 of the Record.

<sup>115</sup> ¶ 9 of the Record.

We submit that DRI has an obligation to conserve the habitat inhabited by the Royal Mountain Gorilla and the Mountain Gorillas as they are an endangered species which are in threat of extinction which ousts any oil exploration activities by Replete.

**f) Replomute cannot invoke DRI's state sovereignty as a justification for exploring oil in the area inhabited by the royal mountain gorillas**

Principle 10 of the Rio Declaration provides that for natural resources that cross political border, all the concerned states must be involved in the management of shared resources.<sup>116</sup> Further, the 1972 Stockholm Declaration places a great emphasis on the need to protect both species and their habitats, particularly at principles 2 and 4 which, respectively, provide for the safeguarding of representative samples of natural ecosystems for the benefit of present and future generations and humankind's responsibility to manage the heritage of wildlife and its habitat.

This absolute sovereign right is now clearly qualified by the general rule stated in Principle 21 of the 1972 Stockholm Declaration and now Principle 2 of the 1992 Rio Declaration which provides that although states have the sovereign right to explore their own natural resource, they also have the responsibility of ensuring that activities within their jurisdiction or control do not cause damage to the environment of other states or of the areas beyond the limits of national jurisdiction.<sup>117</sup>

The ICJ in *Legality of the Threat or Use of Nuclear Weapons*,<sup>118</sup> recognized that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn and the existence of the general obligation of States to ensure

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<sup>116</sup> Kariuki Muigua, Didi Wamukoya and Francis Kariuki, "Natural Resources and Environmental Justice in Kenya" Glenwood Publishers Limited (2015) at page 332; See also Principle 10 of the United Nations Conference on Environment and Development, June 3-14, 1992, Rio Declaration on Environment and Development, U.N. DOC. A/CONF. 151/26 (1992).

<sup>117</sup> *Ibid.*

<sup>118</sup> *Legality of the Threat or Use of nuclear weapons*, Advisory Opinion, 1. C.J. Reports 1996, p. 226 at ¶ 29.

that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.

DRI has an obligation to ensure that the activities within its jurisdiction do not affect the environment of the states beyond it. In our present case, the Oil extraction activities in DRI have a possible implication for contributing to climate change<sup>119</sup> something which might affect the growing wildlife industry in Aringuv.<sup>120</sup> We submit that despite the fact the all states are sovereign entities able to exercise sovereign rights over all-natural living and non-living resources within their land and sea territory,<sup>121</sup> This does not preclude their obligation to conserve the environment and endangered species of plant, bird and animal life.<sup>122</sup>

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<sup>119</sup> ¶ 26 of the Record.

<sup>120</sup> ¶ 2 of the Record.

<sup>121</sup> Maltose Fitzmaurice, David Ong and Pamos Merkouris (eds),” Research Handbook on International Environmental Law” Edward Elgar Publishing Limited at page 521.

<sup>122</sup> *Ibid.*



## **PRAYERS FOR RELIEF**

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

1. The Respondent's failure to prepare an EIA with respect to the proposed oil extraction activities in DRI violates international law.
2. The actions of Replomute with respect to the proposed oil extraction activities in the DRI violates international law.

Respectfully submitted,

Agents on behalf of the Applicant.