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28TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION, 2023

IN THE INTERNATIONAL COURT OF JUSTICE AT THE PEACE PALACE

THE HAGUE, NETHERLANDS



GENERAL LIST NO. 303, YEAR 2023

THE CASE CONCERNING MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

ARINGUV

(APPLICANT)

V.

REPLOMUTÉ

(RESPONDENT)

-WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT-

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TABLE OF ABBREVIATIONS

1	¶	Paragraph
2	Royal Mountain Gorilla	Gorilla
3	ICJ	International Court of Justice
4	Espoo Convention	Convention on Environmental Impact Assessment in a Transboundary Context
5	CBD	The Convention of Biological Diversity
6	CMS	The Convention on the Conservation of Migratory Species of Wild Animals
7	EIA	Environmental Impact Assessment
8	NGOs	Local and international nongovernmental organizations
9	Gorilla Agreement	Agreement on the Conservation of Gorillas and Their Habitats Gorilla Agreement
10	VCLT	Vienna Convention on the Law of Treaties
11	CIL	Customary International Law
12	ILC	International Law Commission
13	GHG	Greenhouse Gas

QUESTIONS PRESENTED

- I. Whether the Failure of Replomuté to Prepare an EIA Regarding the Oil-Related Activities Violates International Law.

- II. Whether Replomuté's Oil-Related Activities in the DRI Violate International Law.

STATEMENT OF JURISDICTION

On July 24, 2023, pursuant to Article 40(1) of the Statute of the International Court of Justice (“ICJ”), Aringuv and Replomuté have submitted to this Honorable Court by Special Agreement, questions concerning Mountain Gorillas and Impact Assessment, which includes Annex A and Clarifications, signed at Kampala, Uganda on June 16, 2023.

The Registrar, pursuant to Article 26 of the Statute of the ICJ, addressed an acknowledgement of receipt to the Parties on July 31, 2023.

The Parties have accepted the jurisdiction of the ICJ. The Parties request the Court to adjudge the merits of this matter on the basis of rules and principles of general international law, including any applicable treaties.

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

STATEMENT OF FACTS

The DRI and Aringuv are neighboring States in central Africa (R¶1) (R¶2). Replomuté is a European State (R¶3). The DRI, a low-income country, is rich in oil (R¶1). Aringuv, a lower-middle-income country, has a growing mountain gorilla tourism industry (R¶2). Replomuté, a high-income and industrialized country, is among the world's largest oil importers (R¶3).

The Royal Mountain Gorilla (“Gorilla”) is a CMS Appendix I species found only in the DRI and Aringuv (R¶9). The northern population of gorilla, occupying a transboundary national park, frequently crosses the borders between the DRI and Aringuv (R¶9).

In 1981, the DRI and Replomuté signed a concession agreement which granted the Lenoir Corporation, wholly owned and operated by Replomuté, the right to explore and extract oil from the conservation park inhabited by the southern population of the Gorilla (R¶17). The DRI conducted an environmental impact assessment (“EIA”) according to its national laws, but the EIA failed to consider the potential impacts to gorillas, gorilla habitat, or climate change (R¶17).

In February 2012, the Lenoir Corporation announced that oil extraction would begin upon anticipated completion of the pipeline (R¶20). Local and international nongovernmental organizations (“NGOs”) expressed concern to the DRI and Replomuté, regarding oil-related activities’ negative impacts, and called for the Lenoir Corporation to abandon the project (R¶21). In June 2012, upon the DRI’s request to withdraw from the Concession Agreement, Replomuté invoked the mandatory arbitration provision contained in the Concession Agreement (R¶22) and

prevailed in the arbitration (R¶23). The arbitral award ordered the DRI to allow the Lenoir Corporation's oil-related activities to proceed or be subject to a US\$825 million penalty (R¶23). Consequently, DRI acquiesced to the oil-related activities (R¶23).

From 2018 to 2019, concerned with the negative environmental impact of Replomuté's oil-related activities, Aringuv requested Replomuté to conduct an updated EIA (R¶27), to which Replomuté refused (R¶28).

SUMMARY OF ARGUMENTS

I. The failure of Replomuté to prepare an EIA regarding the oil-related activities violates international law.

First, the Lenoir Corporation's omissions are attributable to Replomuté because Replomuté exercises effective control over the Lenoir Corporation's failure to conduct an EIA.

Second, Replomuté violates its independent obligations for EIA under the Convention on Environmental Impact Assessment in a Transboundary Context (the "Espoo Convention") and customary international law ("CIL").

Third, Replomuté cannot discharge its obligations by relying on the DRI's insufficient EIA.

II. Replomuté's oil-related activities in the DRI violate international law.

First, Replomuté directly violates the CMS because Replomuté has not provided Gorilla, a CMS Appendix I species, with immediate protection. Additionally, Replomuté violates the CBD because the oil-related activities harm the DRI's environment and do not constitute a sustainable use.

Second, Replomuté is indirectly liable for the DRI's wrongful acts because Replomuté used economic pressure to coerce the DRI into violating international law and Replomuté had knowledge of the circumstances of the DRI's actions.

ARGUMENTS

I. The Failure of Replomuté to Prepare an EIA Regarding the Oil-Related Activities Violates International Law

A State entails international responsibility if (1) the conduct in question is attributable to the State under international law, and (2) the conduct is contrary to the State’s international obligations.¹ Here, Replomuté is responsible for failing to prepare an EIA for the oil-related activities because the Lenoir Corporation’s omissions are attributable to Replomuté [A], and the omissions are contrary to Replomuté’s obligations of the Espoo Convention [B] and CIL for EIA [C].

A. The Lenoir Corporation’s omissions are attributable to Replomuté

The conduct of a corporation will be attributable to a State if the State exercises “effective control” over the corporation.² The “effective control” test requires both general control of the State over the corporation and specific control of the State over the implementation of the particular act.³

Here, Replomuté exerts general control over the Lenoir Corporation, as Replomuté wholly

¹ Phosphates in Morocco (It. v. Fr.), Judgment, 1938 P.C.I.J. (ser. A/B) No. 74, at 28 (June 14); United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. Rep. 29, ¶56 (May 24).

² Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U. S.), Judgment, 1986 I.C.J. Rep. 65, ¶¶109, 115 (June 27) [hereinafter Certain Activities]; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb.), Judgment, 2007 I.C.J. Rep. 208, ¶400 (July 11).

³ Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt, ICSID Case No. ARB/04/13, Award, ¶173 (Nov. 6, 2008); Gustav F W Hamester GmbH & Co KG v. Republic of Ghana, ICSID Case No. ARB/07/24, Award, ¶179 (June 18, 2010).

owned and operated the Lenoir Corporation.⁴ Moreover, Replomuté exerts specific control over the oil-related activities, as Replomuté negotiated with the DRI to grant the Lenoir Corporation the right to explore and extract oil within the DRI.⁵ Therefore, Replomuté exercises effective control over the Lenoir Corporation’s omissions.

B. Replomuté violates its obligations for EIA under the Espoo Convention

1. Replomuté breaches its independent obligations to conduct an EIA under Article 2(3) Espoo Convention

Article 2(3) Espoo Convention provides that “the Party of origin” should undertake an EIA if the oil-related activities are likely to cause “significant adverse transboundary impacts.”⁶

a. Replomuté is the Party of origin under Article 1(ii) Espoo Convention

Article 1(ii) Espoo Convention provides that the Party of origin is the Party “under whose jurisdiction” the proposed activities are expected to be carried out.⁷ According to Article 31(1) of the Vienna Convention on the Law of Treaties (the “VCLT”),⁸ in light of the Espoo Convention’s purpose to “enhance international co-operation in assessing environmental impact in a transboundary context,”⁹ “jurisdiction” is not limited to territorial jurisdiction of the Party

⁴ Record ¶17.

⁵ *Id.*

⁶ Convention on Environmental Impact Assessment in a Transboundary Context, art. 2(3), opened for signature May 25, 1991, 1989 U.N.T.S. 309 [hereinafter Espoo Convention].

⁷ *Id.*, art. 1(ii).

⁸ Vienna Convention on the Law of Treaties, art. 31 (1), opened for signature May 23, 1969, 115 U.N.T.S. 331 [hereinafter VCLT].

⁹ Espoo Convention, *supra* note 6, Preamble.

State. If the Espoo Convention drafters intended to restrict the Party of origin to the Party States where the oil-related activities would occur, they could have explicitly used the term “territory,” as seen in Appendix IV(2) and VII(2).¹⁰

The broadened interpretation of “jurisdiction” in Article 1(ii) Espoo Convention aligns with the CIL principle of harm prevention. This principle holds that States are accountable for activities within their territory or undertaken by their nationals.¹¹

Here, Replomuté can exercise national jurisdiction over the oil-related activities, because the oil-related activities are all conducted by Replomuté nationals.¹² Therefore, as the Party of origin, Replomuté should bear an independent obligation for an EIA if the oil-related activities would cause significant transboundary harms.

b. Replomuté’s oil-related activities are likely to cause significant adverse transboundary impacts

Assessing the significance of the transboundary impacts should consider the nature of the activities listed in Appendix I and the specific criteria outlined in Appendix III of the Espoo Convention.¹³ Here, the nature, size, location and effects of Replomuté’s oil-related activities

¹⁰ *Id.*, Appendix IV(2) and VII(2).

¹¹ Trail Smelter (U.S. v. Can.), 3 R. Int’l Arb. Awards 1965 (1941); Corfu Channel Case (U.K. v. Alb.), Judgment, 1949 I.C.J. Rep. 22 (Dec. 15) [hereinafter Corfu Channel]; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 8, ¶29 (July 8) [hereinafter Nuclear Weapons]; Pulp Mills on The River Uruguay (Argentina v. Uruguay), Judgment, 2010 I.C.J. Rep. 14, ¶101 (April 20) [hereinafter Pulp Mills]; S.S. Lotus (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 92 (Sept. 7).

¹² Clarification, ¶13.

¹³ Espoo Convention, *supra* note 6, Appendix I, III.

are likely to cause significant adverse transboundary impacts.

First, according to explanatory note to the Espoo Convention, the construction of large-diameter oil pipelines in nature would increase the risk of industrial accidents, emanate volatile organic compound, contaminate water, cause changes in land use and disturb animals' habitats.¹⁴ Therefore, the construction of large-diameter oil pipelines, as listed in Appendix I of the Espoo Convention, is generally considered to carry risks of significant adverse transboundary impacts.

Second, the size of the oil pipeline would be relatively large.¹⁵ The oil pipelines in Africa, generally above 1400 km, are longer than those in other regions of the world.¹⁶

Third, the location of the oil-related activities is close to “an area of special environmental sensitivity.”¹⁷ The oil would be extracted from the national park inhabited by the southern population of Gorilla.¹⁸

Fourth, oil-related activities would have “serious effects on humans and existing use of an affected area.”¹⁹ The harmful gases emissions from wellheads, pipelines, drilling sites, compressor stations would pose air quality concerns and cause acid rain.²⁰ Possible oil spillages

¹⁴ Economic Commission for Europe, Current Policies, Strategies and Aspects of Environmental Impact Assessment in a Transboundary Context, 55 (U. N., 1996).

¹⁵ Espoo Convention, *supra* note 6, Appendix III(a).

¹⁶ Summary Table, globalenergy.org, <https://globalenergymonitor.org/projects/global-oil-infrastructure-tracker/summary-tables> (last visited Nov. 19, 2023).

¹⁷ Espoo Convention, *supra* note 6, Appendix III(b).

¹⁸ Record ¶17.

¹⁹ Espoo Convention, *supra* note 6, Appendix III(c).

²⁰ Jiang Dawei ET AL., *Elevated Atmospheric CO2 Impact on Carbon and Nitrogen Transformations and Microbial*

would cause soil acidification, resulting in the loss of soil fertility²¹ and a 60% reduction in household food security.²²

Therefore, Replomuté's oil-related activities are likely to cause significant adverse transboundary impacts. However, only the DRI conducted one EIA.²³ Therefore, Replomuté breaches its independent obligations to conduct an EIA under Article 2(3) of the Espoo Convention.

Respondent may argue that the adverse impacts of Replomuté's oil-related activities are not transboundary. However, Article 1(vii) of the Espoo Convention provides that transboundary impacts include not only physical effects on flora, fauna, soil, air, water and climate, but also effects on socio-economic conditions resulting from alterations to those factors.²⁴

Here, Replomuté's oil-related activities can bring negative impacts on the socio-economic conditions of Aringuv's gorilla tourism. *Trail Smelter* tribunal regarded farmers' economic losses, resulting from sulfur dioxide emissions from the smelter, as significant transboundary harm.²⁵ Similarly here, the negative impacts of the oil-related activities, including water

Community in Replicated Wetland, 8 *Ecol Processes*, 9, 57, (2020) (harmful gas emission emanating from pipelines causes acid rain).

²¹ Zhao Yanan ET AL., *The Effects of Crude Oil on Microbial Nitrogen Cycling in Coastal Sediments*, 139 (*Environment Int.* 2020).

²² Ordinioha B, Brisibe S, *The Human Health Implications of Crude Oil Spills in the Niger Delta, Nigeria: An Interpretation of Published Studies*, 6 (54 *Nigerian Medical Journal*, 2013).

²³ Record ¶17.

²⁴ Espoo Convention, *supra* note 6, art. 1(vii).

²⁵ *Trail Smelter*, *supra* note 11, ¶1926-1928.

contamination,²⁶ soil acidification,²⁷ unsustainable use of biological resources,²⁸ and excessive greenhouse gas emissions,²⁹ would lead to financial losses in Aringuv's strong hospitality and wildlife tourism industry.³⁰

2. Alternatively, Replomuté cannot discharge its EIA obligation by relying on the DRI's insufficient EIA

a. The DRI's EIA lacks post-project analysis

The Article 7 and Appendix V Espoo Convention provide that, at the request of the affected Party, the Party of origin should undertake post-project analysis to monitor compliance with the

²⁶ UNEP, Environmental Assessment of Ogoniland Site Specific Fact Sheets, 2 (UNEP eds., 2011). International Union for Conservation of Nature, Integrating Biodiversity Conservation into Oil & Gas Development, 10 (IUCN eds., 2003). Netherlands Commission for Environmental Assessment, Advisory Review of the Environmental and Social Impact Assessment for the East African Crude Oil Pipeline (EACOP), 28 (Netherlands Commission for Environmental Assessment eds., 2019).

²⁷ FAO and UNEP, Global assessment of soil pollution: Report, Chapter 3 (Natalia R. Eugenio eds., 2021); UNEP, Environmental Assessment of Ogoniland Site Specific Fact Sheets, 2 (UNEP eds., 2011); International Union for Conservation of Nature, Integrating Biodiversity Conservation into Oil & Gas Development, 10 (IUCN eds., 2003).

²⁸ *Id.*, at Chapter 4. International Union for Conservation of Nature, Integrating Biodiversity Conservation into Oil & Gas Development, 10 (IUCN eds., 2003). Terry Z. Riley ET AL., Impacts of Crude Oil and Natural Gas Developments on Wildlife and Wildlife Habitat in the Rocky Mountain Region, Technical Review, August 2012, at 19.

²⁹ The International Council on Clean Transportation, Carbon Intensity of Crude Oil in Europe, 3 (The International Council on Clean Transportation eds., 2010). Adam R. Brandt, *Climate Impacts of Oil Extraction Increase Significantly with Oilfield Age*, 7 Nature Climate Change, 551, 553 (2016) (Concluding oil extraction emits considerable Carbon Dioxide).

³⁰ Boopen Seetanah ET AL., *Investigating the impact of climate change on the tourism sector: evidence from a sample of island economies*, 74 Tourism Review, 194, 200, (2018) (establishing causation between tourism and GHG emission).

conditions set out in the approval of the activity.³¹

Here, the only EIA was conducted around 1981, without taking any after-project knowledge on threats to gorillas and climate change into account.³² Therefore, the DRI's EIA lacks post-project analysis.

b. The DRI's EIA needs to be revised in light of additional information on the impacts of oil-related activities

Article 6(3) Espoo Convention provides that, “when additional Information on the significant transboundary impact of a proposed activity, which was not available at the time a decision was made and which could have materially affected the decision,” becomes available to the Party of origin, that Party should immediately inform and consult with the affected Party on whether the decision needs to be revised.³³

Here, at the time when the DRI entered into the Concession Agreement with Replomuté, the DRI was not aware of the adverse transboundary impacts of the oil-related activities on gorillas.³⁴ However, once the DRI signed and ratified the Gorilla Agreement in 2007,³⁵ the DRI grew concerns about the declining Gorilla populations³⁶ and wished to withdraw from the

³¹ Espoo Convention, *supra* note 6, art. 7 and Appendix V.

³² Record ¶17.

³³ Espoo Convention, *supra* note 6, art. 6(3).

³⁴ Record ¶9.

³⁵ Record ¶9.

³⁶ Agreement on the Conservation of Gorillas and Their Habitats, preamble, opened for signature June 1, 2008, U.N.T.S. 2425 [hereinafter Gorilla Agreement].

Concession Agreement in May 2012.³⁷ Therefore, the additional information on the adverse impacts of the oil-related activities would have materially affected the DRI's decision to proceed with the Concession Agreement.

Article 5 provides that a consultation should be based on an EIA.³⁸ Therefore, the DRI should conduct a revised EIA, which takes the adverse impacts on gorillas into account, to fully consult with Aringuv on whether the decision to proceed with the Concession Agreement needs to be revised. However, the DRI did nothing after conducting the only insufficient EIA around 1981.³⁹

3. Aringuv can require Replomuté to fulfill its obligations under the Espoo Convention

Article 14(1)(c) VCLT provides that the State's signature on the treaty subject to ratification amounts to State's consent to be bound by a treaty through ratification.⁴⁰ Here, the Espoo Convention is a treaty subject to ratification⁴¹ and Aringuv signed the Espoo Convention in 2017.⁴² Therefore, as Aringuv's signature amounts to tacit ratification,⁴³ Aringuv is a Party to the Espoo Convention.

Replomuté argues that Aringuv cannot assert Replomuté's violations under the Espoo

³⁷ Record ¶122.

³⁸ Espoo Convention, *supra* note 6, art. 5.

³⁹ Record ¶17.

⁴⁰ VCLT, *supra* note 9, art. 14(1)(c).

⁴¹ Espoo Convention, *supra* note 6, art. 17(1).

⁴² Record ¶12.

⁴³ Oliver Dörr, Vienna Convention on the Law of Treaties A Commentary, 161 (Kirsten Schmalenbach eds., 2011).

Convention due to the lack of reciprocity.⁴⁴ However, generalized principle of reciprocity is found in the Espoo Convention. When treaties function for common benefit of people, there is a generalized reciprocity.⁴⁵ Here, the Espoo Convention is to ensure mankind's "environmentally sound and sustainable development."⁴⁶ Therefore, the generalized principle of reciprocity allows Aringuv to sue Replomuté for its violations under the Espoo Convention.

C. Replomuté violates its obligations for EIA under CIL

New environmental norms and standards should be taken into account "not only when States contemplate new activities but also when continuing with activities begun in the past."⁴⁷ Therefore, the Court's judgements on environmental issues after 1980s and the evolution of environmental awareness on species conservation and climate change should be taken into account.

1. Replomuté breaches its independent obligations to conduct an EIA under CIL

States have a responsibility to ensure that "activities within their control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction."⁴⁸ This principle of harm prevention, as a "part of the corpus of international law relating to the

⁴⁴ Record ¶128.

⁴⁵ *Supra* note 43, at 314.

⁴⁶ Espoo Convention, *supra* note 6, Preamble.

⁴⁷ *Gabcikovo-Nagymaros Project (Hung. v. Slov.)*, Judgment, 1997 I.C.J. Rep. 7, ¶140 (Sept. 25) [hereinafter *Gabcikovo-Nagymaros*].

⁴⁸ *Trail Smelter*, *supra* note 11, at 1965; *Corfu Channel*, *supra* note 11, at 22; *Nuclear Weapons*, *supra* note 11, ¶29; *Pulp Mills*, *supra* note 11, ¶101.

environment,”⁴⁹ has its origins in the States’ obligation to exercise due diligence.⁵⁰ Due diligence requires a State “to use all the means at its disposal” to avoid activities causing significant transboundary harm.⁵¹ To exercise due diligence, a State is obliged to, under CIL, undertake an EIA when there are reasonable grounds to believe that the proposed activities carry a risk of significant transboundary harm.⁵²

To determine whether the oil-related activities carry risks of significant transboundary harm, the Court should consider the “nature and magnitude” of the project and its surrounding environmental context.⁵³ The context of transboundary harm includes not only the damage to a specific state, but also harm affecting shared resources of mankind.⁵⁴

Here, greenhouse gas (“GHG”) emissions from the oil-related activities are significant.⁵⁵ Those GHG emissions exacerbate greenhouse effect as they cover the Earth and accumulate the heat, causing regional warming.⁵⁶

⁴⁹ Nuclear Weapons, *supra* note 11, ¶29.

⁵⁰ Pulp Mills, *supra* note 11, ¶113.

⁵¹ *Id.*, ¶101.

⁵² *Id.*, ¶204.

⁵³ Certain Activities, *supra* note 2, ¶155.

⁵⁴ Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Case No. 17, Advisory Opinion of Feb. 1, 2011, ITLOS Rep. 10, ¶ 148.

⁵⁵ Adam R. Brandt, *Climate Impacts of Oil Extraction Increase Significantly with Oilfield Age*, 7 Nature Climate Change, 551, 551 (2016); International Energy Agency, Emissions from Oil and Gas Operations in Net Zero Transitions, 8 (IEA, 2023) (Transporting and processing of oil resulted in 3.5 billion tonnes carbon dioxide equivalent, which accounts for around 8.75% of the global energy-related GHG emissions in 2022).

⁵⁶ Laffoley and Baxter, Explaining Ocean Warming: Causes, scale, effects and consequences, International Union for Conservation Nature, 23-25 (IUCN eds., 2016); *supra* note 20; Von Schuckmann K ET AL., *An Imperative to Monitor Earth’s Energy Imbalance*, 6 Nature Climate Change, 138-144 (2016) (Earth’s Energy Imbalance leads to

In conclusion, the excessive GHG emissions of the oil-related activities, which are under the control of Replomuté, poses risks of significant transboundary harm on the atmosphere and leads to regional climate change.

2. Alternatively, Replomuté cannot discharge its CIL obligation by relying on the DRI's insufficient EIA

a. The DRI's prior EIA is insufficient in content

The content of EIA should reflect “the nature and magnitude of the proposed development and its likely adverse impact on the environment.”⁵⁷ In the *Gabcikovo-Nagymaros* Case, the Court held that the parties should “look afresh” at the environmental impacts of the proposed hydroelectric facility, with reference to those standards prevailing at present rather than those prevailing at the time of the 1977 treaty.⁵⁸

Here, the EIA was conducted around 1981 and oil extraction was planned to start after the completion of the pipeline in June 2022.⁵⁹ In these 41 years, scientific knowledge on the impacts of oil extraction on gorillas, climate change, and the surrounding environment has evolved significantly.⁶⁰ The meaning of “significance” also changes as scientific knowledge of the

environmental problems); Balmaseda MA ET AL., *Distinctive climate signals in reanalysis of global ocean heat content*, 40 *Geophysical Research Letters*, 1754-1759 (2013) (ocean heat leads to climatic problems).

⁵⁷ Pulp Mills, *supra* note 11, ¶205.

⁵⁸ Gabcikovo-Nagymaros, *supra* note 47, ¶140.

⁵⁹ Record ¶33.

⁶⁰ Mohammad Naseem, Saman Naseem, *International Environmental Law*, 53, ¶101 (Roger Blanpain eds., 2021).

environment develops.⁶¹

Scientific reports reveal that the oil-related activities impact significantly on gorillas and climate change.⁶² Here, the content of the DRI's prior EIA did not consider impacts on gorillas and climate change, focusing only on the impacts on nearby human populations.⁶³ Therefore, the DRI's prior EIA is insufficient in content.

b. The DRI's EIA lacks further environmental monitoring

An EIA is not a one-time assessment, but is an obligation of continuous monitoring of subsequent performance throughout the life of the project.⁶⁴ The DRI is obliged to conduct EIAs throughout the oil-related activities, especially when the DRI became aware of the impacts on gorillas and climate change.⁶⁵

However, the DRI did nothing other than the EIA around 1981.⁶⁶ Therefore, Replomuté cannot discharge its EIA obligation by relying on this single EIA.

⁶¹ International Law Commission, Commentaries to the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, 377, art. 2, commentary 7 (ILC eds., 2001).

⁶² UNEP, A Global Perspective on the Impacts of Infrastructural Development on the Great Apes, 12 (Christian Nellemann and Adrian Newton eds., 2002); Adam R. Brandt, *Climate Impacts of Oil Extraction Increase Significantly with Oilfield Age*, 7 Nature Climate Change, 551, 551 (2016).

⁶³ Record ¶17.

⁶⁴ Gabcikovo-Nagymaros, *supra* note 47, ¶205.

⁶⁵ Record ¶26.

⁶⁶ Record ¶17.

II. Replomuté Is Directly Liable for Violating the Convention on the Conservation of Migratory Species of Wild Animals (“CMS”) and the Convention on Biological Diversity (“CBD”)

Having established that Lenoir Corporation’s oil-related activities are attributable to Replomuté, Replomuté violates its international law obligations because (a) Replomuté fails to provide Gorilla, a CMS Appendix I species, with immediate protection under the CMS,⁶⁷ and (b) Replomuté fails to ensure conservation of biodiversity under the CBD.⁶⁸

A. Replomuté breaches its obligations under the CMS

Replomuté breaches its Party obligations under the CMS because (1) Gorilla is an endangered migratory species under CMS Appendix I; (2) Replomuté fails to provide Gorilla with immediate protection as required by Article II 3 (b) CMS.

1. Gorilla is a migratory species under CMS Appendix I

First, Gorilla has been in fact listed under CMS Appendix I and cannot be removed. A species can only be listed in CMS Appendix I after the Scientific Council has carefully assessed the best scientific evidences,⁶⁹ and can only be removed when reliable evidence indicates that the species is no longer endangered.⁷⁰ Here, Gorilla has been listed.⁷¹ Moreover, with a total

⁶⁷ Convention on the Conservation of Migratory Species of Wild Animals art. II 3 (b), June 23, 1979, 1651 U.N.T.S. 333 [hereinafter CMS].

⁶⁸ Convention on Biological Diversity art. 1, June 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD].

⁶⁹ CMS, *supra* note 67, art. III(2), VIII.

⁷⁰ CMS, *supra* note 67, art. III(3)(a).

⁷¹ Record ¶9.

known population of only 935,⁷² Gorilla remains critically endangered under IUCN Red List.⁷³

Therefore, Gorilla remains endangered under the CMS and cannot be removed from CMS Appendix I.

Second, contrary to Replomuté’s assertion, Gorilla is rightfully classified as migratory under the CMS. A species is migratory under the CMS if a significant proportion of its population is anticipated⁷⁴ to cross jurisdictional borders in a cycle of any nature.⁷⁵ Here, the northern population of Gorilla has been frequently observed to cross borders between Aringuv and the DRI in every dietary season to forage for food, and in every reproduction cycle to avoid in-breeding.⁷⁶ Moreover, the northern population of Gorilla constitutes a significant proportion of the entire population. Assessment of “significant” calls for no rigid numerical proportion, instead, a pragmatic approach.⁷⁷ Compared with polar bear, another Appendix I species whose migrating population constitutes only 37%,⁷⁸ the migrating population of Gorilla is more significant, amounting to 68% of the entire Gorilla population.⁷⁹

Therefore, the entire species of Gorilla, including its southern population, is in fact and properly included in CMS Appendix I.

⁷² Record ¶9.

⁷³ Record ¶9; C.O.P. to the C.M.S. Res. 11.33, U.N. Doc. UNEP/CMS/Resolution 11.33 Annex1 ¶4 (Nov. 2014).

⁷⁴ C.O.P. to the C.M.S. Res. 11.33, U.N. Doc. UNEP/CMS/Resolution 11.33 ¶2 (Nov. 2014).

⁷⁵ *Id.*

⁷⁶ UNEP/CMS, Concerted Action and CMS Gorilla Agreement in collaboration with the Great Apes Survival Project-GRASP, 24, 47 (2008).

⁷⁷ C.O.P. to the C.M.S. ScC-SC2. Doc.5. U.N. Doc. UNEP/CMS/ScC-SC2/Doc.5 ¶3 (Jul. 2017).

⁷⁸ C.O.P. to the C.M.S. Res. 11.33, U.N. Doc. UNEP/CMS/COP11/Doc.24.1.11/Rev.2 ¶2.4 (Nov. 2014).

⁷⁹ Record ¶9.

2. Replomuté breaches its obligations under the CMS

Under Article II3(b) CMS, as a non-range State, Replomuté “shall endeavor to provide immediate protection” for Appendix I species.⁸⁰ According to Article 31 VCLT, the CMS should be interpreted in the light of the subsequent practice in its application, including the Great Apes Survival Partnership (“GRASP”), to which European Union is a Partner.⁸¹ Under the GRASP regime, Replomuté should take all possible steps to mitigate the negative impacts of Replomuté’s industrial activities to great apes.⁸² Here, Replomuté breached Article II3(b) CMS because Replomuté had not adopted relevant mitigation measures.

First, Replomuté did not adopt the minimum mitigation practice required by the CMS.⁸³ CMS Parties should mitigate negative environmental impact by preserving ecological connectivity,⁸⁴ since unimpeded movements among connected habitats are crucial for migratory species to survive and thrive.⁸⁵ Here, Replomuté has breached its obligations because Replomuté has not built ecological corridors.

Second, Replomuté has not taken all possible mitigation measures since Lenoir Corporation has not adhered to the common mitigation practices adopted in the oil industry.⁸⁶ Such measures

⁸⁰ CMS, *supra* note 67, Art. II (3).

⁸¹ UNEP, Non-Range State, Great Apes Survival Partnership (GRASP) UN Environment, <https://www.un-grasp.org/our-partners/non-range-states/>.

⁸² Council of the GRASP, U.N. Doc. UNEP/UNESCO/GRASP/COUNCIL.2/ 2 ¶3.2.1 (Oct. 2012).

⁸³ C.O.P. to the C.M.S. Conf.10.39, U.N. Doc. UNEP/CMS/Conf.10.39 ¶6 (Aug. 2011).

⁸⁴ CMS, Migratory Species and Infrastructure, 1-2 (2020).

⁸⁵ International Union for Conservation of Nature, Guidelines for Conserving Connectivity through Ecological Networks and Corridors, 2 (IUCN eds. 2020).

⁸⁶ C.O.P. to the C.M.S. Conf.10.2, U.N. Doc. UNEP/CMS/COP11/Doc.23.4.3.2 ¶3.3 (Aug. 2014).

typically include carefully planning of the construction to avoid or reduce occupying wildlife habitat and monitoring wildlife response.⁸⁷ Here, Lenoir Corporation has not carefully planned the project to avoid and reduce habitat disturbance because Lenoir Corporation's oil-related activities take place directly in the conservation park inhabited by gorillas. In addition, Replomuté had not properly monitored gorillas' response to the oil-related activities, such as evaluating gorilla's avoidance response, detecting distribution shifts, and so on,⁸⁸ because the only available information about Gorilla population is the census conducted in 2020.⁸⁹

B. Replomuté breached its obligations under the CBD

As a CBD Party, Replomuté is obligated to (a) ensure that the activities under its control do not damage the environment of other States,⁹⁰ and (b) ensure the sustainable use of components of biological diversity.⁹¹

Here, Lenoir Corporation's oil-related activities, which are under Replomuté's control,⁹² damage the DRI's environment. First, oil-related activities cause deforestation and habitat loss, which is a primary cause of biodiversity loss.⁹³ Second, oil-related activities adversely impact

⁸⁷ *Id.*

⁸⁸ *Id.*, ¶3.4.

⁸⁹ Record ¶9.

⁹⁰ CBD, *supra* note 69, art. 3.

⁹¹ CBD, *supra* note 69, art. 10.

⁹² Record ¶17.

⁹³ International Union for Conservation of Nature, *Biodiversity offsets: Views, experience, and the business case*, 2 (IUCN eds. 2004).

the environment with contaminated water,⁹⁴ CO, SO₂, NO_x, hydrocarbons, and gas flares.⁹⁵ Third, minor and major oil spills happen frequently during oil extraction and transportation.⁹⁶ Oil spills can lead to fires, causing instant destruction of components of biodiversity.⁹⁷ In addition, pollutants of oil spills would linger in the ecosystem for decades, resulting in continued biodiversity loss.⁹⁸ Therefore, Replomuté’s oil-related activities adversely impact the DRI’s environment.

Additionally, Lenoir Corporation’s oil-related activities constitute an unsustainable use of biodiversity resources. Following the practice recognized by the CBD,⁹⁹ legislated in over 69 countries’ national laws,¹⁰⁰ and adopted by major oil companies,¹⁰¹ Lenoir Corporation should adopt mitigation hierarchy to ensure sustainable use of biodiversity. Here, Lenoir Corporation should avoid, reduce, restore, and offset impacts to biodiversity¹⁰² by adjusting the project design throughout the project lifespan,¹⁰³ repairing damaged areas,¹⁰⁴ and taking positive

⁹⁴ Adedapo O. Adeola et. al., Crude oil exploration in Africa: socio-economic implications, environmental impacts, and mitigation strategies, 42 *Environ Syst Decis* 26, 41 (2022).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*, at 10.

⁹⁸ Environmental Protection Agency, *Understanding Oil Spills and Oil Spill Response*, 8 (Dec. 1999).

⁹⁹ C.O.P. to the C.B.D. 14 INF/35, U.N Doc. CBD/COP/14/INF/35 ¶3 (Oct. 2008).

¹⁰⁰ *Id.*, ¶4.

¹⁰¹ *Id.*

¹⁰² Biodiversity Consultancy, *A Cross-sector Guide for Implementing the Mitigation Hierarchy*, 6 (2015).

¹⁰³ *Id.*, at 32.

¹⁰⁴ *Id.*, at 47.

conservation measures to remediate past damage.¹⁰⁵ However, Lenoir Corporation has not mitigation hierarchy to promote sustainability. Moreover, contrary to Replomuté's obligations, Replomuté declined to neither address nor compensate the environmental impact induced from the oil-related activities.¹⁰⁶ Therefore, Replomuté's oil-related activities constitute an unsustainable use.

III. Replomuté Is Indirectly Liable for the DRI's Breach of the DRI's International Obligations

Replomuté is indirectly liable for the DRI's breach of the CMS and the Gorilla Agreement because (a) Replomuté coerced the DRI by requesting an enormous penalty, (b) the DRI breached its international obligations by acquiescing to Replomuté's harmful oil-related activities, and (c) Replomuté knew the circumstances of the DRI's actions.

A. Article 18 ARSIWA codifies CIL and applies when a State coerced another State with compelling economic pressure

Article 18 ARSIWA codifies State responsibility where (a) a State coerces another State (b) into committing an internationally wrongful act, and (c) with knowledge of the circumstances of the act.¹⁰⁷ Article 18 ARSIWA accurately codifies CIL and applies when the coercing State uses compelling economic pressure.¹⁰⁸

¹⁰⁵ *Id.*, at 61.

¹⁰⁶ Record ¶22.

¹⁰⁷ Draft Articles on Responsibility of States for Internationally Wrongful Acts, UN DocA/RES/56/83 (2001) annex art. 18 [hereinafter ARSIWA].

¹⁰⁸ *Id.*

First, Chapter IV ARSIWA, where Article 18 situates, codifies CIL. Chapter IV ARISWA embodies the long-recognized principle of non-intervention, which prohibits “all States or group of States to intervene directly or indirectly in the internal or external affairs of other States.”¹⁰⁹ Additionally, Chapter IV ARSIWA is enshrined in decisions of international tribunals,¹¹⁰ state practices,¹¹¹ and scholarly opinions.¹¹²

Second, Article 18 ARSIWA applies where a State uses economic coercion to deprive another State’s freedom of action, in violation of the non-intervention principle.¹¹³ States are prohibited from using economic coercion to obtain from another State “subordination of the exercise of its sovereign rights or to secure from it advantages of any kind.”¹¹⁴ Such prohibition has crystalized into CIL, as supported by sufficient state practices from declarations of the United Nations General Assembly,¹¹⁵ the United Nations Human Rights Council,¹¹⁶ and the

¹⁰⁹ Certain Activities, *supra* note 2, ¶205.

¹¹⁰ Al Nashiri V. Poland, App. No. 28761/11, ¶207, (July 24, 2014), <https://hudoc.echr.coe.int/eng?i=001-146044>; Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador, PCA Case No. 2009–23, Second Partial Award on Track II, ¶3.33 (Aug. 30, 2018).

¹¹¹ C. L. Bouvé, “Russia’s liability in tort for Persia’s breach of contract”, 6 AJIL 389, 389-408 (April 1912).

Yearbook of the International Law Commission, Eighth report on State responsibility by Mr. Roberto Ago, Special Rapporteur-the internationally wrongful act of the State, source of international responsibility 3, 23 (1979).

¹¹² James Crawford, State Responsibility: the General Part at 395-434 (1 ed. 2013); Mohamed Helal, On Coercion in International Law, SSRN Journal at 77 (2019).

¹¹³ Comment to ARSIWA P 236 (3) Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, UN Doc A/56/10 (Supp) Ch IV.E.2 (2001) art. 18 (3) [hereinafter ARSIWA Commentary].

¹¹⁴ A. Res. 20/2131, the 1970 Friendly Relations Declaration builds on the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty art. 2, Dec. 21, 1965.

¹¹⁵ A. Res. 20/2131, Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the

European Commission,¹¹⁷ as well as Charters of International Organizations.¹¹⁸, and *opinion juris* from opinion of this Court.¹¹⁹

Third, the State deploying economic coercion shall be liable for the wrongful act that flows therefrom, beyond economic coercion itself.¹²⁰ In *Barcelone Traction*, this Court stressed that “responsibility is the necessary corollary of a right.”¹²¹ By deploying compelling economic pressure, a coercing State deprives the coerced state of its right of autonomy over the wrongful acts that flow from the coercion.¹²² Meanwhile, the wrongful actions are within the control and autonomy of the coercing state.¹²³ Therefore, it is the coercing State who should be liable for the wrongful actions ensued from economic coercion.¹²⁴

In conclusion, Article 18 ARSIWA codifies CIL and applies to situations where the coercing state uses compelling economic pressure.

Protection of Their Independence and Sovereignty, UNGA (Dec. 21, 1965); A. Res. 29/3281, Charter of Economic Rights and Duties of States General, UNGA Res 3281 (Dec.12, 1974).

¹¹⁶ A. HRC. Res. 27/21/Corr.1, Human rights and unilateral coercive measures (Oct. 3, 2014); A. HRC. Res. 45/5, Human rights and unilateral coercive measures (Oct. 12, 2020).

¹¹⁷ European Parliament legislative Res. 2021/0406 (Apr. 6, 2021).

¹¹⁸ Charter of the Organization of American States, art. 16, Arp. 30, 1948, 2 U.S.T. 239, 119 U.N.T.S. 3 (P.3)

¹¹⁹ Certain Iranian Assets case (Iran v. U.S.), Judge Robinson’s 2023 separate opinion. I.C.J. Rep. 14, ¶35 (July 11).

¹²⁰ James D. Fry, Attribution of Responsibility, in *Principles of Shared Responsibility in International Law* 98, 121 (André Nollkaemper & Ilias Plakokefalos eds., 1 ed. 2014).

¹²¹ *Barcelone Traction* case (Belgium V. Spain), 1970 Judgment. I.C.J. Rep. 34, ¶ 36 (July 11).

¹²² Fry, *supra* note 48, at 107.

¹²³ *Id.*

¹²⁴ ARSIWA, *supra* note 110, art. 18.

B. Replomuté used compelling economic pressure to force the DRI into allowing the oil-related activities to continue when relevant environmental impact was not addressed

Coercion under Article 18 ARSIWA exists when it is materially impossible for the coerced State to perform its obligations due to the coercion.¹²⁵ Under such circumstances, the coerced State has no effective choice but to comply with the demand of the coercing State.¹²⁶ In *Russo-Turkish*, the tribunal recognized that the payment of debt would be materially impossible when it seriously compromises the State's internal situations.¹²⁷ Therefore, economic coercion exists when the requested penalty seriously impedes a State's capacity to fulfill its paramount obligation to provide essential public services¹²⁸ and ensure citizens' human rights.¹²⁹

Here, US\$ 825 million penalty requested by Replomuté constitutes economic coercion because it would seriously compromise the DRI's capacity to maintain public administration and provide the DRI citizens with adequate food, medical resources, and safety.

First, as a low-income country, the DRI struggles to maintain its internal situations absent a penalty. The DRI's population lived on \$2.24 USD per day in 2020, only marginally above the

¹²⁵ ARSIWA Commentary, *supra* note 116, art. 18(2).

¹²⁶ *Id.*

¹²⁷ *Russia v. Turkey*, PCA Case No. 1910-02, Award of the Tribunal, ¶6 (Nov. 11, 1912).

¹²⁸ Robert D. Sloane, On the Use and Abuse of Necessity in the Law of State Responsibility, 106 Am. j. int. law 447, 464 (2012); Yearbook of the International Law Commission, "Force majeure" and "Fortuitous event" as circumstances precluding wrongfulness: Survey of State practice, international judicial decisions and doctrine-study prepared by the Secretariat 65,132 (1978).

¹²⁹ International Covenant on Civil and Political Rights, art. 4 (1), 23 March 1976, 23 March 1976, 1 U.S.C. 113, 999 ICCPR 173.

world extreme poverty line.¹³⁰ Similar to other poverty-stricken African countries,¹³¹ maintaining daily administration and providing for its citizens, the DRI faces fiscal deficit.

Second, the coercive penalty would seriously impede the DRI's capacity to administer its internal affairs. The US\$ 825 million penalty far exceeds the annual security and agriculture expenditure of African countries.¹³² The penalty would force the DRI to delegate funds from poverty alleviation, public administration, and security to debt payment, depriving the DRI of its capacity to ensure citizens' human rights. In particular, the DRI, which has struggled with Ebola outbreak¹³³ and COVID 19 pandemic¹³⁴ and is prone to internal conflicts,¹³⁵ would lack funding to deal with potential pandemic outbreaks or to ensure national security.

Therefore, making it materially impossible to ensure citizens' basic human rights and maintain State administration, the penalty gives the DRI no effective choice but to comply with Replomuté's demand, *i.e.* allowing the Lenoir Corporation's oil-related activities to proceed.

C. But for Replomuté's coercion, the DRI would be liable for its violations of the CMS and the Gorilla Agreement

The but for causation required by Article 18(a) ARSIWA is satisfied as long as the coerced

¹³⁰ The World Bank, Fact Sheet: An Adjustment to Global Poverty Lines, News, (Sep 14, 2022), <https://www.worldbank.org/en/news/factsheet/2022/05/02/fact-sheet-an-adjustment-to-global-poverty-lines>.

¹³¹ The Republic of Uganda, Annual Budget Performance Report FY 2015/16, 57 (2016).

¹³² *Id.*, at 79.

¹³³ Record ¶19.

¹³⁴ *Id.*, ¶32.

¹³⁵ *Id.*, ¶18.

State's action induced by coercion is internationally wrongful.¹³⁶

As a Gorilla Range State, the DRI is obligated under the CMS and the Gorilla Agreement to accord gorillas with strict conservation.¹³⁷ In particular, the DRI should “prevent, reduce or control factors” that are likely to further endanger Gorilla.¹³⁸ Here, as the coerced State, the DRI violates its obligations because the DRI acquiesces to factors that further endanger gorillas, *i.e.*, Lenoir Corporation's continued oil-related activities in gorilla-inhabited park.

First, the DRI fails to restrict intrusion to gorilla habitats. The DRI should¹³⁹ but fails to mainstream awareness for gorilla conservation. By allowing Lenoir Corporation to proceed its oil-related activities in gorilla habitats, local communities would perceive the park and gorilla protection as compromised and less important,¹⁴⁰ thus hindering conservation efforts.

Second, the DRI fails to avoid hosting environmentally-harmful activities in gorilla habitats. Hosting oil-related activities in gorilla habitats greatly endangers gorilla survival by depleting food source, hindering migration, and shrinking habitats.¹⁴¹ Additionally, such industrial activities bring an influx of workers into gorilla habitats,¹⁴² exposing gorillas to higher risks of bushmeat hunting, burn and slash agriculture, and human-gorilla conflict.¹⁴³ In particular, since

¹³⁶ ARSIWA Commentary, *supra* note 116, art. 18(4).

¹³⁷ Record ¶29.

¹³⁸ *Id.*

¹³⁹ Parties to the Agreement Rome, Italy, Agreement on the Conservation of Gorillas and Their Habitats Action Plan, 7 (2008).

¹⁴⁰ World Wildlife Fund, Oil Exploration and Exploitation: The Potential Impacts on Mountain Gorillas, 2 (2013).

¹⁴¹ UNEP, Infrastructural Development on The Great Apes, 7 (2002).

¹⁴² *Id.*

¹⁴³ *Supra* note 68, at 12.

the DRI is prone to pandemic outbreaks, increased human exposure subjects gorillas to higher risks of infecting human diseases and parasites, such as Ebola, which could kill more than 80% of Gorilla population in less than 100 days.¹⁴⁴

Therefore, the DRI violates its obligations for failure to address factors that endangers gorillas.

D. Replomuté coerced the DRI with knowledge of the circumstances of the DRI's action

For Replomuté to be liable for the DRI's international law violations, it is sufficient as long as Replomuté knew the factual situation of the DRI's action.¹⁴⁵

Here, the Lenoir Corporation is wholly owned by Replomuté, therefore, Replomuté is presumed to have knowledge of the Lenoir Corporation's activities.¹⁴⁶ Moreover, multiple local and NGOs have notified Replomuté of the oil-related activities' negative impact on gorillas.¹⁴⁷ Therefore, Replomuté knew the circumstances of the oil-related activities.

In conclusion, Replomuté is indirectly liable for the DRI's international law violations because Replomuté coerced the DRI into committing internationally wrongful acts, when Replomuté knew the factual circumstances of the DRI's actions.

¹⁴⁴ Zimmerman, D.M., Hardgrove, E., Sullivan, S. et al. Projecting the impact of an ebola virus outbreak on endangered mountain gorillas. *Sci Rep* 13, 1 (2023).

¹⁴⁵ ARSIWA Commentary, *supra* note 116, art. 18(5).

¹⁴⁶ Record ¶17.

¹⁴⁷ Record ¶22.

CONCLUSION AND PRAYER

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

1. The failure of Replomuté to prepare an EIA regarding the oil-related activities violates international law, and
2. Replomuté's oil-related activities in the DRI violate international law.

RESPECTFULLY SUBMITTED,
AGENTS FOR THE APPLICANT