TEAM CODE: 2440

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, THE NETHERLANDS

CASE CONCERNING QUESTIONS RELATING TO MOUNTAIN GORILLAS AND IMPACT ASSESMENT

ARINGUV

(APPLICANT)

VS

REPLOMUTÉ

(RESPONDANT)

MEMORIAL FOR THE APPLICANT

TABLE OF CONTENTS

INDEX OF AUTHORITIES

INTERNATIONAL TREATIESES

JUDICIAL AND ARBITRAL DECISIONS

UN DOCUMENTS AND OTHER INTERNATIONAL DOCUMENTS

ESSAYS, ARTICLES AND JOURNALS

BOOKS AND RESTATEMENTS

1. Mountain Gorilla, Gorilla beringei ssp. beringei. https://www.iucnredlist.org/. (Type in the search bar "Mountain Gorilla" and click on the first and only option) (2020)……..…..33, 34, 35

2. Neil Craik, Environmental Impact Assessment in Principles of Environmental Law, Cambridge University Press. (2008)….....20

TABLE OF ABBREVIATIONS

1	CBD: Convention on Biological Diversity
2	CMS: Convention on Migratory Species
3	DRI: Democratic Republic of Ibirunga
4	EIA: Environmental Impact Assessment
5	Gorilla Agreement: Agreement on the Conservation of Gorillas and their habitats
6	International Court of Justice: ICJ
7	IEL: International Environmental Law
8	ILA: International Law Association
9	Lenoir Corporation: L.Corp.
10	NGO: Nongovernmental organization
11	R: Stetson Record
12	RMG: Royal Mountain Gorillas
13	Rio Declaration: United Nations Conference on Environment and Development at Rio de Janeiro, 1992
14	UNFCCC: United Nations Framework Convention on Climate Change
15	¶: Paragraph

QUESTIONS PRESENTED

I.

WHETHER REPLOMUTÉ'S FAILURE TO PREPARE AND EIA WITH RESPECTO TO THE PROPOSED OIL EXTRACTIONS ACTIVITIES IN THE REGION VIOLATES INTERNATIONAL LAW, AND

II.

WHETHER THE ACTIONS OF REPLOMUTÉ WITH RESPECT TO THE OIL EXTRACTIONS ACTIVITIES IN DRI VIOLATE INTERNATIONAL LAW.

STATEMENT OF JURISDICTION

Consistently with *Article 40 of the Statute of the ICJ,* Aringuv and Replomuté have submitted to the ICJ by Special Agreement, questions Relating to Mountain Gorillas and Impact Assessment, signed at Kampala, Uganda as contained in Annex A – Agreed Statement of Facts -, including the Clarifications. The Parties transmitted a copy of the Special Agreement to the Registrar of the ICJ on 16 June 2023. The Registrar of the Court, as instructed by *Article 26 of the Rules of Court*, addressed a notification of receipt of the Special Agreement to the minister of foreign affairs from both parties on 24 July 2023.

The Parties have accepted the jurisdiction of the ICJ. Consequently, they request the Court to adjudge the merits of this matter based on the rules and principles of general international law, as well as any applicable treaties. The Parties further request this Court to determine the legal consequences, including the rights and obligations of the Parties arising from any judgment on the questions presented in this matter.

The Parties have agreed to respect the decision of this Court.

STATEMENT OF FACTS

Aringuv, a lower middle-income sovereign state in central Africa shares its eastern border with The Democratic Republic of Ibirunga(R¶1), a low-income country(R¶2). Its economy is primarily based on the wildlife tourism industry e.g., the Royal Mountain Gorillas (hereinafter RMG) tourism. On the other hand, Replomuté is a high-income country(R¶3) in Europe with a long history of colonialism and predatory exploitation of natural resources, such as crude oil, precisely from less favored nations, such as Aringuv and the DRI.

In 1981, the Lenoir Corporation (hereinafter L.Corp) –a wholly government-owned and controlled corporation of the government of Replomuté– signed a concession with the DRI to explore, extract, and construct a pipeline to transport said oil. The activities would strictly take place in the area inhabited by the southern population of the RMG(R¶17), putting them in a direct line of harm; situation aggravated by the fact they are critically endangered according to the IUCN Red List of Threated species. This area holds 295 significant individuals, but the second population (the northern population) that lies in the boundary between Aringuv and the DRI has 640 individuals(R¶9) which are vital for the former State's economy.

That same year a so-called EIA was prepared, which only focused on the quantity of water that would be used and the waste that the project could cause exclusively on humans, and no other living being. It completely disregarded the potential impacts on the gorillas, their habitat, and climate change. In the 41 years since the concession was granted, a valid EIA has not been conducted and during the entirety of the project, the RMG and their habitats have not been taken into consideration(R¶17).

From 1989 to 2009 the L.Corp. carried out oil exploration activities with only the alleged EIA and

in 2009 it began constructing the pipeline(R¶19), which due to multiple delays is currently only at 98% of construction(R¶32). The different delays caused construction to stop on multiple occasions and therefore created 4 different timelines in the project. (i)from 1983 to 1986 when the project had to stop due to the beginning of a civil war in the DRI (ii) from 2003-2006 when the project continued after the government regained control over the area, but, ultimately, due to an Ebola outbreak the project had to stop once again(R¶91) (iii) 2009-2012 the project continued after the Ebola outbreak but had to stop due to a military coup(R¶22) (iv) 2015-2023 the project continued, but had to stop due to the Covid-19 pandemic(R¶22) (vi) finally, the project started once again in 2021.

During the construction of the pipeline numerous international and local NGOs called on the L.Corp. to abandon the project as its footprint would lead to negative impacts on the RMG and their habitat(R¶22). However, Replomuté intentionally decided to disregard these crucial recommendations. In addition to this, Aringuv expressed serious concerns on the damage caused and the one that will perpetuate in case the activities continue(R¶27), and even so Replomuté claims that it has not violated international law(R¶30), neither in a procedural or substantive matter.

After numerous exchanges of diplomatic notes between Replomuté and Aringuv, the States decided to approach the ICJ for it to resolve the issue.

SUMMARY OF ARGUMENTS

I

Replomuté failed to abide by their conventional and customary obligation to conduct an EIA prior to initiating the project, ignoring the concerns over adverse effects on RMGs -a fundamental shared resource between the DRI and Aringuv- raised by both local and international NGOs. Replomuté, as the State controlling the area of the project through the L.Corp., has the obligation to conduct the EIA, and still, is neglecting its international duty.

While Replomuté argues that an EIA was conducted by the DRI in 1981, this study did not meet international standards. It disregarded the impact on RMGs and their habitat, it did not meet the highest technological standards, it was not conducted by an independent and capable entity, and it did not abide by international principles.

Finally, conducting an EIA is a continuous obligation that requires monitoring throughout a project's life. However, as the 1981 assessment cannot be considered an EIA, the obligation has never been fulfilled.

II

Replomuté coerced the DRI to violate its obligations derived from the Gorilla Agreement. Despite the DRI's express desire to halt the oil concession due to Gorilla Agreement breaches, Replomuté exercised economic coercion to ensure the continuation of the project. This is a wrongful act under international law and compromises the conservation of gorilla habitats, directly violating the Convention.

Additionally, the exploration and the construction of the pipeline directly harmed the biological diversity in the area, particularly affecting the critically endangered RMGs. These activities led to habitat degradation, increased human intrusion, and posed risks of disease transmission through the potential migration of RMG. Further, Replomuté's actions violated the principle of prevention, which resulted in imminent harm to the environment and climate change.

ARGUMENTS ADVANCED

---

1. REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW BY FAILING TO PREPARE AN EIA WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE REGION

Replomuté has violated its international obligation to prepare an EIA regarding their activities of exploration and extraction of oil. Firstly, it is here explained how the State violated international law. Secondly, how by having control over the area where the project is being developed all of the consequences are attributable to the State. And, thirdly, it is described how the inadequacies of the 1981's alleged EIA conducted by the DRI, the way it failed to meet international standards and omitted key elements i.e., RMG and their habitat.

1.1. REPLOMUTÉ FAILED TO FULLFILL ITS INTERNATIONAL OBLIGATION TO CONDUCT AN EIA IN THIS CASE

Replomuté violated its international obligation to conduct an EIA for the proposed oil extraction activities by not preparing an EIA. This is both an international customary obligation recognized by the ICJ and a conventional obligation under the Espoo Convention.

The customary obligation originates from the Principle of Sustainable Development -which tries to reconcile economic development with the protection of the environment[1]- but it was ultimately recognized on its own by the ICJ in the Pulp Mills case as an interpretation of article

[1] The Gabčíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment I.C.J. Reports 1997, pp.77, para.140.

41(a) of the Statute of the Court[2]. It determines that an EIA should be conducted whenever the proposed activities *"are likely to have a significant adverse impact on the environment"*[3], and cause a transboundary harm, prior to the initiation of the project[4]. And the treaty obligation originates from the Espoo convention which describes an EIA as a procedure for evaluating the likely impact of a proposed activity on the environment[5].

In the present case, the significant adverse impact on the environment is evident, as in the time when the concession was negotiated the DRI understood the risk of a potential environmental harm and decided, in 1981, to conduct the so-called EIA[6], which demonstrates the awareness of the potential impact the project would have on the environment. Likewise, throughout the development of the project, both local and international NGOs expressed serious concerns to the DRI, Replomuté, and the CMS Secretariat regarding the negative impacts that the project would have on the RMG and their environment[7]. This is noteworthy, considering that RMG are an endogamic specie who exclusively life in the DRI and Aringuv[8], making them also a shared resource.

---

[2] Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p.82-83, para.204.

[3] U.N. General Assembly. Report of the United Nations conference on environment and development. A/CONF.151/26 (Vol. I). (1992). Annex I. Rio Declaration on Environment and Development, principle 17.

[4] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, pp.82-83, para.204; 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.706, para.104; In the matter of the South China Arbitration (The Philippines v. The People's Republic of China), Award, Permanent Court of Arbitration. 12 July 2016, pp.948.*

[5] Convention on Environmental Impact Assessment in a transboundary context, Article 1(vi), 1991.

[6] R¶1.

[7] R¶21.

[8] R¶9.

Moreover, if control is understood as to regulate or to govern[9], it can be understood that Replomuté has control over the area of the southern RMG's population because the concession grants exclusivity to the L.Corp. and the activity is conducted by Replomuté nationals[10]. Allowing the State to govern the development, since it has total capacity to enact its will over the activities. And, L.Corp's actions are attributable to Replomuté under the parameters of the Responsibility of States for Internationally Wrongful Acts[11]. This, because the corporation is solely owned by the State and, therefore, subjected to its direct control, making all its actions and omissions of international law attributable to Replomuté[12].

Because of the control it has over the area, by failing to conduct an EIA prior to the beginning of the oil extraction and exploration project Replomuté violated international law. This, because the States that control a project have the obligation to prevent negative impact to the environment and to conduct an EIA[13]. As Replomuté controls the project, it is the one responsible for conducting the EIA, not the DRI.

Despite Replomuté's obligation to conduct an EIA, it failed to fulfill the requirements to conduct one. In the diplomatic notes sent by Replomuté to Aringuv it only references the 1981 alleged EIA done by the DRI as well as its intention not to conduct one[14]. This shows that the State considered its obligation to have been fulfilled by the DRI's incorrectly conducted EIA.

Finally, it's important to bring forth that Replomuté's failure to prepare the EIA has been

[9] Waters of Tunari S.A v. Republic of Bolivia. No. ARB/02/3. (2005). para.231

[10] Clarifications to the Record, A13.

[11] U.N. International Law Commission. Responsibility of States for Internationally Wrongful Acts. (2001), article 8.

[12] Electrabel S.A v. The Republic of Hungary. No. ARB/07/19. (2012), para. 7.60.

[13] Convention on Biological Diversity. 1992, Article 14(1.a).

[14] R¶28.

continuous throughout the 41 years of this project. The obligation to conduct an EIA is a continuous one, as the EIA should be performed not only before the beginning of the project, but when it is deemed necessary[15]. Therefore, the obligation is not fulfilled by simply preparing the EIA prior to the initiation of the project -which it failed to do- without monitoring how the impacts may change while the project is being carried out. The obligation will only be fulfilled if the impact is checked and updated with the construction of the project itself.

1.2. THE 1981'S ALLEGED EIA CANNOT BE CONSIDERED A PROPER EIA UNDER INTERNATIONAL LAW AND, THEREFORE, THE OBLIGATION TO CONDUCT IT HAS NEVER BEEN FULFILLED

Replomuté may argue that an EIA was conducted by the DRI in 1981 in compliance with its international obligations. However, the study conducted failed to fulfill the international standards, requirements and principles. The 1981´s alleged EIA was conducted unilaterally by the DRI, and its limited analysis was insufficient. Firstly, it will be explained how the EIA done by the DRI failed to meet international requirements. And, secondly, it will be explained how it failed to abide by the principles of international law.

a. The 1981's alleged EIA failed to abide by the international requirements and, therefore, this obligation has never been fulfilled

For an EIA to be valid it needs to be: (i)conducted by an independent and capable entity, (ii)prior to granting the concession and the beginning of the project, and (iii)done with the highest

[15] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, pp.83-84, para.205; 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, para.161.*

technological standards[16]. In this case, the alleged EIA failed all the requirements.

First, the EIA was not conducted by a capable and independent entity[17]. As the DRI was the one that conducted the EIA and as a Party to the concession, the State cannot be considered an objective, capable or independent source.

Second, the EIA must be done prior to the beginning of the project [18]. In this case, as the 1981's alleged EIA cannot even be considered a valid assessment, this requirement was not fulfilled.

Third, the alleged EIA was not conducted considering the highest technological standards of the proposed activity. States are obligated to regulate the contents of the EIA considering the specific features of the activity in question[19]. As a matter of fact, the EIA should be conducted in a manner that is scientifically rigorous, transparent and participatory[20], especially taking into consideration the level of risk that could potentially arise[21].

In the present case, as the activity in question is the exploration and extraction of oil, the

[16] Case of the Saramaka People v. Suriname, Preliminary Objections, Inter-Am. Ct H.R. (ser.C) No.172. (2007), para.129.

[17] Ibidem, para.104.

[18] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p.p. 83-84, para.205*; Case of the Saramaka People v. Suriname, Preliminary Objections, Inter-Am. Ct H.R. (ser.C) No.172. (2007), para.104.

[19] Oneryildiz v. Turkey, Judgment, ECHR, 2004, para.90; Jugheli and others v. Georgia, Judgment E.C.H.R., 2017, para.75; Cordella and others v. Italy (Cordella), Judgment E.C.H.R., 2019, para.159.

[20] Neil Craik, Environmental Impact Assessment in Principles of Environmental Law, Cambridge University Press. pp.196 (2008).

[21] Jugheli and others v. Georgia, Judgment E.C.H.R., 2017 para.75; Separate Opinion of Judge ad hoc Dugard in Costa Rica v Nicaragua/Nicaragua v Costa Rica para.18; U.N International Law Commission. Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries. A/56/10.(2001), Article. 7.

rules that regulate and determine the contents of the EIA should consider the characteristics of this specific activity. Nevertheless, Replomuté has not provided any evidence to support the claim that the EIA incorporated the specific requirements of the activity in question. Therefore, regardless of the denomination given to the documents prepared in anticipation of the project, it is not EIA.

b. The 1981´s alleged EIA failed to abide by international principles and, therefore, this obligation has never been fulfilled.

The DRI failed to abide by the principles of due diligence, notification and prevention in the development of the 1981's alleged EIA by not considering the impact of the project on the RMG and not notifying Aringuv of the transboundary harm.

i) The Principle of Due Diligence

The principle of due diligence was ignored when conducting the so-called EIA since it failed to include the impact of the project on the RMGs. This principle is important when conducting an EIA to determine its necessary content, the Court may apply a due diligence standard[22]. This standard implies that the State must exercise due diligence in carrying out its projects which is expressed in conducting an EIA that understands the nature and magnitude of the activity and its likely impact on the environment[23].

It must be noted that local and international NGOs expressed serious concern to the DRI,

[22] Separate Opinion of Judge ad hoc Dugard in Costa Rica v Nicaragua/Nicaragua v. Costa Rica, para.9.

[23] *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.706, para.104.*

Replomuté, and the CMS Secretariat regarding the negative impacts to the RMGs[24]. Additionally, it called the State to consider all the different environmental impacts such activity can have on the States[25]. As the project's location was a national park, the EIA should have considered potential impacts on the RMG population and their habitat.

Regardless, the DRI blatantly ignored the impact on the RMG as the alleged EIA only focused on the project's impact on the nearby human population, the quantity of water that would be used by the project and how it would affect the water levels in the area[26]. This causes it to be incomplete and to not fulfill the principle of due diligence.

ii) The Principle of Notification

The DRI did not conduct the EIA abiding by the notification principle by not informing Aringuv about the development of a project that could cause transboundary harm. Under the provisions of this principle, States have the obligation to notify and consult other States that may be affected by an economic activity[27]. This notification should be prior to the beginning of the project, and it should be effective, containing all the information a State would need to know on the potential impact the project could entail on its own territory so it can adopt the appropriate measurements in its own territory[28].

Replomuté has been unable to prove that Aringuv was notified of the existence of the

[24] R¶21.

[25] R¶21.

[26] R¶17.

[27] Dispute over the Status and Use of Waters of the Silala (Chile v. Bolivia), Judgment, I.C.J. Reports 2022, pp.36, para.118; Inter-American Court Of Human Rights. OC-23/17 Advisory Opinion. 2017, para.196.

[28] *Ididem*, para.196; The Philippines V. The People's Republic of China, Case no. 2013-19, Award of the Permanent Court of Arbitration. 2016, pp.948.

project and of the results of the EIA conducted prior to the beginning of the project. This cannot be interpreted by the Court any differently than a failure of Replomuté to fulfill its obligation.

This principle has been recognized by the Court as an international customary obligation, which creates the duty of States to notify neighboring States when there is a significant risk of transboundary harm on another State´s environment and its shared resources[29]. It was recently recognized by the ICJ in the dispute over the Waters of Silala. In its judgement, the Court established that States have the obligation to conduct an objective assessment of the circumstances and of the risk of significant transboundary harm in accordance with customary law[30].

Hence, under the principle of notification there are two separate obligations: (i) the duty to conduct an objective assessment of the risk of transboundary harm, and (ii) the obligation to notify the neighboring States of the risks of transboundary harm. Thus, the 1981's alleged EIA prepared by the DRI cannot be considered an EIA under international law, and the argument presented by Replomuté in the diplomatic note of March 2019 forwarded by Ambassador Siberck of Replomuté is utterly false[31]. Hence, an EIA has never been conducted for this project, neither by the DRI nor by Replomuté.

iii) The Principles of Prevention

The 1981's alleged EIA further violates environmental international law by disregarding the principle of prevention contained in various instruments of international law, including

[29] Dispute over the Status and Use of Waters of the Silala (Chile v. Bolivia), Judgment, I.C.J. Reports 2022, pp.35, par.114.

[30] *Ididem.*

[31] R¶28

Gabčíkovo-Nagymaros Project and the Rio Declaration[32]. According to the former: "*The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often-irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage."*[33]

By disregarding the analysis of the potential impact of the project on climate change, the MRG and their habitat the 1981's alleged EIA does not adequately enable the adaptation of the project to prevent the imminent damage to the environment of other states.

Since it ignores the negative effects on climate change, Replomuté is unable to comply with the mitigation of climate change. The UNFCCC underscores the importance of assessments in evaluating and addressing the impacts of climate change mitigation and adaptation measures[34]. This obligation materializes the principle of prevention and is attributable to Replomuté as party of the UNFCCC[35]. On its part, the Paris Agreement develops the principle of prevention by establishing the responsibility of the Parties in addressing climate change through a variety of measures and commitments, which include the mitigation of threats to climate change[36]. In conclusion, Replomuté should have implemented preventive steps to forecast, avert, or reduce the factors contributing to climate change and alleviate its detrimental impacts[37].

---

[32] U.N. General Assembly. Report of the United Nations conference on environment and development. A/CONF.151/26 (Vol. I).(1992). Annex I. Rio Declaration on Environment and Development. Principle 2

[33] Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p.78, para.140

[34] United Nations Framework Convention on Climate Change. Article 3. 1992

[35] Supra

[36] United Nations Paris Agreement. Article 3. 2015

[37] Ibidem, para.3.

Similarly, due to the omission of the potential harm on RMG and their habitat Replomuté is incapable of preventing the damage on RMG. As explained in section 1.1 the RMG species are considered a shared resource and coincidently any harm to the species implies harm to Aringuv's environment. As such, Replomuté's incapability violates the prevention principle.

2. THE ACTIONS OF REPLOMUTÉ REGARDING THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI VIOLATE INTERNATIONAL LAW

Not only did Replomuté blatantly breach its obligation by neglecting to conduct an EIA, but it also committed further transgressions against other international obligations. Firstly, Replomuté coerced the DRI to violate their obligations regarding the Gorilla Agreement. Secondly, Replomuté has harmed biological diversity, breaching its obligations contained in the Convention on Biological Diversity (hereinafter CBD). Finally, the State violated the principle of prevention, further transgressing international obligations related to climate change.

2.1. REPLOMUTÉ COERCED THE DRI TO BREACH ITS OBLIGATIONS REGARDING THE GORILLA AGREEMENT

Replomuté will likely claim that the DRI has freely decided to violate its international obligations under the Gorilla Agreement and the CBD. However, the economic pressure applied by Replomuté shows the opposite. Even so, the DRI expressed its desire to stop the concession, as it breached its obligations under the Gorilla Agreement. Replomuté coerced the DRI to ensure the continuity of the oil exploration, the construction of the pipeline and to begin the oil extraction. The coercing State is the prime mover in respect of the conduct -in this case Replomuté- and the

coerced State -the DRI- is merely its instrument[38].

The principal rule of international law that governs the exercise of coercion is the prohibition o intervention, and, according to the ICJ, coercion is the "very essence" of unlawful intervention[39]. Coercion is a procedure wherein a governing body exerts authority to modify the conduct of an opponent.[40] Power, thus, functions as a tool, with coercion representing a tactical approach in which power is used to obtain a desired effect.

The wrongful act committed by the DRI is the result of the coercion imposed by Replomuté. This occurs either by the action or omission of a State, attributable to said State under international law and, in turn, constitutes a breach of an international obligation[41]. As a result of this pressure, the DRI incurred and will continue to incur in a wrongful act by breaching the Gorilla Agreement which requires its Parties to *"take measures to conserve all populations of gorillas"*[42]. Among other duties, the CMS requires the DRI to conserve gorilla habitat and to "*prevent, reduce or control factors that are endangering or are likely to further endanger the species"*[43].

Replomuté was fully aware of the negative impacts that the activities carried out by the L.Corp. would generate, including the effect on the RMG's habitat. The before mentioned coercion prevented the DRI from complying with its obligation to ensure the protection of the habitat of this

[38] U.N. International Law Commission. Responsibility of States for Internationally Wrongful Acts. (2001), p.65.

[39]*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America). Merits, Judgment, ICJ. Reports 1986. para.205.*

[40] Mohamed S. Helal, On Coercion in International Law, Ohio State Public Law Working Paper No. 475 (March 21, 2019.) At.70.

[41] Ibidem, Art. 18.

[42] Agreement on the Conservation of Gorillas and Their Habitats. Article 3 (1).2007.

[43] Convention on the Conservation of Migratory Species of Wild Animals. Article 3 (4.d).1979.

species[44]. In doing so, it disregarded the NGO's call to abandon the project due to its footprint effect on the primary habitat of the southern population of the RMG[45].

Nonetheless, Replomuté coerced the DRI through the arbitral award into committing a wrongful act[46], for without it, the DRI could have adjusted its actions to comply with its treaty obligations. Correspondingly, according to the principle of non-intervention[47], the intervention of another state through any means of coercion is a wrongful act in itself.

However, an act of coercion emerged when Replomuté based their deeds on the arbitral award. It must be considered that there's a restriction on the DRI's freedom of action[48], due to the penalties that could be imposed on it if it does not allow the L.Corp. to proceed with the oil exploration and extraction activities. The coercion is emphasized by the fact that the DRI is a low-income State, while Replomuté is a high-income one[49] and the last one is making use of its power to economically subject the DRI and its political independence.

Replomuté is forcing the DRI's economic choices. It must be taken into account that coercion is presented as an act that is not necessarily unlawful[50]. In this case, even if the arbitration was made in a correct way it constitutes a wrongful act since it is considered by the ICJ as a method

[44] Agreement on the Conservation of Gorillas and Their Habitats. Article 3 (2.b). 2007.

[45] R¶21.

[46] R¶23.

[47] U.N Charter. Article 2(7). 1945.

[48] James D. Fry, Coercion, Causation, and the Fictional Elements of Indirect State Responsibility, Vanderbilt Law Review, 2021. At. 611.

[49] R¶1; R¶3.

[50] Antonios Tzanakopoulos, The Right to be Free from Economic Coercion, Cambridge Journal of International and Comparative Law, 2015. At. 616.

of illegal intervention[51]. This, because it causes a limitation to the economic choices that the DRI should be able to make, according to the principle of free choice that every Sovereign State has[52].

For the reasons mentioned, while the decision taken by the arbitral panel may not inherently constitute an unlawful act, Replomuté utilizes it as a justification to compel the DRI into breaching its international obligations outlined in both the Gorilla Agreement and the CMS.

2.2. REPLOMUTÉ BREACHED ITS INTERNATIONAL OBLIGATION TO ENSURE THAT ACTIVITIES WITHIN THEIR CONTROL DO NOT CAUSE DAMAGE TO BIOLOGICAL DIVERSITY

In addition to Replomuté's coercion of the DRI, its actions directly impacted the environment and the conservation of biodiversity. Additionally, Replomuté's exploration activities and pipeline construction adversely affects the biological diversity in the area. These actions harmed the critically endangered RMGs, both due to the increased human intrusion and habitat degradation, and the danger of the transmission of diseases because of this.

a. Replomuté's activities harm biological diversity.

Oil exploration activities started in 1983 in the DRI[53], and although they were suspended multiple times, the exploration continued throughout the years without implementing any method prevention. Diverse sources prove the inevitable damage these activities cause to the biological

[51] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America). Merits, Judgment, ICJ. Reports 1986. Para.202,205 and 245.*

[52] Ibidem, para.205 and 241.

[53] R¶18

diversity[54], and thus constitute certain violations of different international obligations at the forefront of Replomuté i.e., the RMG specie and its surroundings.

In essence, oil exploration involves surveying, clearing of seismic lines, and massive dynamite explosions for geological excavations[55]. The destabilization of sedimentary materials associated with dynamite shooting causes increases in turbidity, blockage of filter feeding apparatuses in benthic (bottom dwelling) fauna, and reduction of plant photosynthetic activity due to reduced light penetration[56].

Furthermore, oil extraction can result in lasting damage to the biological diversity because of the disruption of migratory pathways, the degradation of important animal habitats, and oil spills which can be devastating to the animals and humans who depend on these ecosystems. Considering that the pipeline construction has lasted more than a decade, the reduction in habitat area separates populations, which may cause a change in their breeding behavior[57].

As proven, the actions of the L.Corp are most likely to have caused the degradation of biological diversity considering the nature of the activity that is being conducted. Furthermore, the stated facts and evident imbalance of the States, especially in economic matters, leads to the requirement to reverse the burden of proof. Now Replomuté must prove that the exploration

[54] Convention on Biological Diversity.1992. Article 2. "Biological diversity means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which it is a part: this includes diversity within species, between species and of ecosystems".

[55] Collins Ugochukwu and Jürgen Ertel, Negative Impacts of Oil Exploration on Biodiversity Management in the Niger De Area of Nigeria, Impact Assessment and Project Appraisal, 2008. At. 139

[56] Collins Ugochukwu and Jürgen Ertel, Negative Impacts of Oil Exploration on Biodiversity Management in the Niger De Area of Nigeria, Impact Assessment and Project Appraisal, 2008. At. 143.

[57] Collins Ugochukwu and Jürgen Ertel, Negative Impacts of Oil Exploration on Biodiversity Management in the Niger De Area of Nigeria, Impact Assessment and Project Appraisal, 2008. At. 143.

activities done have not caused any environmental damage, as it has happened in other international disputes[58], but specially on this matter taking into logical consideration Replomuté's attendance and fully participation in the 1992 Rio Declaration[59], asserting "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation[60]".

This requirement regarding proof of environmental damages, framed by International Environmental Law scenarios, is mainly inspired by the Principle of Precaution[61], and in some cases by the Principle of Collaboration [62], both whenever it is deemed that it constitutes a necessary variant for the satisfaction of justice. In the present dispute: the protection of the biological diversity based on each state's capabilities[63]. Consequently, and as stated by this Court "Such new norms have to be taken into consideration, and such new standards given proper weight, not only when

---

[58] David Aven et al v. Costa Rica. Case No.UNCT/15/3. para.705. (2018); United States v. Japan. Case No.DS245. Para.705. (2005).

[59] R¶6

[60] U.N. General Assembly. Report of the United Nations conference on environment and development. A/CONF.151/26 (Vol. I). (1992). Annex I. Rio Declaration on Environment and Development, Principle 15.

[61] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p.71, para.162; Oil Platforms (Islamic Republic of Iran v. United States of America), Separate Opinion of Judge Owada, 2003 I.C.J. Rep. para.46; Temple of Preah Vihear (Cambodia v. Thailand), Judgment, 1962 I.C.J. Rep. para.16; Application of Convention on Prevention and Punishment of Crime of Genocide (Bosna. & Herz. v. Serb. & Montenegro), 1996 I.C.J. p.204, para.31; Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgement, 2008 I.C.J., para.45; Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgement, 2009 I.C.J. Rep. para. 68; Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Judgement, 2010 C.I.J. Rep. para.54.*

[62] William A. Parker (United States.) v. United Mexican States. RIAA, VOLUME IV pp.35-41, Decision. Par.6-7. (1926).

[63] U.N. General Assembly. Report of the United Nations conference on environment and development. A/CONF.151/26 (Vol. I). (1992). Annex I. Rio Declaration on Environment and Development, Principle 16.

States contemplate new activities but also when continuing with activities begun in the past[64]", therefore Replomuté, as a high-income State with better capabilities is required to ensure there has not been serious or irreversible damage from its activities.

b. Replomuté's activities harm the RMG's and their habitat

The activities conducted by Replomuté within the habitat of the southern RMG, particularly the exploration for oil and the associated infrastructure development, are in direct conflict with the obligations set forth in Article 8 (f) of the CBD, which requires all Contracting Parties to: *"Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies"*[65].

In addition to this, Replomuté also violated its international obligation to *"to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction"*[66] an obligation originated from the principle of no harm that is also being violated by continuing with the project knowing how it degraded the habitat and also poses a significant threat to the recovery of the endangered RMGs, a species explicitly categorized as critically endangered on the Red List.

i) Due to the increase in human intrusion

The activities of exploration in the DRI's National Park assures that damage to the RMG is

[64] *Gabčíkovo-Nagymaros Project (Hungary/ Slovakia), Judgment, I.C.J. Reports 1997, p.78, para.140*
[65] Convention on Biological Diversity. 1992 Art. 8(f)
[66] Rio Declaration on Environment and Development. Principle 2,1992; The Stockholm Declaration, Principle 21, 1972; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1.C.J. Reports 1996 p.241, para.27;* Trail Smelter Arbitration (United States v. Canada), Award, 16 April 1938 and 11 March 1941, reprinted in 3 UNRIAA 1905 (2006), p.1965.

inflicted, this, because the human presence inside of said habitat increases. The RMG's wellbeing is far more threatened when they encounter humans. It was clarified in the record[67], that the RMG is classified as critically endangered on the IUCN Red List of Threatened Species (hereinafter Red List), which only emphasizes the need to protect them.

The Red List serves as a vital and comprehensive resource for assessing the risk of extinction among animals, fungi, and plants. Replomuté's legal obligations under the CBD treaty require it to promote the conservation of biological diversity and ignoring the Red List would undermine these obligations. Focusing on the Convention's objectives and principles makes it clear that achieving the responsibility to prevent environmental damage in other states necessitates the use of credible scientific instruments like this list.

In the mentioned source, some of the reasons for their classification are that the human entry into the gorilla habitat poses both immediate and long-term risks, such as: human disturbance of the animals, disease, injury and death, habitat degradation and destruction, and climate change induced alterations of habitat all jeopardize the existence of the RMG[68].

As mentioned, the activities of exploration for oil and the building of the pipeline bring an additional human presence into the habitat of the southern RMGs. This presence causes gorillas to alter their patterns of behavior, which makes them stop eating and focus on the continuation of their progress.

---

[67] R¶9

[68] https://dx.doi.org/10.2305/IUCN.UK.2020-3.RLTS.T39999A176396749.en: Mountain Gorilla, Gorilla beringei ssp. beringei. https://www.iucnredlist.org/. (Type in the search bar "Mountain Gorilla" and click on the first and only option) (2020).

The building of the infrastructure alone needed to complete the L.Corp's objectives has already brought in an additional risk; damage has already been done. Nonetheless, it is also relevant to mention the imminent danger that the continuation of the activities poses for the gorillas. The CBD applies to the events in which activities are carried out under the control of a particular State, no matter the jurisdiction[69]. As it has previously been proven, the L.Corp. has control of the activities.

Furthermore, its provisions apply when the damage has not yet occurred, but it will in the future, and it creates a responsibility for the contracting party. In the case of imminent damage to biological diversity originating under said contracting parties' control, it must initiate action to prevent or minimize said damage[70].

The imminent danger to the RMGs is evident, as future human intrusion due to the oil extraction activities creates imminent damage. As the activities are being conducted under Replomuté's control, it is the States responsibility to take immediate action to prevent or minimize the impending harm to biological diversity.

ii) **Due to the degradation of their habitat**

Further, the construction of the pipeline and the infrastructure needed for the exploration of oil would deter the RMGs from going into those zones, forcing them out of their habitats. Oil exploration activities need the use of seismic testing to identify optimal locations for oil reserves[71]. This process often entails the removal of vegetation and the enhancement of infrastructure to

[69] Convention on Biological Diversity. Article 4(b). 1992.

[70] Ibidem, Article 14(d)

[71] Collins Ugochukwu and Jürgen Ertel, Negative Impacts of Oil Exploration on Biodiversity Management in the Niger De Area of Nigeria, Impact Assessment and Project Appraisal, 2008. At. 139

facilitate the movement of equipment to testing sites.

One of the most significant concerns is the deforestation that results from clearing vegetation, especially in the creation of cutting lines, which is done when there is seismic testing, as it was previously explained. The destruction of the natural habitats can severely impact the species adapted to these environments, as they tend to avoid such disruptions. This habitat loss can also expose other species to increased risks, including mortality from heightened traffic and heightened threats from predators due to habitat loss[72]. This is emphasized by the Red List, for it states that the fragmentation of habitat and its degradation would increase by the development of infrastructure built inside of the national park[73].

iii) Due to the risk of the transmission of diseases

In addition to the disturbance that the increase in contact with humans causes and the degradation of their habitat, there is also the danger of the transmission of diseases. The RMG, as species of Mountain Gorillas[74], is incredibly susceptible to human-transmitted diseases. According to the record *"From 2006 to 2008, an Ebola outbreak in the area required the L.Corp to suspend its operations in the DRI*"[75] and according to the Red List *"...great apes are highly susceptible to*

[72] http://assets.wwf.org.uk/downloads/mountain_gorillas_virunga_final_formatted.pdf: Oil exploration and exploitation: the potential impacts on mountain gorillas. 2013.

[73] https://dx.doi.org/10.2305/IUCN.UK.2020-3.RLTS.T39999A176396749.en: Mountain Gorilla, Gorilla beringei ssp. beringei. https://www.iucnredlist.org/. (Type in the search bar "Mountain Gorilla" and click on the first and only option) (2020).

[74] R¶9

[75] R¶19

[the] *Ebola virus disease (EVD)*"[76].

With the alteration in their movements, and the permanent damage to their habitat, the southern population of the RMG could be bringing diseases to the northern population of the RMG, ergo, to Aringuv, which poses an increased danger of transboundary harm. As the RMG has "*rarely*"[77] been sighted in Aringuv, their migration pattern could alter, and the possibility of sighting the population again in Aringuv's territory is much higher, as is the risk of damage that they could be bringing.

[76] https://dx.doi.org/10.2305/IUCN.UK.2020-3.RLTS.T39999A176396749.en: Mountain Gorilla, Gorilla beringei ssp. beringei. https://www.iucnredlist.org/. (Type in the search bar "Mountain Gorilla" and click on the first and only option) (2020).

[77] R¶9.

CONCLUSION AND PRAYER FOR RELIEF

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

1. In a procedural matter, Replomuté's failed to conduct and prepare an EIA with respect to the proposed oil extraction activities and thus violates international law,
2. In a substantive matter, the actions of Replomuté with respect to the proposed oil extraction activities in the DRI violate international law.

RESPECTFULLY SUBMITTED,

AGENTS FOR THE APPLICANT.