Team Code: 2479A

28TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION

BEFORE

THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE,

THE HAGUE, NETHERLANDS

QUESTIONS RELATING TO MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

ARINGUV (APPLICANT)

V.

REPLOMUTÉ (RESPONDENT)

MEMORIAL ON BEHALF OF THE APPLICANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTERNATIONAL TREATIES AND CONVENTIONS

Agreement on the Conservation of Gorillas and Their Habitats ("Gorilla Agreement"), October 26, 2007, 2545 U.N.T.S. 36

Charter of the United Nations, Oct. 24, 1945 1 U.N.T.S. 16

Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79

Convention on Environmental Impact Assessment in a Transboundary Context ("Espoo Convention"), February 25, 1991, 1989 U.N.T.S. 800

Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1969, 1651 U.N.T.S. 333

Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), October 6, 1958, 330 U.N.T.S. 3

JUDICIAL AND ARBITRAL DECISIONS

Ampal-American Israel Corporation and others v Arab Republic of Egypt, ICSID Case No. ARB/12/11 (2012)

Costa Rica v. *Nicaragua* / *Nicaragua* v. *Costa Rica*, ICJ Rep 15 (2018)

Pulp Mills on the River Uruguay (Argentina v. Uruguay), ICJ Rep 113 (2006)

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UN DOCUMENTS AND OTHER INTERNATIONAL DOCUMENTS

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QUESTIONS PRESENTED

I. WHETHER, AS A PROCEDURAL MATTER, THE FAILURE OF REPLOMUTÉ TO PREPARE AN ENVIRONMENTAL IMPACT ASSESSMENT WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DEMOCRATIC REPUBLIC OF IBIRUNGA (DRI) VIOLATED INTERNATIONAL LAW.

II. WHETHER, AS A SUBSTANTIVE MATTER, THE ACTIONS OF REPLOMUTÉ WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI VIOLATE INTERNATIONAL LAW.

Statement of Jurisdiction

In accordance with Article 40 of the Statute of the ICJ, Aringuv and Replomuté have submitted to the ICJ by Special Agreement, questions concerning their differences relating to Mountain Gorillas and Impact Assessment as contained in Annex A, including the Clarifications.

The parties transmitted a copy of the Special Agreement to the Register of the ICJ on July 24, 2023. The Registrar of the Court, in accordance with Article 26 of the Rules of the Court, addressed a notification of receipt of the Special Agreement to the parties on July 31, 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.

Statement of Facts

Background

The Democratic Republic of Ibirunga (DRI) is a coastal sovereign state in central Africa (R¶1). Aringuv is a sovereign state in central Africa that shares its eastern border with the DRI (R¶2). Replomuté is a sovereign state in Europe (R¶3). In 1981, the DRI and Replomuté signed a concession agreement that granted the Lenoir Corporation, an entirely state-run and operated corporation in Replomuté, the right to explore and extract oil from a an area in Southern DRI (R¶17). The only mechanism for dispute resolution was a mandatory binding arbitration clause (R¶17).

Oil Exploration and Pipeline Construction

In 1981, the DRI conducted an environmental impact assessment in accordance with its national laws, focusing solely on the impacts on nearby human populations, water usage, and waste production. The EIA did not consider effects on climate change or potential impacts to gorillas (R¶17). From 1983 to June 2012, the Lenoir Corporation constructed the oil pipeline and engaged in oil exploration (R¶18-22). No oil extraction has occurred at the current date.

Effects on Royal Mountain Gorilla Populations

In 2007, Aringuv and DRI became Parties to the Agreement on the Conservation of Gorillas and Their Habitats (R¶9). This Agreement mandates conservation of the habitat of Royal Mountain Gorillas, which as critically endangered on the IUCN Red List of Threatened Species (R¶9). There are two populations of Royal Mountain Gorilla; the Northern Population that consists of 640 gorillas that frequently cross the border between the DRI and Aringuv and the Southern Population. The Southern Population consists of 295 individuals and occupies a national park in the DRI. These gorillas from the Southern Population are rarely sighted in Aringuv (R¶9).

In 2012, local and international nongovernmental organizations (NGOs) expressed serious concern about the negative impacts to the Royal Mountain Gorillas resulting from Lenoir Corporation's oil extraction activities

(R¶9). The proposed oil extraction would encompass the primary habitat of the Southern Population of Royal Mountain Gorillas (R¶21).

In June 2012, the DRI's new president declared that the Gorilla Agreement compelled it to withdraw from the 1981 DRI-Replomuté agreement (R¶22). Replomuté invoked the mandatory arbitration provision (R¶22). In March 2015, Replomuté prevailed in the binding arbitration. The arbitral panel ordered the DRI to permit the Lenoir Corporation to proceed with its activities. The penalty from non-compliance with the decision of the arbitral panel was set at more than $825 million (USD) in penalties (R¶23).

Diplomatic Negotiations between Aringuv and Replomuté

In May 2018, the Aringuv Ministry of Foreign Affairs contacted the Replomuté Ministry of Foreign Affairs and expressed concerns about the transboundary impacts of the oil extraction due to the impacts of the project on the climate and on the Royal Mountain Gorilla (R¶26). Aringuv presents two main arguments.

First they argue that Aringuv violated a number of international treaties, including the Espoo Convention and Convention on Biological Diversity when it refused to conduct a separate EIA given the updated information about the impacts on the climate and gorilla population (R¶27). They also argue that Replomuté failed its obligations under Customary International Law. On this point, Replomuté disputes the applicability of the treaties by arguing that Aringuv is not party to the Espoo Convention and no transboundary impacts exist (R¶28).

Second they argue that Replomuté is in violation of its obligations under the Convention on Migratory Species because its oil extraction would significantly harm the Royal Mountain Gorilla population. Further, they also argue that Replomuté is indirectly responsible for the violations of the DRI of its obligations under the CMS and Gorilla agreement because Replomuté is coercing the DRI to commit an internationally wrongful act (R¶29). Replomuté refutes these claims, arguing that the Royal Mountain Gorilla is not migratory, that they have no obligations under the CMS because Replomuté is not a Range State for the Royal Mountain Gorilla, and that no coercion occurred (R¶30).

Unable to reach an agreement, Replomuté and Aringuv submitted questions to the International Court of Justice (ICJ) and agreed that the Lenoir Corporation would not proceed with the project until a judgment was issued (R¶35).

Summary of Arguments

I.

In failing to conduct an appropriate EIA, Replomuté has failed to comply with its obligations under several international treaties to which it is party. First, Replomuté is in violation of Article 14.1 of the Convention on Biological Diversity. 14.1(a) is the applicable article because the actions of the Lenoir Corporation, as a corporation wholly owned and operated by the government of Replomuté, fall under the jurisdictional scope of CBD as outlined in Article 4.

Second, Replomuté fails its obligations to conduct an appropriate EIA under the Espoo Convention, to which it is bound as a contracting party to the convention. Thus, in failing to revise the EIA after information about the impact on gorillas came to light, Replomuté is in violation of Article 6.3 of the Espoo Convention. Further there are significant transboundary impacts.

Third, Replomuté violated its obligations to consider transboundary impacts in an EIA under the 1972 Stockholm Convention.

Last, Replomuté has failed to comply with its obligations under Customary International Law to conduct a transboundary EIA. Under Customary International Law, Replomuté was obligated to conduct a preliminary assessment as to the presence of transboundary harm. Hard Replomuté conducted this preliminary assessment, they would have determined that there were risks of significant transboundary harm.

II.

As a substantive matter, the actions of Replomuté with respect to the proposed oil extraction activities in the DRI violate international law. First, Replomuté violated its direct responsibility under several international treaties to protect the habitat of the Royal Mountain Gorilla. The proposed oil extraction activities violate Article 14.1(d) of the Convention on Biological Diversity because Replomuté failed to take initiae action to prevent or minimize grave danger or damage to the biological diversity of another state.

Further, Replomuté is in violation of its obligations as a party to the Convention on Migratory Species. Because Royal Mountain Gorillas are considered migratory under the CMS, the obligations of the CMS apply. Because of its substantial impact on the range and conservation of the Royal Mountain Gorilla, Replomuté should be considered a Range State under the CMS. However, even if Replomuté is not considered a Range State, it is still in violation of its CMS obligations.

Second, regardless of the direct responsibility, Replomuté is also indirectly responsible because it coerced the DRI to commit an internationally wrongful act. The actions of DRI in regard to the Lenoir Corporation violate its duties under the CMS and Gorilla Agreement, and would be internationally wrongful acts if they had not been coerced. Replomuté was aware of the consequences of the coercion and still exerted economic pressure that gave the DRI no functional choice but to violate its international legal obligations.

Argument

I. As a procedural matter, the failure of Replomuté to prepare an EIA with respect to the proposed oil extraction activities in the region violates international law

A. Replomuté has failed to comply with its obligations under several international treaties to which it is part

1. In failing to conduct an appropriate EIA, Replomuté is in violation of Article 14.1 of the Convention on Biological Diversity

a. The actions of the Lenoir Corporation, as a corporation wholly owned and operated by the government of Replomuté, fall under the jurisdictional scope of CBD as outlined in Article 4

The government of Replomuté argues that the actions of the Lenoir Corporation should be exempted from compliance with Article 14.1(a) of the CBD. However, the actions of Replomuté fall under the jurisdictional scope outlined in Article 4(b). [1] Thus, the entirety of the convention is applicable to Replomuté and governs the actions of the Lenoir Corporation; Replomuté does not escape the jurisdiction of CBD merely because the *effects* of the violation Article 14 occurred outside of Replomuté's national jurisdiction.

Article 4 of the CBD outlines the jurisdictional scope of the convention: subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party: (a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and (b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.[2] In this case, because the Lenoir Corporation is wholly owned and operated by the government of Replomuté, the processes and activities associated with conducting its business fall entirely within the control and jurisdiction of the state. Regardless of the location of its effects, the violation

[1] Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79
[2] Ibid.

of the EIA requirements detailed in Article 14.1 of the CBD is attributable to Replomuté based on 'effective control' over the entity in question, and thus falls within its national jurisdiction.

States have, in accordance with the Charter of the United Nations and the principles of international law the responsibility 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. [3]Among these activities falling under the responsibility of the state are the business decisions and operations conducted by state-operated enterprises. A growing practice in international law suggests that States generally act as the 'mind and will' of their State-owned enterprises, and thus State attribution is grounded in the control and presumed knowledge of any violation of international law.

The actions of State-controlled business enterprises have previously been attributed to the State itself in international legal contexts. For example, the Commentaries to the United Nations Guiding Principles on Business and Human Rights (UNGPs) recognize that an abuse of human rights committed by 'a business enterprise is controlled by the State' 'may entail a violation of the State's own international law obligations." [4]*Sacchi et al. v Argentina et al*, litigated in November 2021 to the Committee on the Rights of the Child, provides another example. [5]In that case, the Committee specifically noted that States may be held responsible for 'activities originating in their territory or under their effective control or authority," and extended that category to the transboundary environmental harms conducted by several state-owned energy companies. [6]

The burden of effective control is established in the case of the Lenoir Corporation and Replomuté; like the Egyptian Natural Gas Holding Company, Lenoir is entirely owned and operated by the government of Replomuté and thus acts solely under its direction and control.

b. The current EIA conducted by DRI does not comply with the EIA requirements listed in 14.1(a)

[3] Charter of the United Nations, Oct. 24, 1945 1 U.N.T.S. 16
[4] *Sacchi et al. v Argentina et al.*, CRC/C/88/D/104/2019 (2021)
[5] Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79
[6] Ibid.

As a state party falling under the jurisdiction of the CBD, all requirements listed in Article 14.1 apply equally to the actions of the Replomuté. There is no limiting language within Article 14.1 that suggests that state parties may selectively comply with certain mandates of the convention, nor that compliance with Article 14.1(c) excuses parties from their obligations under Article 14.1(a).

Thus, Replomuté falls under the purview of Article 14.1(a) and was required, under the CBD, to "introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects." No procedure in Replomuté required that the EIA conducted with regard to the proposed Lenoir Corporation projects considered significant adverse effects on biological diversity.

While the initial EIA was conducted prior to Replomuté signing and ratifying CBD, Replomuté became party to the EIA requirements of the CBD in 1993. After ratification, the EIA on file for the proposed oil extraction became inappropriate given the context of the CBD. Because the initial EIA did not consider the biodiversity effects of the project, including potential impacts to gorillas and gorilla habitat, this EIA did not satisfy Replomuté's Article 14.1(a) requirements under the CBD.

At the time of ratification, the oil extraction element of the project remained a "proposed activity,"[7] as no activity related to oil extraction had been actually conducted beyond mere planning. Indeed, Replomuté had numerous occasions to revise the inappropriate EIA while the oil extraction phase of the project remained in planning stages. At each of these critical junctures, the government of Replomuté had knowledge of their obligations under the CBD to have in place an appropriate EIA properly considering effects on biodiversity.

[7] A definition for a "proposed activity" can be found in the Convention on Environmental Impact Assessment in a Transboundary Context, to which Replomuté is also party. The Espoo Convention defines a proposed activity as "any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure." The decision to initiate the extraction phase of the project was a proposed activity by this definition. This proposed activity was subject to decisions of the Lenoir Corporation based on a number of factors including, likely, the results of oil exploration in the area as well as developments in the political and legal context associated with the project. The result of this decision was released in February 2012, when the Lenoir Corporation announced its plans to begin oil extraction activities from the DRI upon completion of the pipeline. Further, the Lenoir Corporations acted as a competent authority when making the decisions on proposals to resume activity in 2003, 2009, and 2022.

Further, at each of these moments, the oil extraction part of the project remained in "proposal" stages. Replomuté had the time and resources to conduct an appropriate and compliant EIA, or to require that DRI conduct an updated assessment in light of its obligations under Article 14.1(a) of the CBD. The fact that no EIA was conducted by either Replomuté or the DRI violates Replomuté's obligations under the Article 14.1(a) of the CBD.

2. Replomuté fails its obligations to conduct an appropriate EIA under the Espoo Convention

a. Replomuté is bound by its obligations as a contracting party under the Espoo Convention.

As a contracting party under the Espoo Convention, Replomuté is bound by its obligations under the Espoo Convention. Though Aringuv has not yet ratified the Espoo Convention, it has made indications that it intends to do so, both by signing the document and through the recent political agenda of the current President. This is similar to the circumstances of Russia that had previously signed but not ratified the Espoo convention. In that case, it was widely accepted that "by signing the Espoo Convention in 1991 the country has taken voluntary responsibility not to go against the spirit of the Convention." [8]Thus, while there was not a legal obligation of reciprocity, many neighboring parties to the convention are entitled to honor the voluntary responsibility as an indicator of a shared spirit. Replomuté should afford Aringuv the same respect here, following the general requirement under the Espoo Convention that states respect "the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a transboundary context." [9] Reneging on its obligations under Espoo on the technicality of reciprocity would contravene this general principle, especially considering the voluntary responsibilities of Aringuv as a Contracting State under the convention.

b. The EIA should be revisited, as per Article 6.3 of the Espoo Convention

[8] Peterson, K. *The Russian Federation and the Espoo Convention: Current Situation and Future Challenges* (2007).
[9] Convention on Environmental Impact Assessment in a Transboundary Context ("Espoo Convention"), February 25, 1991, 1989 U.N.T.S. 800

Article 6.3 of the Espoo Convention is controlling in an instance where "additional information on the significant transboundary impact of a proposed activity, which was not available at the time a decision was made with respect to that activity and which could have materially affected the decision, becomes available to a concerned Party before work on that activity commences." In this case, additional information became available since 1992 about the potential transboundary effects of climate change and in 2007 about the dangers presented to the Royal Mountain Gorilla, which has since been classified as critically endangered on the IUCN Red List of Threatened Species. This information, which was not considered in the initial EIA, increases the risk of transboundary harm to the nation of Aringuv, both because of the effects of climate change, and because of the hazards associated with eradicating one of the two remaining populations of an endangered species native to Aringuv. Because of the increased transboundary impact, Replomuté is required to revise the previous EIA and reconsider the decision to move ahead with the oil extraction project.

c. As defined in the Espoo Convention, there exists a significant transboundary impact of Lenoir Corporation's planned activities

Replomuté asserts that there is no significant transboundary impact sufficient to require an EIA. Article 1(vii) of the Espoo Convention sets the following definition for impacts considered under the convention:

> "Impact" means any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors» it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors.

A majority of these factors are implicated by the proposed oil extraction. Several NGOs have expressed "serious concern" about the effects of the proposed oil extraction on the population of Royal Mountain Gorillas, given that the project would entirely encompass the primary habitat of the southern population of the Royal Mountain Gorilla. The threat of local extinction for the southern population of the Royal Mountain Gorilla poses a substantial and grave danger to flora, fauna, landscape, and socio-economic conditions in Aringuv.

First, local extinction would pose trickle-down effects on other areas of the ecosystem,[10] reducing the future availability of food resources for other Royal Mountain Gorillas. Second, and more critically, local extinction of the southern Royal Mountain Gorilla would reduce the overall Royal Mountain Gorilla Population by over 30%, leaving the northern population as the singular group standing between the species and extinction. This is an especially precarious position due to the high risk of infectious disease transmission between gorillas living in proximity and the slow birth rate. [11]

Large-diameter oil and gas pipelines are listed in Appendix I of the Espoo Convention as a potentially impactful project, and thus the Lenoir Corporation project constitutes a project with significant transboundary impacts.

3. The duty to conduct a transboundary EIA is a Requirement of Principle 21 of the 1972 Stockholm Declaration

The prevailing view [12] in international law understands requirements for a transboundary EIA as a logical requirement of Principle 21 of the 1972 Stockholm Declaration. Principle 21 says:

> States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility 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

[10] Megafaunal extinction profoundly affected ecosystem structure, seed dispersal, land surface albedo and nutrient recycling processes. Through their movements, megafaunal species played a major role in translocating mineral nutrients from areas of high to those of lower abundance, Simone Fattorini, *Quaternary Mass Extinctions*, Science Direct (2021)

[11] This is not a base-less threat. A recent study found that Ebola Outbreaks lead to population declines of 56–98% in Western lowland gorilla populations due to the a high susceptibility for infection combined with high transmission rates. Zimmerman, D.M., Hardgrove, E., Sullivan, S. et al. Projecting the impact of an ebola virus outbreak on endangered mountain gorillas. Sci Rep 13, 5675 (2023).

[12] John H. Knox, *The Myth and Reality of Transboundary Environmental Impact Assessment*, The American Journal of International Law (2002)

The prevailing view interprets the second clause of the principle as a limiting factor on the right ensured in the first; this interpretation has been confirmed by the original negotiators of the language. [13] Thus, Principle 21 has been construed [14] as an obligation of performance of due diligence, entailing three procedural duties, including conducting a transboundary EIA.

In the context of Principle 21, the initial EIA conducted in 1981 violates the Stockholm Declaration. This initial EIA failed to consider any potential transboundary harms including the effects on gorillas, gorilla habitat, and climate change. Thus, Principle 21 requires Replomuté to properly determine that the "activities under their control do not cause damage to the environment of other States."

B. Replomuté has failed to comply with its obligations under Customary International Law to conduct a transboundary EIA

1. Customary International Law requires that states consider transboundary harm

In the case of *Pulp Mills on the River Uruguay* (*Argentina v. Uruguay*), the ICJ held that the obligation to conduct a transboundary EIA was considered a requirement under Customary International Law. [15]

The ICJ expanded on this obligation in *Costa Rica* v. *Nicaragua* / *Nicaragua* v. *Costa Rica*, by specifying a two-stage assessment approach for transboundary EIA procedures. First, a State is obligated to determine whether there is a risk of significant transboundary harm. Second, should such a risk exist, the state is further required to carry out a transboundary EIA under Customary International Law. [16]

In the *Nicaragua v Costa Rica* case, the ICJ held that Costa Rica failed to comply with the first prong of the assessment because it did not conduct any preliminary assessments on the risks posed by its transboundary road project. Further, the court held that if Costa Rica had properly conducted the preliminary assessment,

[13] Louis B. Sohn, *The Stockholm Declaration on the Human Environment*, 14 HARV. INT'LLJ. 423, 492 (1973)"
[14] Gunther Handl, *National Uses of Transboundary Air Resources: The International Entitlement Issue Reconsidered*, 26 NAT'L RES.J. 405, 429 (1986)
[15] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, ICJ Rep 113 (2006)
[16] *Costa Rica* v. *Nicaragua* / *Nicaragua* v. *Costa Rica*, ICJ Rep 15 (2018)

that it would have determined the presence of a significant transboundary harm, citing three main factors. *First* the court considered the scale of the project. *Second,* it considered the location of the project and *third,* it considered geographic conditions of the river basin where the road was to be situated. Through this analysis, the Court therefore found that "the construction of the road by Costa Rica carried a risk of significant transboundary harm" and that "the threshold for triggering the obligation to evaluate the environmental impact of the road project was met." [17] This framework can be applied to the case of Replomuté.

2. Replomuté failed to conduct a preliminary assessment as to the presence of transboundary harm

Like Costa Rica, Replomuté failed to properly conduct a preliminary assessment to determine whether the risks posed by the oil extraction activities of the Lenoir Corporation posed transboundary harm to the environment of Aringuv. By failing to take these transboundary impacts into account, Replomuté has failed to comply with the first stage of assessment required under Customary International Law.

3. There exists transboundary harm under the definitions of Customary International Law

Would Replomuté have conducted the preliminary assessment, they would have determined that the actions of the Lenoir Corporation pose a substantial risk of transboundary harm, following the three factors considered under *Nicaragua v Costa Rica. First,* the scale of the oil extraction and transportation project is substantial, with the pipeline stretching across the country of the DRI and the oil extraction encompassing a substantial footprint. *Second,* like the location considered in the case of *Nicaragua v Costa Rica*, the location of the oil extraction project encompasses the habitat of the Southern Population of Royal Mountain Gorilla, threatening the population with the grave danger of local extinction. *Third,* like the San Juan River, Royal Mountain Gorillas are migratory species that can pass between the border of DRI and Aringuv. Therefore, any harm caused by the oil extraction project would also impact the future resources, ecosystems, health, and population dynamics of Royal Mountain Gorillas in Aringuv.

[17] Ibid.

As such, Replomuté failed its obligations under Customary International Law, both to perform a preliminary assessment to determine the associated transboundary impacts of its oil extraction project, and to revise the existing EIA to take into account these transboundary concerns.

II. As a substantive matter, the actions of Replomuté violate International Law

A. Replomuté violated its direct responsibility under several international treaties to protect the habitat of the Royal Mountain Gorilla

1. Replomuté is not in compliance with Article 14.1(d) of the CBD

Regardless of its obligations under CBD Article 14.1(a) and 14.1(c) regarding the EIA, Article 14.1(d) is controlling for the substantive details of the case. Article 14.1(d) particularly pertains to actions "originating under its jurisdiction or control" that pose "imminent or grave danger or damage… to biological diversity within the area under jurisdiction of other States." [18] Under Article 14.1(d) Replomuté was obligated to both "notify immediately the potentially affected States" as well as "initiate action to prevent or minimize such danger or damage." Replomuté has failed to meet this obligation.

The actions of Lenoir Corporation fall under the scope of Article 14.1(d). First, the actions are completely under the control of Replomuté, as Lenoir Corporation is a wholly state-run corporation. Second, the actions threaten "grave danger" to biological diversity within the jurisdiction of Aringuv and DRI.

2. Replomuté is in violation of its obligations as a party to the Convention on Migratory Species

a. Royal Mountain Gorillas are considered migratory under the CMS

Replomuté argues that the Royal Mountain Gorilla does not migrate across borders, and thus there are not transboundary harms to its actions. However, the CMS applies to "the entire population or any geographically separate part of the population of any species, a significant portion of whose members cyclically and predictably cross one or more jurisdictional boundaries." [19]The Royal Mountain Gorilla is classified as

[18] Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79
[19] Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1969, 1651 U.N.T.S. 333

migratory and included in Appendix I of the convention. Over 68% of the species regularly transverses the jurisdictional boundary between the DRI and Aringuv, thereby constituting a significant portion of the species.

Further, severing the species would depart from the current definition of "geographically separate" recognized by the CMS. Splitting a species by geography is a rare occurrence (only four of the forty original listings in Appendix I consist of geographically separate populations of species). All four of these species are separated by numerous countries (for example, the separation of Peruvian and non-Peruvian populations of the vicuna or the separation of North West African and Canary Islands populations of the houbara bustard). Largely these separations are put in place to enable "a State with a non-endangered, well managed population of a species which is endangered in other States to allow limited exploitation of its population."

This is not the case between the northern and southern populations of the Royal Mountain Gorilla: both fall within the jurisdiction of the DRI, share characteristics, and are equally endangered. Furthermore, both populations possess the capacity to migrate across borders; it is noted that the Southern population is "rarely" sighted in Aringuv, which does not rule out the possibility that migration has occurred periodically in the past, or that it might occur in the future. As a "significant portion" of the species regularly migrate across borders, and because of the geographic proximity of the populations, the population cannot be separated under the CMS.

b. Due to its presence and impact in the range of the Royal Mountain Gorilla, Replomuté can be considered a range state under the CMS

While it is true that Replomuté does not exercise jurisdiction over the physical range of the Royal Mountain Gorilla, its control over critical decisions made in the habitat of the Southern Royal Mountain Gorilla population grants it a unique position to "remove barriers and reduce threats to aid conservation" of the species. Thus, Replomuté can be positioned as a range state under the CMS, and is thus party to any range-state obligations listed within the convention.

In UNEP/CMS/Resolution 12.21 on Climate Change and Migratory Species, the COP recognized that CMS instruments, such as defined ranges of migratory species, as well as the classifications of "range state," may need to adapt due to changes in the ranges of migratory species. Additionally, Decision 13.140: Definition of the terms "Range State" and "Vagrant" advises that "guidance should reflect the flexibility needed to assess Range State or vagrancy status on a case by case basis according to species and Party circumstances. [20]

In the supplemental document produced in conjunction with Decision 13.140, a decision tree proposed guidance for Parties in determining Range State status and considers states as "Range States" that are "able to provide suitable habitat, remove barriers, or reduce threats to aid conservation of the species." [21]This guidance follows the precautionary stance advised in the document that "may be needed for a species depending on whether it or its subpopulations are under threat." For example, a Critically Endangered species on the IUCN Red List could be considered to have Range State status in countries where it may only possibly appear occasionally and unpredictably, if it "could benefit from conservation action." This example of case-by-case flexibility is exemplified in the case of the Asiatic cheetah Acinonyx jubatus venaticus, where a strong case was made for Pakistan to be considered a Range State, even despite uncertainty about its consistent presence in the region.

In this case, Replomute has the ability to "provide management actions needed to make a difference to the conservation of the species," given its singular control over highly destructive activities occurring in the primary habitat of the Royal Mountain Gorilla. This positions Replomute as better suited to make decisions to preserve the conservation of the Royal Mountain Gorilla than any of the other Range States. The spirit of the CMS encourages the "concerted action of all States" to protect critically endangered species: it would contravene this spirit if Replomute were exempted from its obligation to protect said species merely because it was operating beyond its territorial boundaries.

[20] CMS, Decision 13.140: Definition of the terms "Range State" and "Vagrant", UNEP/CMS/ScC-SC5/Inf.6 (2021)
[21] Ibid.

c. Even if Replomuté is not considered a Range State, it is still in violation of CMS obligations

Even if Replomuté is not considered a Range State and is not subject to Article III obligations, the general principles in Article II apply. Article 2.2 requires all parties to "acknowledge the need to take action to avoid any migratory species becoming endangered." Replomuté failed to comply with this principle in refusing to take action to prevent oil extraction that would severely endanger a large percentage of the Royal Mountain Gorilla population. Further, Article 2.1 stipulates that the Parties:

> "acknowledge the importance of migratory species being conserved and of Range States agreeing to take action to this end."

By invoking the mandatory arbitration provision of the DRI-Replomuté agreement instead of allowing the government of DRI to withdraw from the agreement in light of its responsibilities as a Range State, Replomuté fails to respect the importance of Range State conservation action.

B. Replomuté is indirectly in violation of several international treaties through coercion of the DRI to commit an internationally wrongful act

Despite Replomuté's critiques of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 18 is grounded in customary international law and provides a legible rubric to understand disproportionate power dynamics and coercive tactics between nations. Thus, the articles should be interpreted as persuasive logic illuminating dimensions of coercion ending in the violation of International Law. [22]

Article 18 lays out two main criteria for a nation to be internationally responsible for legal violations of another nation: *first*, the act would, but for the coercion, be an internationally wrongful act of the coerced State and *second*, the coercing State does so with knowledge of the circumstances of the act. [23]Thus, it is necessary to first establish that the DRI violated international law and second establish that Replomuté was

[22] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1(2001)
[23] Ibid.

aware of the violation. *Third*, it is necessary to establish that the actions of Replomuté in regards to the concession agreement in the DRI constituted coercion under the ILC Draft Articles.

1. The act would, but for the coercion, be an internationally wrongful act of the coerced State

The DRI has violated many international treaties to which it is party, including, most notably, its Range State commitments under the CMS and obligations under the Gorilla Agreement. As a Range State to the Royal Mountain Gorilla, the DRI is required to conserve gorilla habitat and to "prevent, reduce or control factors that are endangering or are likely to further endanger the species." These same obligations are emphasized in the 2007 Gorilla Agreement, such that the DRI is required under Article III, paragraph 2(a) to "accord the same strict conservation for gorillas" as provided for under the CMS. DRI violated these obligations by allowing an oil extraction project to encompass the primary habitat of the Royal Mountain Gorillas residing within its national jurisdiction. [24]

The failure to comply with any of these treaties to which it is party constitute a breach of DRI's commitments to international law and would be an internationally wrongful act had the state not been coerced by Replomuté.

2. The coercing State does so with knowledge of the circumstances of the act

The ILC Draft Articles note that while ignorance of the circumstances of the act are material in determining the responsibility of the coercing State, ignorance of the law is no excuse. [25] Replomuté had been informed by international NGOs as well as by the state of Aringuv that DRI's actions with violate the CMS and Gorilla Agreement. Thus, Replomuté was duly aware that the activities were a breach of the CMS obligations; Replomuté's sole defense in regards to this accusation was that it was not itself a Range State for the Royal Mountain Gorilla. DRI, however, is a Range State and was in clear violation of its Range State obligations.

[24] Agreement on the Conservation of Gorillas and Their Habitats ("Gorilla Agreement"), October 26, 2007, 2545 U.N.T.S. 36

[25] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1(2001)

3. Replomuté coerced the DRI to make illegal decisions

Finally, Replomuté coerced the DRI to make illegal decisions that violated its Range State obligations under the CMS and Gorilla Agreement. The ILC Draft Articles note that "serious economic pressure" constitutes coercion if it deprives "the coerced State of any possibility of conforming with the obligation breached." In this case, Replomuté "forced the will" of DRI by invoking the mandatory binding arbitration clause, which resulted in the DRI having no "effective choice but to comply with the wishes of the coercing State" due to the economic circumstances of the nation. Because of DRI's low-income status, with a gross national income per capita was $82, DRI had no feasible choice to refuse the results of the mandatory binding arbitration and its $825 million penalties. Given that the DRI had only the option to comply with the wishes of Replomuté and violate its international responsibilities, this constitutes coercion under the ILC Draft Articles. Thus, Replomuté bears the sole responsibility under Article 18 for the injuries to Aringuv as a result of its coercion, and is indirectly responsible for DRI' violation of international law.

Conclusion

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

(1) As a procedural matter, the failure of Replomuté to prepare an EIA with respect to the proposed oil extraction activities in the region violates international law

(2) As a substantive matter, the actions of Replomuté with respect to the proposed oil extraction activities in the DRI violate international law.

RESPECTFULLY SUBMITTED

AGENTS OF APPLICANT