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28TH STETSON INTERANTIONAL ENVIRONMENT MOOT COURT COMPETITION,
2023

BEFORE
THE INTERNATIONAL COURT OF JUSTICE
LA COUR INTERNATIONALE DE JUSTUCE
AT THE PEACE PALACE,



THE HAGUE, NETHERLANDS

General List No. 303, YEAR 2023

CONCERNING QUESTIONS RELATING TO MOUNTAIN
GORILLAS AND IMPACT ASSESSMENT

ARINGUV
(APPLICANT)

V.

REPLOMUTÉ
(RESPONDENT)

-WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT-

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- *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.* 32

- *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*. 33
- *Reports of Judgement, Advisory Opinions and Order About Construction of a Road in Costa Rica along the San Juan River, 16 December 2015, P. 65*.30
- *South Dakota v Dole, 483 U.S. 203, 107 S. Ct. 2793, 97 L. Ed. 2d 171, 1987 U.S.* 39
- *National Federation of Independent Business v. Sebelius, 567 U.S. 519, 132 S.Ct. 2566, 183 L.Ed.2d 450, 2012 U.S.* 39

UN DOCUMENTS AND OTHER INTERNATIONAL DOCUMENTS

- *Articles on Responsibility of States for Internationally Wrongful Acts, art. 5, G.A. Res. 56/83, 2001 (Dec. 12, 2001)*. 23, 35 36, 38, 41
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- *International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, in Yearbook of The International Law Commission, 2001, Vol. II, Part Two, p. 152, ¶. (4)*. 19, 31
- *International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in Yearbook of the International Law*

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ESSAYS, ARTICLE AND JOURNALS

- 34 Andrea B. Taylor & Michele L. Goldsmith, Gorilla Biology: A Multidisciplinary Perspective 1 (2002). 20

- DR. C. Mark Pearson, THE SEVEN STEPS OF OIL AND NATURAL GAS EXTRACTION (2022). 20

- Cameron A. Duquette, Indirect Effects of Energy Development in Grasslands, 2017. 20

- Jena. R. Hickey et al., Gorilla beringei ssp. beringei, Mountain Gorilla, 2018 IUCN. 20

- Michael B. J. Harfoot et al., *Present and Future Biodiversity Risks from Fossil Fuel Exploitation*, 11 Conserv. 1 (2018). 21

- Jean N. Namugize, *Preliminary Environmental Impact Assessment of Geothermal Exploration and Development in Karisimbi, Rwanda*, 28 Conserv. 669 (2011). 21

- Mahmoud Fard Kardel, Comparative Concession Contracts in The Gas and Oil Industries Globally, 14 J. Comp. L 244 (2019). 22
- Luisa I. Rabanal et al., *Oil Prospecting and Its Impact on Large Rainforest Mammals in Loango National Park, Gabon*, 143 Biol. Conserv. 1017 (2010). 24
- Thomas M. Butynski & Jan Kalina, *Gorilla Tourism: A Critical Look* 294-313 (1998). 24
- The John A. Dutton e-Education Institute, *EARTH 109: Fundamentals of Shale Energy Development: Geology, Hydraulic Fracturing, and Environmental, Geopolitical and Socio-economic Impacts: Well Pad Development* 24
- David P. Watts, *Effects of Mountain Gorilla Foraging Activities on The Productivity of Their Food Plant Species*, 25 Afr. J. Ecol. 155 (1987). 25
- Gustavo Palacios et al., *Human Metapneumovirus Infection in Wild Mountain Gorillas, Rwanda*, 17 Emerg. Infect. Dis. 711 (2011). 25
- Rosie Woodroffe, *Managing Disease Threats to Wild Mammals*, 2 Anim. Conserv. 185 (1999). 25
- Jude C. Dike, *Does Climate Change Mitigation Activity Affect Crude Oil Prices? Evidence from Dynamic Panel Model*, 2014 J. Energy 9 (2014). 27
- Environment and Climate Change Canada, National Inventory Report 1990–2015: Greenhouse Gas Sources and Sinks in Canada, *Statistics*. 28

- McKinsey & Company, Pathways to an Energy and Carbon Efficient Russia
..... 28
- Statistics Norway, Emissions to air, *Statistics*. 28
- James H. Thorne et al., *Alternative Biological Assumptions Strongly Influence Models of Climate Change Effects on Mountain Gorillas*, 4 *ESA J.* 1 (2013). 28
- Daniel John McGahey et al., *Investigating Climate Change Vulnerability and Planning for Adaptation: Learning from A Study of Climate Change Impacts on The Mountain Gorilla in The Albertine Rift*, 5 *J. Nat. Sci.* 10 (2013). 29
- Elham Shabahat, *Rwandan People and Mountain Gorillas Face Changing Climate Together*, MONGABAY, (2018). 29
- Andrew J. Plumptre, et al., *Transboundary Conservation in The Greater Virunga Landscape: Its Importance for Landscape Species*, 134 *Biol. Conserv.* 279 (2007).
..... 31
- World Bank, GNI (current US\$) - Uganda (2023). 40
- UGANDA BUREAU OF STATISTICS, Uganda Government Spending (last visited Nov. 06, 2023). 40

BOOKS

- Håvard Devold, *Oil and Gas Production Handbook an Introduction to Oil and Gas Production, Transport, Refining and Petrochemical Industry 4* (3rd ed. 2013).
..... 24
- Allan Kenneth Birabi, *Managing Transnational UNESCO World Heritage Sites in Africa* 83-103 (2023). 32

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TABLE OF ABBREVIATIONS

1.	The DRI: The Democratic Republic of Ibirunga
2.	&: And
3.	RSIWA: Responsibility of States for Internationally Wrongful Acts
4.	Art.: Article
5.	CBD: Convention on Biological Diversity
6.	CMS: Convention on Migratory Species
7.	EIA: Environmental Impact Assessment
8.	VCLT: Vienna Convention on the Law of Treaties
9.	NGO: Non-governmental organization
10.	UNFCCC: United Nations Framework Convention on Climate Change
11.	USD: United States dollar
12.	GNI: Gross National Income
13.	R: Stetson Record
14.	ICJ: International Court of Justice
15.	¶: Paragraph
16.	Vol: Volume
17.	Pmbl: Preamble
18.	P: Page
19.	U.N.T.S.: United Nations Treaty Series

20.	Doc: Document
21.	No.: Number
22.	IUCN: International Union for Conservation of Nature and Natural Resources
23.	UNESCO: United Nations Educational, Scientific and Cultural Organization
24.	ICL: International Customary Law

QUESTIONS PRESENTED

I.

**WHETHER REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW WITH RESPECT
TO THE OIL-ACTIVITIES AND THE PREPARATION OF AN EIA,**

II.

**WHETHER REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW
WITH RESPECT TO THE COERCING THE DRI
TO COMMIT INTERNATIONALLY WRONGFUL ACT.**

STATEMENT OF JURISDICTION

In accordance with *Article 40 of the Statute of the ICJ*, the sovereign state of central Africa (Aringuv) and the sovereign state of Europe (Replomuté) have submitted to the ICJ by Special Agreement, questions concerning their differences relating to oil-activities and preparation of an EIA conflict in Annex A, including the Clarifications. The parties transmitted a copy of the Special Agreement to the Register of the ICJ on 16 June 2023.

The Registrar of the Court, in accordance with Article 26 of the Rules of Court, addressed a notification of receipt of the Special Agreement to the 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 judgement on the questions presented in this matter.

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

SUMMARY OF FACTS

Background

The Democratic Republic of Ibirunga (DRI) is a low-income coastal sovereign state in central Africa (R¶1). Aringuv is a low-middle-income sovereign state in central Africa that shares eastern border with the DRI. Aringuv's major industries are hospitality and wildlife tourism, including Mountain gorilla tourism (R¶2). Replomuté is a high-income sovereign state in Europe (R¶3).

Replomuté's oil activities in the DRI

From 1983 to 2020, the Lenoir Corporation conducted oil exploration activities in the DRI in accordance with the terms of the 1981 DRI-Replomuté agreement (R¶18). Its operations conducted in the southern population of *the Royal Mountain Gorilla's* habitat (R¶17). In 2017, Melanie Waitz of the Green Path Party was elected president in Aringuv. He enforced the green-platform campaign and expressed concern about Replomuté's oil activities (R¶25) and they conducted an EIA by the DRI's national laws, and *the Algiers Convention* focused on the impacts on nearby human populations (R¶17). But Aringuv rebutted that Replomuté must conduct an EIA because 1) *Espoo Convention Article 5 and 6.3* require an EIA about the significant adverse transboundary impact, 2) an EIA requirement mandated by *the Revised Algiers*, 3) *Article 4.1(f) of the UNFCCC* requires an EIA since oil-activities have adverse impact on the environment (R¶27).

Replomuté also asserted that they are not Range state so there's no duties of Article III. Additionally, the southern population of *the Royal Mountain Gorilla* does not migrate across boundaries and therefore oil extraction will not have a transboundary impact to *the Royal Mountain Gorilla* (R¶30). In response of this argument, Aringuv claimed that Replomuté violate *CMS* because 1) their oil extraction activities will likely to endanger *the Royal Mountain Gorilla*, 2) *the Royal Mountain Gorilla* is considered as the migratory species by *CMS* and therefore the DRI have the duties to conserve *the Royal Mountain Gorilla* habitat under *CMS*, 3) the DRI also have to strictly conserve for *the Royal Mountain Gorilla* according to the Gorilla Agreement Article III, paragraph 4 (R¶29, 31).

Revoke of the binding arbitration

In 2012, General Mina became the president by military coup in the DRI. He demanded a \$50 million (USD) fund to compensate the DRI's environmental and societal impacts. Replomuté invoked the mandatory arbitration provision of the DRI-Replomuté agreement (R¶22). As a result, the DRI had to permit the oil activities or be subject to more than \$825 million (USD) in penalties (R¶23). Aringuv asserted that Replomuté is coercing the DRI to violate *the Gorilla Agreement* under *CMS* and that constitutes internationally wrongful act (R¶29). On 22 May 2022, the Aringuv Minister called the threat of the \$825 million (USD) arbitral penalty “colonial extortion (R¶34).”

Diplomatic exchanges followed, but Aringuv and Replomuté failed to reach agreement. As a result, submitted their dispute to the ICJ for resolution, to determine whether Replomuté's preparation of an EIA and the oil activities in the DRI violate international law.

SUMMARY OF ARGUMENTS

I. Replomuté violates international law by not conducting an EIA.

An EIA is required under CBD Article 14.1(a) if a proposed project is likely to harm biological diversity, and under CMS Article 3.4(c) if likely to harm the Royal Mountain Gorilla. Furthermore, UNFCCC requires an appropriate EIA to minimize adverse effects on the Royal Mountain Gorilla. Because Replomuté is bound by CBD, CMS, and UNFCCC, Replomuté must conduct an EIA. Also, the CIL provides, *“the specific content of the environmental impact assessment required in each case, having regard to ... its likely adverse impact”*. However, Replomuté refused to do so. Therefore, Replomuté violated international law.

II. Replomuté violates international law by coercing the wrongful act.

The actions invoking the arbitration provision by Replomuté constitutes coercion under the CIL. The Responsibility of States for Internationally Wrongful Acts (RSIWA) provides: “A State which coerces another State ...: (a) ... an internationally wrongful act of the coerced State; and (b) the coercing State does so with knowledge of the circumstances of the act.” Firstly, the DRI’s acquiescence of Replomuté’s oil-activities was in violation of the Gorilla Agreement 3.2 and CMS 3.4. Second, Replomuté was aware of the DRI's violation. Therefore, the actions invoking the arbitration provision by Replomuté is coercion.

ARGUMENTS ADVANCED

1. Replomuté violates international law by not conducting an EIA.

1. Conventional Law

i. Replomuté's failure to conduct an EIA violates the CBD Article 14.1(a).

CBD Article 14.1(a) provides: "Each Contracting Party...shall: (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity..." If a proposed will likely significantly adversely affect biological diversity, the party who proposed the project must conduct EIA.

a. Replomuté is bound by CBD Article 14.1(a).

CBD Article 4(b) provides: "except as otherwise expressly provided in this Convention, the provisions of this Convention apply ... [i]n the case of processes and activities ... within the area of its national jurisdiction or beyond the limits of national jurisdiction". Unless expressly limited, the provisions of the CBD apply to activities beyond a contracting party's jurisdiction. As there is no limit on jurisdictional scope in CBD Article 14.1(a), Replomuté's oil activities in the DRI are bound by CBD Article 14.1(a).

Furthermore, VCLT Article 31.1 provides: "A treaty shall be interpreted ... in accordance with the ordinary meaning ... and ... its object and purpose". According to CBD Article 14.1(a), the ordinary meaning of "its proposed projects" is any proposed project carried out by the contracting party. The phrase "its proposed projects" has no unspoken limitation. The

CBD Preamble affirms this: “the conservation of biological diversity is a common concern of humankind ...” And that also provide: “Nothing that it is vital ... significant reduction or loss of biological diversity at source”. Given these intentions in the preamble of the CBD, “its proposed projects” of CBD Article 14.1(a) include projects that beyond national jurisdictions.

However, Replomuté would restrict the application of CBD Article 14.1(a) only to proposed projects *within* a Party’s own territory¹. Under VCLT Article 2.1(d), this constitutes a reservation: a “statement ... made by a State ... that purports to exclude or to modify the legal effect of certain provisions ... in their application to that State.” But CBD Article 37 prohibits reservations: “No reservations may be made to this Convention.”.

Then, CBD Article 14.1(a) governs activities conducted both within a party’s national jurisdiction *and without*, including Replomuté’s oil activities in the DRI.

ii. Replomuté’s oil-activities have significant adverse effects on biological diversity.

‘Significant’ means “more than detectable but, no need to be serious or substantial”.² According to CBD Article 2, biological diversity “is variability among living organisms ...

¹ R¶28.

² International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, in Yearbook of The International Law Commission, 2001, Vol. II, Part Two, p. 152, ¶. (4).

[including] terrestrial [species].” The Royal Mountain Gorilla, as a terrestrial knuckle-walkers,³ is indubitably included in “biological diversity”. Therefore, EIA must be conducted prior to any proposed project that may significantly adversely affect the royal mountain gorilla.

Extracting oil includes many steps: preparing the rig site, drilling, well completion, fracking.⁴ In preparing a rig site, infrastructure like well pads and access roads must be built.⁵ Building this infrastructure destroys the gorillas’ habitat.^{6,7} Moreover, oil exploration and

³ 34 Andrea B. Taylor & Michele L. Goldsmith, *Gorilla Biology: A Multidisciplinary Perspective* 1 (2002).

⁴ DR. C. Mark Pearson, THE SEVEN STEPS OF OIL AND NATURAL GAS EXTRACTION (2022),

<https://www.cred.org/seven-steps-of-oil-and-natural-gas-extraction>.

⁵ *Ibid.*

⁶ Cameron A. Duquette, *Indirect Effects of Energy Development in Grasslands*, 2017, available at

<https://www.proquest.com/dissertations-theses/indirect-effects-energy-development-grasslands/docview/1988615146/se-2>.

⁷ Jena. R. Hickey et al., *Gorilla beringei ssp. beringei, Mountain Gorilla*, 2018 IUCN., available at

<https://dx.doi.org/10.2305/IUCN.UK.2020-3.RLTS.T39999A176396749.en>.

extraction degrade, pollute, and disturb habitats,⁸ and are the main threats to mountain gorillas.⁹ Because such effects are “more than detectable”, Replomuté’s oil activities in the DRI significantly adversely affect mountain gorillas.

CBD Article 14.1(a) requires EIA of effects on biological diversity when a proposed project may likely significantly adversely affect biological diversity. But the DRI’s EIA never took into account potential effects on gorillas.¹⁰ Therefore, Replomuté must conduct an EIA on their proposed project, and their refusal to do so violates international law.

b. Replomuté’s failure to conduct an EIA violates the CMS Article 3.4(c).

i. Replomuté is a Range State of the Royal Mountain Gorilla.

CMS Article 3.4(c) imposes obligations on parties that are Range States of a migratory species listed in Appendix I.¹¹ The Royal Mountain Gorilla is a migratory species listed in CMS

⁸ Michael B. J. Harfoot et al., *Present and Future Biodiversity Risks from Fossil Fuel Exploitation*, 11 *Conserv.* 1 (2018).

⁹ Jean N. Namugize, *Preliminary Environmental Impact Assessment of Geothermal Exploration and Development in Karisimbi, Rwanda*, 28 *Conserv.* 669 (2011).

¹⁰ R¶17.

¹¹ Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, 1651 U.N.T.S. 333 [hereinafter CMS].

Appendix I¹². Therefore, a Range State of the Royal Mountain Gorilla must comply with CMS.

A ‘Range State’ is “any State that *exercises jurisdiction* over any part of the range of that migratory species.”¹³ Jurisdiction is: “A geographic area within which political . . . authority may be exercised.”¹⁴ Political authority is: “The power vested in a . . . body of persons exercising any function of the state.”¹⁵ The DRI- Replomuté concession agreement¹⁶ permits Lenoir Corporation to install and maintain machinery and to install a pipeline and extract oil.¹⁷ Specifically, the concession agreement authorizes Lenoir Corporation to exert comprehensive control over the entire operation. A typical concession contract would permit Replomuté to decide “to explore new fields, employment of personnel, price setting for oil, and transportation of produced oil”¹⁸ in regions covered by agreement.¹⁹ All of this constitutes political authority

¹² R¶9.

¹³ *Ibid.*

¹⁴ **Jurisdiction Definition**, *Black’s Law Dictionary (11th ed. 2019)*, available at Westlaw.

¹⁵ **Political power Definition**, *Black’s Law Dictionary (11th ed. 2019)*, available at Westlaw.

¹⁶ R¶17.

¹⁷ Mahmoud Fard Kardel, *Comparative Concession Contracts in The Gas and Oil Industries Globally*, 14 J. Comp. L 244 (2019).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

exercised in the area granted to Lenoir by the DRI. Therefore, Lenoir Corporation exercises jurisdiction over a part of the range of the Royal Mountain Gorilla.

Lenoir is a company wholly owned by Replomuté.²⁰ Under the Article of RSIWA, when Lenoir Corporation acts, the act is attributable to Replomuté.²¹ Therefore, when Lenoir Corporation exercises territory in the DRI, in fact Replomuté exercises that jurisdiction.

ii. Replomuté’s oil-activities are in violation of CMS Article 3.4(c) by endangering the Royal Mountain Gorillas.

CMS Article 3.4(c) requires Range States “to prevent, reduce or control factors that are endangering or are likely to further endanger the species, ...”²² As shown above, Replomuté is a Range State and therefore, under CMS, must prevent factors that endanger gorillas.²³ But instead, Replomuté *endangers* the southern population of the Royal Mountain Gorilla.

Replomuté’s oil activities involves several factors that endangers the southern population of the Royal Mountain Gorilla.

Oil & Gas drilling

²⁰ R¶17.

²¹ Articles on Responsibility of States for Internationally Wrongful Acts, Art. 5, G.A. Res. 56/83, 2001 (Dec. 12, 2001).

²² CMS, *supra* note 1, Art 3(4)(c).

²³ *Ibid.*

Oil exploration includes prospecting, seismic and drilling activities that take place before the development of a field is finally decided.²⁴ According to the evaluation of the impact on gorillas, the seismic activities that precede oil extraction can produce physiological responses to mammals such as temporary or persistent damage to their auditory systems. In the long term, the Royal Mountain Gorilla species may even be adversely affected by a decrease in survival probability.²⁵

Transportation & Service roads

Oil activities includes the construction of roads, pipelines, and utility and service lines. The network of roads and corridors could restrict the movement of gorillas—a migratory species.²⁶ Gorillas that do not avoid such a construction corridor during building risk of exposure to human-communicable diseases and signs of disturbance.

Logging & Wood harvesting

After the exploration work, sites are next prepared for drilling: constructing a well pad. In preparing this site,²⁷ trees are cut down to the extent needed for the well to be

²⁴ Håvard Devold, *Oil and Gas Production Handbook an Introduction to Oil and Gas Production, Transport, Refining and Petrochemical Industry 4* (3rd ed. 2013).

²⁵ Luisa I. Rabanal et al., *Oil Prospecting and Its Impact on Large Rainforest Mammals in Loango National Park, Gabon*, 143 *Biol. Conserv.* 1017 (2010).

²⁶ Thomas M. Butynski & Jan Kalina, *Gorilla Tourism: A Critical Look* 294-313 (1998).

²⁷ The John A. Dutton e-Education Institute, *EARTH 109: Fundamentals of Shale Energy*

drilled. Mountain gorillas feed primarily on leaves from the dense herbaceous forests found in much of their habitat.²⁸ Therefore, this process degrades the habitat of the mountain gorilla.

Invasive non-native/alien species/diseases

Because apes are genetically related to humans, they are susceptible to the same pathogens. In fact, human pathogens can cause disease in mountain gorillas.²⁹ As oil activities suddenly increase human presence in the gorilla habitats, our high genetic relatedness presents a dangerously elevated risk of disease transmission. In addition to the risk of direct exposure to infectious diseases, also human waste, urine, and litter are present in the forest but difficult to manage. These all serve as potential avenues for human-gorilla pathogen transmission.³⁰

Any one or a combination of these threats could abruptly change the status of the

Development: Geology, Hydraulic Fracturing, and Environmental, Geopolitical and Socio-economic Impacts: Well Pad Development,

<https://www.e-education.psu.edu/earth109/node/941> (accessed Nov. 10, 2023).

²⁸ David P. Watts, *Effects of Mountain Gorilla Foraging Activities on The Productivity of Their Food Plant Species*, 25 Afr. J. Ecol. 155 (1987).

²⁹ Gustavo Palacios et al., *Human Metapneumovirus Infection in Wild Mountain Gorillas, Rwanda*, 17 Emerg. Infect. Dis. 711 (2011).

³⁰ Rosie Woodroffe, *Managing Disease Threats to Wild Mammals*, 2 Anim. Conserv. 185 (1999).

species. Therefore, oil-extraction activities introduce factors that endanger the Gorillas, which violates CMS Article 3.4(c).

Any one or a combination of these threats could abruptly change the status of the species. Therefore, oil-extraction activities introduce factors that endanger the Gorillas, which violates CMS Article 3.4(c).

iii. Replomuté must conduct an EIA including the impact on *the Royal Mountain Gorillas*.

Before signing the oil agreement, the DRI conducted EIA,³¹ but the DRI is insufficient under the CMS, because it failed to investigate potential impacts on Royal Mountain Gorillas and their habitat.

Before the pipeline was built, “NGOs called on the Lenoir Corporation to abandon the project, emphasizing that the project’s footprint would encompass the primary habitat of the southern population of the Royal Mountain Gorilla.”³² Though the NGO’s request of Replomuté rested on Replomuté’s authority to control the project, Replomuté still pushed the project forward.

Replomuté refused to conduct EIA despite the likelihood of harm to the gorillas and their habitat. Thus, Replomuté’s refusal violates CMS Article 3.4(c).

³¹ R¶17.

³² R¶20&21.

c. Replomuté’s failure to conduct an EIA violates the UNFCCC.

States party to the UNFCCC must “ensure that activities within their . . . control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”³³ The UNFCCC develops this principle in Article 4.1(f): “All Parties . . . shall . . . employ appropriate methods, for example impact assessments . . . to minimiz[e] adverse effects . . . on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change.”

i. Replomuté’s oil-activities are the projects adapt to climate change.

Replomuté’s oil activities are “projects or measures undertaken . . . to mitigate or adapt to climate change.” Replomuté seeks to extract and transport crude oil because it is less expensive than purchasing oil on the commodity market. Global attempts to lessen climate change have increased the cost of crude oil.³⁴ Therefore, obtaining a cheaper source of crude oil is an adaptation to climate change. Therefore, Replomuté must employ appropriate methods.

³³ United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107. Pmb1. [hereinafter UNFCCC].

³⁴ Jude C. Dike, *Does Climate Change Mitigation Activity Affect Crude Oil Prices? Evidence from Dynamic Panel Model*, 2014 J. Energy 9 (2014).

ii. Replomuté did not employ appropriate methods to minimize adverse effects on the Royal Mountain Gorilla.

Emissions resulting from the extraction of oil and gas are significant. Oil and gas extraction constitute a significant part of a State's domestic emissions in oil-exporting countries such as Canada (~20 percent of national emissions)³⁵, Russia (~20 percent)³⁶, and Norway (~28 percent)³⁷. Then, emissions from oil extraction cause climate change.

Climate change caused by oil extraction in the range of the mountain gorillas will express itself in increased temperatures and modified rainfall patterns.³⁸ These conditions

³⁵ Environment and Climate Change Canada, National Inventory Report 1990–2015:

Greenhouse Gas Sources and Sinks in Canada, *Statistics*,

<https://www.ec.gc.ca/ges-ghg/default.asp?lang=En&n=662F9C56-1> (accessed Nov. 4, 2023).

³⁶ McKinsey & Company, Pathways to an Energy and Carbon Efficient Russia (accessed Nov. 4, 2023).

<http://www.mckinsey.com/business-functions/sustainability-and-resource-productivity/our-insights/pathways-to-an-energy-and-carbon-efficient-russia>.

³⁷ Statistics Norway, Emissions to air, *Statistics*,

<http://ssb.no/en/natur-og-miljo/statistikker/klimagassn> (accessed Nov. 3, 2023).

³⁸ James H. Thorne et al., *Alternative Biological Assumptions Strongly Influence Models of Climate Change Effects on Mountain Gorillas*, 4 *ESA J.* 1 (2013).

will cause changes in food availability and habitat quality.³⁹ Land use patterns have changed to address food security concerns, encroachment on natural habitats, decreased access to clean water outside of gorilla habitats, and increased socio-political instability. All of these factors increase the human presence in parks and thus threaten gorilla conservation⁴⁰

iii. Replomuté must conduct an EIA which formulated and determined nationally.

UNFCCC Article 4.2(d) defines “appropriate methods” as those “carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information.”⁴¹ But Replomuté refused to conduct EIA

³⁹ Daniel John McGahey et al., *Investigating Climate Change Vulnerability and Planning for Adaptation: Learning from A Study of Climate Change Impacts on The Mountain Gorilla in The Albertine Rift*, 5 J. Nat. Sci. 10 (2013).

⁴⁰ Elham Shabahat, *Rwandan People and Mountain Gorillas Face Changing Climate Together*, MONGABAY, (2018), available at <https://news.mongabay.com/2018/06/rwandan-people-and-mountain-gorillas-face-changing-climate-together>.

⁴¹ UNFCCC Art 4.2(d).

at all.⁴² Lacking “the best available scientific information and assessment on climate change,” Replomuté *cannot* know which measures are appropriate. Therefore, Replomuté cannot employ appropriate measures to minimize adverse effects on the environment.

Thus, Replomuté’s refusal to conduct EIA or abandon its activities violates UNFCCC Article 4.1(f).

2. Customary International Law

International customary law is “a general practice accepted as law.”⁴³ That is, international custom has two elements: ‘a general practice of states,’ which ‘states follow because they believe it is a legal obligation’.⁴⁴

a. Replomuté violated the duty to prevent significant transboundary harm.

Transboundary harm is “damage to the environment of other States or of areas beyond the limits of national jurisdiction.”⁴⁵ “Significant” means “more than detectable, but no need to

⁴² R¶28.

⁴³ Statute of the International Court of Justice, June 26, 1945, 3 Bevens 1179 Art.38(1)(b).

⁴⁴ *Ibid.*

⁴⁵ Reports of Judgement, Advisory Opinions and Order About Construction of a Road in Costa Rica along the San Juan River, 16 December 2015, P. 65.

be serious or substantial”.⁴⁶

Given evidence from similar ecosystems, Replomuté’s oil activities in the DRI are likely to cause significant adverse effects on the Royal Mountain Gorillas in the DRI. In the case of the Virunga Conservation Area, oil activities and pipeline construction adversely affected Virunga’s ecosystem. This area was initially intended to protect mountain gorillas in the savannas of Virunga,⁴⁷ but oil activities introduced invasive species into the habitat, which greatly harming Virunga’s fragile ecosystem.⁴⁸

The customary rule of the principle of prevention arises from “the due diligence that is required of a State in its territory,”⁴⁹ viz., no State may “allow knowingly its territory to be used

⁴⁶ International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, in Yearbook of The International Law Commission, 2001, Vol. II, Part Two, P. 152, ¶. (4).

⁴⁷ Andrew J. Plumptre, et al., *Transboundary Conservation in The Greater Virunga Landscape: Its Importance for Landscape Species*, 134 Biol. Conserv. 279 (2007).

⁴⁸ Allan Kenneth Birabi, *Managing Transnational UNESCO World Heritage Sites in Africa* 83-103 (2023).

⁴⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, pp. 55, ¶. 101.

for acts contrary to the rights of other States.”⁵⁰ The Court holds:

A State must, before embarking on an activity having the potential adversely to affect the environment of another State, ascertain if there is a risk of significant transboundary harm, which would trigger the requirement to carry out an environmental impact assessment.⁵¹

The principle of prevention prohibits a State to conduct activities “in any area under its jurisdiction, causing significant damage to the environment of another State.”⁵² Therefore, Replomuté is obligated to prevent their oil activities that cause significant damage to *the Royal Mountain Gorilla* of the DRI.

b. Replomuté must conduct an EIA including the impact on the Royal Mountain Gorilla.

⁵⁰ *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, P. 22.*

⁵¹ *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. 706–707, ¶. 104.*

⁵² *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, pp. 55–56, ¶. 101.*

As stated above, Replomuté has a duty of prevention and this “ may now be considered a requirement under general international law to undertake an environmental impact assessment where [a proposed activity may have] a significant adverse impact in a transboundary context.”⁵³ Under such a condition, “due diligence, and the duty of vigilance and prevention” all require an EIA.⁵⁴ Thus, the Court recognizes the principle of prevention as “part of the corpus of international law relating to the environment.”⁵⁵

About the content of an EIA, each State must:

Determine in its domestic legislation or in the authorization process for the project, the specific content of the environmental impact assessment required in each case, having regard to *the nature and magnitude of the proposed development and its likely adverse impact on the environment* as well as to the need to exercise due diligence in conducting such an assessment.⁵⁶

⁵³ *Pulp Mills*, p. 83, ¶. 204.

⁵⁴ *Ibid.*

⁵⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, P. 242, ¶. 29.

⁵⁶ *Pulp Mills*, pp. 83–84, ¶. 205.

That is, an EIA must assess any aspect of the environment that a proposed development is likely to impact adversely. In our case, EIA was never conducted including the potential impacts to gorillas or their habitat.

Moreover, “environmental impact assessment must be conducted [not only] prior to the implementation of a project,” but “*continuous monitoring* of its effects on the environment shall be undertaken” “once operations have started and, where necessary, *throughout the life of the project.*”⁵⁷ Since the Royal Mountain Gorilla is classified as critically endangered on the IUCN Red List of Threatened Species, it is necessary enough to monitor throughout the life of Replomuté’s oil project.

Given this, Replomuté must conduct EIA not only of effects on the environment in general, but on gorillas and their habitats in particular, and must continuously monitor the effects throughout the life of the project. Replomuté’s refusal to do so violates international custom.

II. Replomuté violates international law by coercing the wrongful act and therefore must cease the oil-extraction project.

The DRI has international obligations to protect the Royal Mountain Gorillas according to the Gorilla Agreement Article 3.2(a). However, the DRI violated the Gorilla Agreement by acquiescing the oil activities.⁵⁸ In addition, Replomuté is responsible for coercion under the

⁵⁷ *Ibid.*

⁵⁸ R¶23.

Article 18 of Responsibility of States for Internationally Wrongful Acts (RSIWA). “Coercion” means “conduct which forces the will of the coerced State, ... giving it no effective choice but to comply with the wishes of the coercing State.”⁵⁹ Replomuté’s invocation of the mandatory arbitration provision in binding arbitration—which ordered the DRI not to breach the agreement with Replomuté—constitutes coercion, which makes Replomuté accountable for the DRI’s wrongs.

1. Customary International Law

a. The DRI is committing internationally wrongful act by failing to comply with Gorilla Agreement Article 3.2(a).

i. The DRI is bound by both Gorilla Agreement 3.2(a) and CMS Article 3.4(c).

Gorilla Agreement Article 3.2(a) requires Parties to “accord the same strict conservation for gorillas in the range as provided for under CMS article 3.4.” CMS Article 3.4 provides: “Parties that are Range States of a migratory species listed in Appendix I shall endeavor ... to prevent, reduce or control factors that are endangering or are likely to further endanger the species.”

“The Royal Mountain Gorilla is included in Appendix I of the CMS.”⁶⁰ And the DRI is a

⁵⁹ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in Yearbook of the International Law Commission, 2001, Vol. II, Part Two, P. 69, ¶. (2).

⁶⁰ R¶9.

Range State of the Royal Mountain Gorilla. CMS Article 1.1.(h) defines “Range State” as “any State that exercises jurisdiction over any part of the range of that migratory species.” The habitat of the southern population of Royal Mountain Gorilla is a national park of the DRI, which is an area over which the DRI has jurisdiction. Therefore, the DRI must reduce the factors endangering the Royal Mountain Gorilla.

ii. The DRI failed to protect the Royal Mountain Gorilla.

The arbitral panel ordered the DRI to permit the oil activities or to pay more than US\$825 million in penalties. As a result, the DRI had no choice but to permit the Replomuté to proceed with its oil activities.

Replomuté’s oil activities endanger the Royal Mountain Gorilla species. As the DRI is a range state of the Royal Mountain Gorilla, they must prevent and reduce risks to the species. However, the DRI acquiesced to Replomuté’s oil activities, which endanger the gorillas in the DRI. Then, the DRI violated the Gorilla Agreement Article 3.2(a).

b. Replomuté violates Customary International Law by coercing the DRI with knowledge of the DRI’s wrongful act.

Responsibility of States for Internationally Wrongful Acts (RSIWA) Article 18 provides that ‘a State is responsible for an act that it coerces another State to commit, if the conduct of the coerced State is wrongful, and the coercing State coerces, knowing the circumstances of the act.’

First, the DRI's consent to Replomuté's oil activities violated the Gorilla Agreement 3.2 and CMS 3.4. Second, Replomuté forced the DRI to follow the agreement, knowing that it violates the Gorilla Agreement and CMS. Therefore, Replomuté's invocation of the arbitration provision constitutes coercion.

i. Replomuté was aware of the circumstances of the DRI's violation of the Gorilla Agreement.

“General Mina declared that in light of the Gorilla Agreement, the DRI was compelled to withdraw from the 1981 DRI-Replomuté agreement.”⁶¹ To “declare” means: “To make known or state publicly, formally, or in explicit terms; to assert, proclaim, announce or pronounce by formal statement.”⁶² This means, the DRI formally notified Replomuté that the DRI-Replomuté Agreement violates the Gorilla Agreement.

ii. Invoking the arbitration provision by Replomuté is economic coercion to the DRI.

Economic pressure is coercion.

“Coercion” means “conduct which forces the will of the coerced State, ... giving it no effective choice but to comply with the wishes of the coercing State. Moreover, the coercing State

⁶¹ R¶22.

⁶² *Oxford English Dictionary*, definition of “Declare” (Oxford 3d ed. 1989).

must coerce the very act which is internationally wrongful.”⁶³ The RSIWA with commentary also mentions that economic pressure is coercion: “coercion could [] take other forms, e.g., serious economic pressure, provided that it is such as to deprive the coerced State of any possibility of conforming with the obligation breached.”⁶⁴

The arbitral panel’s order is that the DRI must be subject to more than \$825 million in penalties or permit Replomuté to proceed with its oil activities. Since the DRI shall not endanger the Royal Mountain Gorilla under the article of CMS 3.4(c), if the DRI permits Replomuté to proceed with the oil-related activities in the DRI, it violates the Gorilla Agreement. However, the penalties were too large for the DRI to acquiesce the concession agreement. This means, the DRI could make a choice to comply with the Gorilla agreement by not permitting oil-related activities with paying the penalties. Therefore, the DRI had no choice but to permit the oil activities, which is a violation of the Gorilla Agreement.

In conclusion, invoking the arbitration provision by Replomuté is economic coercion to the DRI. Thus, the circumstance that Replomuté made the DRI to permit the oil activities is economic coercion.

⁶³ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in Yearbook of the International Law Commission, 2001, Vol. II, Part Two, P. 69, ¶. (2).

⁶⁴ Ibid. P. 70, ¶. (3).

\$825 million (USD) of penalty is economic coercion to the DRI.

U.S. case law specifies the economic coercion. In *South Dakota v Dole*, the Court holds: “Our decisions have recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which ‘pressure turns into compulsion’.”⁶⁵ The Court provides that “the State’s loss of only 5% of federal funds ... is not so coercive as to pass the point at which pressure turns into compulsion.”⁶⁶ However, in *National Federation of Independent Business v Sebelius*, federal Medicaid aid accounts for over 20 percent of the average State’s total budget. The Court holds, “The threatened loss of over 10 percent of a State’s overall budget is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion.”⁶⁷ Therefore, the court decided that “the threat to withhold a large amount of funds from one program ‘leaves the States with no real option but to acquiesce in a newly created program’” is unconstitutionally coercive.⁶⁸

⁶⁵ *South Dakota v Dole*, 483 U.S. 203, 107 S. Ct. 2793, 97 L. Ed. 2d 171, 1987 U.S.

⁶⁶ *Ibid.*

⁶⁷ *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 132 S.Ct. 2566, 183 L.Ed.2d 450, 2012 U.S.

⁶⁸ *Ibid.*

Thus, a threat of losing more than 10 percent of a State's budget is economic coercion: the State has no real option but to obey the party imposing the coercion. A penalty greater than 10 percent of the DRI's budget constitutes economic coercion.

The DRI is a low-income country with an agrarian economy. The DRI's GNI-per-capita is \$820 for fiscal year 2020/21; therefore total GNI is US\$41 billion.⁶⁹

These conditions resemble those of Uganda. Uganda's GNI for fiscal year 2020/21 was US\$36.97 billion.⁷⁰ And in 2020, the State of Uganda spent \$3.48 billion.⁷¹ Thus, in 2020, Uganda's government spent 9.41 percent of Uganda's GNI. Since the DRI and Uganda are on very similar national conditions, suppose the DRI's government spending was about 10 percent of the DRI's total GNI. Given the DRI's total GNI for 2020 of US\$41 billion, government spending would be about US\$4.1 billion.

Then, an arbitration penalty of US\$825 million is about 21.7 percent of the DRI's

⁶⁹ R¶1.

⁷⁰ World Bank, GNI (current US\$) - Uganda (2023), *available at*
<https://data.worldbank.org/indicator/NY.GNP.MKTP.CD?locations=UG>.

⁷¹ UGANDA BUREAU OF STATISTICS, Uganda Government Spending (last visited Nov. 06, 2023), *available at*
<https://tradingeconomics.com/uganda/government-spending>.

government spending. And 21.7 percent far exceeds 10 percent. Therefore, the arbitration penalty of \$825 million constitutes economic coercion by Replomuté against the DRI.

When General Mina asked to compensate the DRI for environmental and societal impacts because 1981 DRI-Replomuté agreement is a violation of the Gorilla Agreement, Replomuté had a choice to resolve this through mutual settlement, but they did not. As a result of Replomuté's invocation of the arbitration clause, the DRI could only continue to allow Replomuté's oil activities. Overall, \$825 million (USD) of penalty is economic coercion to the DRI. Thus, Replomuté is responsible for the international wrongs of the DRI.

iii. The responsibilities of coercion are cessation and reparation.

Under RSIWA, coercion requires “cessation of the wrongful act, and reparation for any injury done.”⁷² Because Replomuté is responsible for the DRI's violation of the Gorilla Agreement 3.2 and CMS 3.4, Replomuté must cease oil activities and compensate for the injuries caused by oil activities.

⁷² Ibid. P. 31, ¶. 3.(f).

CONCLUSION AND PRAYER FOR RELIEF

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

- (1) Replomuté violated international law with respect to the oil-activities in the DRI and the preparation of an EIA and
- (2) Replomuté violated international law with respect to respect to the coercing the DRI to commit internationally wrongful act

Therefore, Aringuv humbly prays that the Honorable Court shall order Replomuté to conduct a properly scoped EIA and shall order to cease the oil-activities in the DRI.

RESPECTFULLY SUBMITTED,

AGENTS OF APPLICANT