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28TH ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION, 2024

BEFORE THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, NETHERLANDS

GENERAL LIST NO. 303

THE CASE CONCERNING QUESTIONS RELATING TO MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

ARINGUV
(APPLICANT)

V.

REPLOMUTÉ
(RESPONDENT)

WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Statutes

International Treaties and Conventions

Judicial and Arbitral Decisions

UN and Other International Documents

Kunming-Montreal Global Biodiversity Framework, Decision of the Conference of Parties to the CBD, U.N. Doc. CBD/COP/15/L.25 (Dec. 18, 2022). 27

Report of the International Law Commission on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10 (Aug. 10, 2001). 28, 30

Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/126 (Aug. 12, 1992)...23, 28

U.N.G.A., *Economic Measures as a Means of Political and Economic Coercion against Developing Countries*, Note by the Secretary-General, U.N. Doc. A/48/535 (Oct. 25, 1993) 30

U.N.E.P., *Assessing Environmental Impacts: A Global Review of Legislation* (Feb. 9, 2018) 23

Articles and Other Periodicals

Benjamin Hmiel, et. al., *Preindustrial 14CH4 Indicates Greater Anthropogenic Fossil CH4 Emissions*, 578 NATURE 409 (2020). 26

Clyde Eagleton, *The Responsibility of States in International Law*, 22 AM. J. INT'L L. 291 (1928)..... 30

Dara O'Rourke & Sarah Connolly, *Just Oil? The Distribution of Environmental and Social Impacts of Oil Production and Consumption*, 28 ANN. REV. ENV'T RES. 587 (2003). 22

Elizabeth Kamara, et. al., *Effects of Oil and Gas Exploration in Murchison Falls National Park on Wildlife Resources*, 2 AFRICAN J. OF ENV'T & NAT. SCI. RSCH. 48 (2019)..... 26

IUCN, *Protected Area Categories*, 14 PARKS 3 (2004). 26

James D. Fry, *Coercion, Causation, and the Fictional Elements of Indirect State Responsibility*, 40 VAND. J. OF TRANSNAT'L L. 3 (2007). 30

Jeremy S. Simmonds, et al., *Vulnerable Species and Ecosystems Are Falling through the Cracks of Environmental Impact Assessments*, 13 CONSERVATION LETTERS 1 (2020). 20

Marte Jervan, *The Prohibition of Transboundary Environmental Harm*, PLURICOURTS RESEARCH PAPER NO. 14-17 (2014). 27, 28

Books

Online Materials

Legislative Materials

LIST OF ABBREVIATIONS

Algiers Convention	African Convention on the Conservation of Nature and Natural Resources
CBD	Convention on Biological Diversity
CMS	Convention on the Conservation of Migratory Species of Wild Animals
DRI	Democratic Republic of Ibirunga
ECHR	European Court of Human Rights
EIA	Environmental impact assessment
Espoo Convention	Convention on Environmental Impact Assessment in a Transboundary Context
Gorilla Agreement	Agreement on the Conservation of Gorillas and Their Habitats
ICJ	International Court of Justice
ILC	International Law Commission
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
Lenoir	The Lenoir Corporation
NDC	Nationally Determined Contribution
NGO	Nongovernmental organization
Rio Conference	1992 United Nations Conference on Environment and Development at Rio de Janeiro
RMG	Royal Mountain Gorilla
Stockholm Conference	1972 United Nations Conference on the Human Environment at Stockholm
UNFCCC	United Nations Framework Convention on Climate Change
VCLT	Vienna Convention on the Law of Treaties

QUESTIONS PRESENTED

I. WHETHER, AS A PROCEDURAL MATTER, REPLOMUTÉ'S FAILURE TO COMPLETE ANY ENVIRONMENTAL IMPACT ASSESSMENT FOR ITS OIL ACTIVITIES IN THE DEMOCRATIC REPUBLIC OF IBIRUNGA VIOLATES INTERNATIONAL LAW.

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

STATEMENT OF JURISDICTION

In accordance with Article 40(1) of the *Statute of the International Court of Justice*, Aringuv and Replomuté transmitted a Special Agreement to the Registrar of the Court on July 24, 2023. The Special Agreement provided that the Parties agreed to the jurisdiction of the Court and would not dispute the Court's jurisdiction in written nor oral proceedings. Per the Special Agreement, the Parties submitted questions to the Court regarding both procedural and substantive issues. The Registrar of the Court notified the Parties on July 31, 2023, of receipt of these questions and of entry of the case of Questions Relating to Mountain Gorillas and Impact Assessment (Aringuv v. Replomuté) into the Court's General List.

STATEMENT OF FACTS

Background

The RMG is an endangered species found exclusively in Aringuv and the DRI, two bordering countries in central Africa. The northern population of the RMG occupies a transboundary national park where the gorillas frequently cross the border between the DRI and Aringuv. The southern population inhabits a national park in the DRI. The RMG is listed in Appendix I of the CMS as an endangered migratory species and is classified as critically endangered by the IUCN.

Replomuté, a high-income European country, is a top importer of crude oil with a large industrial economy propelled by mining, metal production, and manufacturing. Replomuté has accepted responsibility for mitigating climate change; along with Aringuv and the DRI, Replomuté was part of the consensus of all documents emerging from several climate change-related international convenings, including the Stockholm Conference and the Rio Conference.

Concession Agreement and Oil Pipeline Construction

In 1981, Replomuté elicited a concession agreement from the DRI that granted Lenoir, a company owned and operated entirely by Replomuté, the right to explore for and extract oil from the area in the DRI inhabited by the RMG. The agreement allowed Replomuté to construct an oil pipeline from the habitat of the RMG—a national park—to the coast of the DRI. The DRI conducted an incomplete EIA for Replomuté's oil activities that excluded potential impacts on the RMG and climate change. Replomuté never completed an EIA.

Lenoir began oil exploration activities in the DRI in 1983 and construction on an oil pipeline in 2009. After a military coup in the DRI in 2012, the new government sought to withdraw from the concession agreement with Replomuté. Replomuté invoked a mandatory

binding arbitration clause in the agreement and prevailed in arbitration. The DRI was ordered to permit Lenoir to continue its operations or pay $825 million.

Diplomatic Notes and Negotiations

In 2018, Aringuv sent a diplomatic note to Replomuté expressing concerns about the impact of oil extraction activities on the RMG and requested that Replomuté conduct an EIA. Replomuté declined Aringuv's request.

Aringuv replied, stating that if pipeline construction continued, Replomuté would be in violation of the CMS and would be responsible for any breach of the Gorilla Agreement by the DRI because of Replomuté's coercion. Replomuté ceased pipeline construction in March 2020 at 98% completion, but in April 2022 it announced it would resume construction. Aringuv and Replomuté engaged in negotiations pertaining to Replomuté's oil activities in the DRI, and the countries agreed to submit questions to the ICJ for resolution.

SUMMARY OF ARGUMENTS

I. Replomuté's failure to prepare an EIA for its oil activities in the DRI violates international law

Replomuté did not prepare any EIA for its oil exploration and extraction activities in the DRI, violating international law. Replomuté violates the Espoo Convention by not completing an EIA for the oil activities of Lenoir, which is under the control of Replomuté. Replomuté violates the CBD by failing to prepare an EIA for oil activities that threaten the RMG, a contributor to biodiversity. Replomuté violates the CMS because its failure to prepare an EIA abrogates its duty to protect migratory species such as the RMG. Replomuté violates specific EIA components of its multiple climate change commitments, including the UNFCCC. Lastly, Replomuté violates customary international law by shirking its responsibility to complete an EIA for an activity likely to cause significant transboundary environmental harm.

II. Replomuté violates international law both directly and indirectly through its oil activities in the DRI

Replomuté directly violates international law under the CMS and the CBD through its oil activities, which have a direct adverse impact on the RMG and its habitat. Replomuté is also in violation of principles of customary international law, including the "no-harm rule" and sustainable development, by engaging in transboundary harm in the DRI and negatively impacting the surrounding environment. Replomuté's failure to mitigate the impacts of its oil activities on climate change is inconsistent with its responsibilities under several climate agreements, including the UNFCCC. Finally, Replomuté indirectly violates international law by coercing the DRI to commit internationally wrongful acts under the Gorilla Agreement and the Algiers Convention.

ARGUMENTS

I. REPLOMUTÉ'S FAILURE TO PREPARE AN EIA FOR ITS OIL ACTIVITIES IN THE DRI VIOLATES INTERNATIONAL LAW

A. Replomuté's failure to prepare an EIA violates its treaty obligations under the Espoo Convention, the CBD, and the CMS

As a Party to the Espoo Convention, Replomuté has failed to prepare an EIA and to notify other Parties of relevant information about transboundary impacts. Pursuant to the CBD, Replomuté has violated its duty to assess the environmental impacts of its oil activities that will likely have adverse effects on biological diversity. The CMS requires Replomuté to prevent or minimize adverse effects on migratory species, and Replomuté's neglect of EIA procedures violates that obligation. Beyond violations of individual treaty provisions, Replomuté has also undermined the object and purpose of each of these important treaties.

1. Replomuté violates the Espoo Convention and undermines its object and purpose

Replomuté has been a Party to the Espoo Convention since 1997.[1] The Convention requires that all Parties establish an EIA procedure that includes public participation and the preparation of an EIA document.[2] There is no evidence that Replomuté has established such a procedure. The Convention lists "[l]arge-diameter oil and gas pipelines"[3] as projects for which EIAs are required. An EIA must include "[a] description of the potential environmental impact of the proposed activity . . . and an estimation of its significance,"[4] with particular attention given to effects on "valued species or organisms."[5]

[1] Record ("R.") at 7.
[2] *See* Espoo Convention, art. 2(2), Feb. 25, 1991, 1989 U.N.T.S. 309.
[3] *Id.*, Appendix I(8).
[4] *Id.*, Appendix II(d).
[5] *Id.*, Appendix III(1)(c).

The Convention imposes a due diligence standard on all Parties[6] to prevent and reduce significant transboundary environmental harms and implement the aims of the treaty.[7] Empirical studies have consistently established that oil pipeline construction frequently results in habitat loss for endangered species.[8] Replomuté's failure to conduct an EIA, and to ensure that the DRI's assessment evaluated transboundary impacts on the RMG, falls far short of its due diligence treaty obligation to prevent and reduce transboundary environmental harm.

Beyond this duty of all Parties, the Espoo Convention requires a "Party of origin" to conduct an EIA when a proposed activity is "likely to cause a significant adverse transboundary impact."[9] The Party of origin is defined as a Party to the Convention "under whose jurisdiction a proposed activity is envisaged to take place."[10] The concept of jurisdiction is not defined in the Convention, but it has been interpreted to include activities under a State's "effective control."[11] Jurisdiction concerning environmental impacts is determined by evaluating which State "is in a position to prevent [the proposed activities] from causing transboundary harm."[12]

Here, Replomuté exercises effective control and is in the best position to prevent harm because it fully controls the operations of Lenoir, qualifying Replomuté as a Party of origin. Moreover, the Convention refers on multiple occasions to a Party's "territory" when discussing

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[6] *See id.*, art. 2(1).
[7] *See, e.g.*, Case of A.-M.V. v. Finland, First Section, ECHR, Application No. 53251/13, Final Judgment (June 23, 2017), at ¶ 45 (convention with exact same language–"take all appropriate and effective measures"–was interpreted by the UN to require due diligence and abolishment of regulations).
[8] *See* The Wildlife Society, *Impacts of Crude Oil and Natural Gas Developments on Wildlife and Wildlife Habitat in the Rocky Mountain Region*, Technical Review 12-02, at 15, 29 (Aug. 2012), https://wildlife.org/wp-content/uploads/2014/05/Oil-and-Gas-Technical-Review_2012.pdf.
[9] Espoo Convention, art. 2(3).
[10] *Id.*, art. 1(ii).
[11] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia and Montenegro), 2007 I.C.J 43, ¶ 400 (Feb. 26).
[12] *Decision Adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Concerning Communication No. 104/2019*, UN Committee on the Rights of the Child, UN Doc. CRC/C/88/D/104/2019, at 10 (Nov. 11, 2021).

the creation of an inquiry commission and an arbitral tribunal.[13] With respect to EIA obligations, then, the drafters consciously rejected the term "territory," with its accompanying constraints, and instead chose to utilize the broader concept of "jurisdiction."

As a Party of origin, Replomuté must comply with the EIA obligations of the Convention but has failed for several reasons. First, the oil pipeline was a "proposed activity" when Replomuté joined the Convention in 1997 and remains one because it has yet to be completed.[14] Second, although the diameter of the pipeline is unknown, the scale of the project and its initial five-year construction timeline indicate it qualifies as a "large-diameter" pipeline listed in the Convention as requiring an EIA.[15] Third, Replomuté's oil activities in the DRI are likely to cause significant adverse transboundary impacts.

Factors to be considered in assessing this likelihood include the size of the project, its location, and its effects.[16] Here, the 9.5 billion barrels of available oil in the DRI and the fourteen years spent on pipeline construction indicate that Replomuté's oil activities are sizable.[17] Regarding location, the pipeline runs through a national park in the DRI. The Espoo Convention specifically lists "national parks" as "area[s] of special environmental sensitivity or importance,"[18] increasing the likelihood that an EIA is required. As for effects, the RMG's status as an endangered migratory species under the CMS and a critically endangered species according to the IUCN conveys that it is one of the "valued species or organisms"[19] specially protected under the Convention. The DRI's initial EIA, as conceded by Replomuté, "did not take potential

[13] Espoo Convention, Appendix IV(2), VII(2).
[14] R. at 12.
[15] R. at 8.
[16] *See* Espoo Convention, Appendix III.
[17] R. at 6, 8.
[18] Espoo Convention, Appendix III(1)(b).
[19] *Id.*, Appendix III(1)(c).

impacts to gorillas, gorilla habitat, or climate change into account."[20] Even assuming the DRI's EIA could satisfy Replomuté's treaty responsibilities, the EIA here was insufficient.

Parties of origin must consult with affected Parties "after completion of the environmental impact assessment documentation"[21] and must notify other Parties after discovering "additional information on the significant transboundary impact of a proposed activity."[22] Since the DRI's incomplete EIA in 1981, Replomuté has participated in multiple conferences on climate change and sustainable development and has become a Party to the CBD, CMS, Espoo Convention, and UNFCCC.[23] A group of NGOs also expressed serious concerns directly to Replomuté about the environmental impacts of its oil activities.[24] Each of these actions communicated relevant additional information to Replomuté, yet Replomuté did not consult with nor notify the DRI and Aringuv and did not allow consultations on whether the decision to allow Replomuté's oil activities must be "revised."[25]

Replomuté argues that it has no obligations under the Espoo Convention to Aringuv because Aringuv is not a Party. This argument has little textual basis. Aringuv has signed the Convention but has not ratified it. The Convention defines "Parties" as any "Contracting Parties" to the Convention[26]; it does not distinguish between signature and ratification. The term "Contracting Parties" is often used in international law to denote both signatories and Parties that have ratified a treaty.[27] Nothing in the treaty or international law, then, bars Aringuv from invoking the consultation and notification provisions of the Convention.

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[20] R. at 8.
[21] Espoo Convention, art. 5.
[22] *Id.*, art. 6(3).
[23] R. at 6.
[24] R. at 8.
[25] Espoo Convention, art. 6(3).
[26] *Id.*, art. 1(1).
[27] *See, e.g.*, Convention on Choice of Court Agreements, 44 I.L.M. 1294 (June 30, 2005).

Even assuming Replomuté is not a Party of origin, signatories to a treaty have an obligation "to refrain from acts which would defeat the object and purpose of a treaty."[28] The ICJ has instructed that the object and purpose of environmental treaties should be interpreted broadly.[29] One purpose of the Espoo Convention is that all Parties shall "take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities."[30] Replomuté's failure to complete any EIA for its oil activities in an environmentally sensitive transboundary region and its failure to update or revise the DRI's 1981 assessment undermine this purpose.

2. Replomuté violates the CBD and undermines its object and purpose

The CBD, to which Replomuté is a Party,[31] is aimed at "the conservation of biological diversity [and] the sustainable use of its components."[32] Article 14(1)(a) of the CBD contains an EIA obligation requiring Parties to create "procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity."[33]

Article 4 of the CBD directly addresses jurisdictional issues, providing that the Convention governs any "processes or activities" affecting biodiversity "regardless of where their effects occur," so long as they take place "under [the Party's] jurisdiction or control."[34] Replomuté, which owns and operates Lenoir, commands the nature and scope of all of Lenoir's activities in the DRI.[35] Thus, the CBD governs Replomuté's oil activities in the DRI because

[28] VCLT, art. 31, May 23, 1969, 1155 U.N.T.S. 331.
[29] *See* Australia v. Japan: New Zealand Intervening, 2014 I.C.J. 226, ¶¶ 54-55 (Mar. 31).
[30] Espoo Convention, art. 2(1).
[31] R. at 6.
[32] CBD, art. 1, June 5, 1992, 1760 U.N.T.S. 79.
[33] *Id.*, art. 14.1(a).
[34] *Id.*, art. 4.
[35] R. at 8.

they are activities under Replomuté's control. Consequently, Replomuté violates the CBD by failing to create EIA procedures and failing to identify and regulate "categories of activities which have or are likely to have significant adverse impacts" on biodiversity.[36]

Replomuté relies on Article 14(1)(c), arguing that this provision controls when a proposed activity is likely to adversely affect biological diversity in another State. This reading belies the Convention's text. Article 14(1) lists five obligations of the Parties, ultimately separated by the word "and."[37] This conjunctive list must be read to impose five independent duties upon the Parties—each of which is enforceable—rather than to create separate regimes that apply in different circumstances to the exclusion of others.[38] Article 14(1)(c) has the independent purpose of ensuring consultation and the exchange of information when impacts are transnational or beyond national jurisdictions. That purpose only bolsters the need for EIAs under Article 14(1)(a), as Parties' abilities to exchange information is restricted if they have not conducted an EIA to gather appropriate data.

The overarching object and purpose of the CBD is to conserve and avoid adverse impacts on biological diversity. The RMG is a critically endangered species, which the CBD treats with particular care,[39] and the habitats of mountain gorillas are rich in biodiversity.[40] Replomuté's failure to evaluate the impacts on the RMG of the oil activities under its control therefore undermines the CBD's object and purpose if not its text.

3. Replomuté violates the CMS and undermines its object and purpose

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[36] CBD, art. 7(c).
[37] *Id.*, art. 14(1)(d).
[38] *See* VCLT, art. 31(2).
[39] *See* CBD, arts. 7–9.
[40] *See Mountain Gorilla*, AFRICAN WILDLIFE FOUNDATION, https://www.awf.org/wildlife-conservation/mountain-gorilla (last visited Nov. 7, 2023).

The CMS is meant to conserve migratory species, prevent their endangerment, and promote protective action by States.[41] Although not a Range State under the CMS, which would entail heightened requirements, Replomuté is a Party and violates its express obligation to "provide immediate protection for migratory species included in Appendix I."[42] This provision imposes a due diligence standard on all Parties to assess when State action may endanger migratory species and prevent such harm when possible.[43] The RMG is listed in Appendix I,[44] and preparing an EIA constitutes the necessary first step in ensuring protection for a vulnerable species.[45] By conducting activities in an endangered species' habitat that inherently jeopardize the well-being and survival of the species without investigating potential impacts on the species, Replomuté violates its most fundamental duty under the CMS.

Importantly, the Conference of the Parties to the CMS revised a resolution in 2017, initially adopted in 2004, pointedly addressing EIAs. The resolution "[e]mphasizes the importance of good quality environmental impact assessment" and "[u]rges Parties to include in [an] EIA . . . as complete a consideration as possible of . . . transboundary effects on migratory species."[46] As a Party to the CMS, Replomuté has endorsed the resolution. Replomuté has undermined the goals articulated in this resolution by balking any EIA procedure for its oil activities in the DRI. Especially given the treaty's mandate to "pay[] special attention to

[41] *See* CMS, art. II, June 23, 1979, 1651 U.N.T.S. 333.
[42] *Id.*, art. II(3)(b).
[43] *See Republic of the Philippines v. People's Republic of China*, Permanent Court of Arbitration, 170 I.L.R. 1, Final Award, ¶¶ 956–61, 988 (July 12, 2016) (holding general treaty obligation to protect marine environment imposed a due diligence standard to prepare an EIA).
[44] R. at 7.
[45] *See, e.g.*, Jeremy S. Simmonds, et al., *Vulnerable Species and Ecosystems Are Falling through the Cracks of Environmental Impact Assessments*, 13 CONSERVATION LETTERS 1 (2020).
[46] *Impact Assessment and Migratory Species*, Resolution of the Conference of Parties to the CMS, U.N. Doc. UNEP/CMS/Resolution 7.2 (Rev.COP12) ¶¶ 1-2 (Oct. 2017).

migratory species the conservation status of which is unfavorable,"[47] Replomuté's conduct contravenes the CMS.

The list of species in Appendix I of the CMS consists of entire species, subspecies, and specific populations of a species. Thus, the Parties to the CMS understand that subsets of a species may not be migratory. The RMG is listed in Appendix I without qualification. The northern population of the gorilla receives no more protection than the southern population. Thus, the Convention treats the RMG as one migratory species worthy of safeguarding due to its endangered status, rendering moot Replomuté's argument that the southern population of the RMG is not migratory.[48]

4. Replomuté violates other treaty commitments, including under the UNFCCC and the Paris Agreement

Replomuté has been a Party to the UNFCCC since 1992.[49] One of the "commitments" under the UNFCCC requires Parties to "[t]ake climate change considerations into account . . . and employ appropriate methods, for example impact assessments."[50] Replomuté's oil exploration and extraction activities in DRI involve the emissions of greenhouse gasses that implicate the "climate change considerations" mandated by the UNFCCC; the pipeline's oil is also being transported to Replomuté to support its economic activity, which includes mining, metal production, and manufacturing,[51] all of which contribute to GHG emissions and climate change. The UNFCCC therefore directs Replomuté to conduct an EIA, which it has not done.

The Paris Agreement, to which Replomuté is a Party, requires Parties to develop "plans, policies and/or contributions" that include the "assessment of climate change impacts and

[47] CMS, art. II.
[48] R. at 11.
[49] R. at 7.
[50] UNFCCC, art. 4(1)(f), May 9, 1992, 1771 U.N.T.S. 107.
[51] R. at 6.

vulnerability."[52] The oil activities of Lenoir are under Replomuté's control; oil exploration and extraction here will contribute to emissions and climate change vulnerability in the DRI, and the shipment of oil to Replomuté will produce emissions upon consumption.[53] Replomuté flouts the Paris Agreement by conducting no evaluation of climate change impacts.

B. Replomuté's failure to prepare an EIA violates customary international law

This Court is authorized to apply customary international law,[54] and the Parties here agreed that the ICJ should resolve this dispute using "rules and principles of general international law."[55] In determining whether a customary rule has solidified in international law, this Court looks to the uniformity of State practice, evidence that States are acting out of a sense of legal obligation (*opinio juris*), State reservations to the rule, and the passage of time.[56] Here, a custom has been adopted by States requiring an assessment of environmental impacts when a proposed State action may have significant adverse transboundary effects on the environment. Replomuté violates this custom.

In identifying relevant principles and customs, the ICJ may validly turn to its own precedent and the views of jurists and scholars.[57] In the seminal *Pulp Mills* case, the ICJ firmly established the "requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a

[52] Paris Agreement, art. 7(9)(c), Dec. 12, 2015, 3156 U.N.T.S. 79.
[53] *See* Dara O'Rourke & Sarah Connolly, *Just Oil? The Distribution of Environmental and Social Impacts of Oil Production and Consumption*, 28 ANN. REV. ENV'T RES. 587 (2003).
[54] Statute of the ICJ, art. 38(1)(b).
[55] R. at 4.
[56] *See generally* North Sea Continental Shelf (Germany v. Netherlands), 1969 I.C.J. 4 (Feb. 20).
[57] Statute of the ICJ, art. 38(1)(d).

significant adverse impact in a transboundary context."[58] This Court has since reiterated this customary rule.[59]

As for State practice, nearly every UN member nation has enacted a law imposing an EIA requirement, and the UN has asserted that "customary international law obliges States to conduct transboundary EIAs for activities which may have significant adverse impact."[60] Some EIA laws even cite international law as requiring such legislation,[61] indicating the presence of *opinio juris*. Many multilateral treaties similarly incorporate EIA requirements, whether for transboundary or domestic activities.[62] The Rio Declaration, which Replomuté adopted, highlights that an "[e]nvironmental impact assessment . . . shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment."[63] Accordingly, "[t]he duty of a state to conduct an EIA has gradually gained the status of a fundamental principle in international law."[64]

Contrary to clear customary requirements, Replomuté has not made any effort to evaluate the environmental impacts of an activity directly under its control that may significantly harm the environment of another State. Replomuté's oil activities pose a risk of significant harm to both Aringuv and the DRI, yet Replomuté prepared no EIA. The DRI's EIA also cannot discharge Replomuté's customary duty; an EIA that completely omits elements of the environment that are at risk of significant harm, as the DRI's did, is *per se* inadequate.[65] A State is relieved of its

[58] Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010 I.C.J. 14, ¶ 204 (Apr. 20).
[59] *See* Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), 2015 I.C.J. 665, ¶ 101 (Dec. 16).
[60] U.N.E.P., *Assessing Environmental Impacts: A Global Review of Legislation*, at 13 (Feb. 9, 2018).
[61] *See* Environmental Impact Assessment System Act of Peru [2001], rev. 2008, art. 2.2.15, annex III(5).
[62] *See, e.g.*, UN Convention on the Law of the Sea, art. 206, Dec. 10, 1982, 1833 U.N.T.S. 3; Protocol on Environmental Protection to the Antarctic Treaty, arts. 3, 8, annex I, Oct. 4, 1991, 2941 U.N.T.S. 3.
[63] Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/126, Principle 17 (Aug. 12, 1992).
[64] Amrit Kaur Pannu, *Law Governing Environmental Impact Assessments at the International Level*, CONSERVATION, SUSTAINABILITY, AND ENVIRONMENTAL JUSTICE IN INDIA 113 (2020).
[65] *See* Philippines v. China, ¶¶ 923, 990.

customary EIA duty only if there is no risk of significant harm or a comprehensive assessment has been completed.[66] Neither is true here, so Replomuté continues to violate customary law.

[66] *See* Costa Rica v. Nicaragua, ¶ 105; Pulp Mills, ¶¶ 210, 261.

II. REPLOMUTÉ VIOLATES INTERNATIONAL LAW BOTH DIRECTLY AND INDIRECTLY THROUGH ITS OIL ACTIVITIES IN THE DRI

A. Replomuté directly violates international law under the CMS and the CBD

Replomuté's actions in the DRI directly violate its obligations as a Party to both the CMS and the CBD. Under the CMS, Parties must take steps to conserve migratory species and their habitats. Under the CBD, Parties must ensure activities within their jurisdiction or control do not damage the environment of other States or areas beyond the limits of national jurisdiction. Through its control of Lenoir, Replomuté's oil extraction activities in the DRI have direct adverse effects on the RMG and its habitat.

1. Replomuté violates its obligations under the CMS

As a Party to the CMS since 1983,[67] Replomuté is required to "provide immediate protection" for migratory species included in Appendix I of the Convention.[68] This responsibility applies to conserving the RMG and its habitat.[69] Replomutè's actions in the DRI adversely impact the species[70] and therefore contradict the fundamental principles of the CMS.[71] Parties must give "special attention" to a migratory species with "unfavorable conservation status" and take "necessary steps" to conserve the species and its habitat.[72] To comply with its responsibilities under the Convention, Replomuté must consider any impact on the long-term abundance of the RMG population and its habitat.[73] However, Replomuté continues to conduct extensive oil activities directly within the RMG's habitat with no knowledge of the impacts of those activities on the species, an action directly contrary to protecting the species. Moreover,

[67] R. at 6.
[68] CMS, art. II(3).
[69] R. at 7.
[70] R. at 8.
[71] *See* CMS, art. II.
[72] *Id.*
[73] *See id.*, art. I.

Replomuté has not taken action that would prevent the RMG from "becoming endangered"[74]; Replomuté's oil activities and pipeline construction disrupt the RMG habitat and will almost certainly reduce the overall population if they have not already.[75]

2. Replomuté violates its obligations under the CBD

Under the CBD, Replomuté is required to "promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings."[76] Replomuté's oil extraction activities threaten the ecosystems in a preserved national park, violating Replomuté's duty to protect ecosystems and natural habitats.[77]

Replomuté must guarantee that activities under its jurisdiction or control do not environmentally damage other States or "areas beyond the limits of national jurisdiction."[78] Replomuté controls Lenoir's oil activities and therefore has the capacity to ensure its activities in the DRI do not negatively impact the RMG and its "natural surroundings."[79] These activities cause substantial damage to the DRI's environment by jeopardizing an endangered species,[80] damaging a national park,[81] and contributing to climate change.[82]

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[74] *Id.*, art. II(2).
[75] *See Threats*, INTERNATIONAL GORILLA CONSERVATION PROGRAMME, https://igcp.org/mountain-gorillas/threats/ (last visited Nov. 6, 2023); *Oil and Gas Development*, WORLD WILDLIFE FUND, https://www.worldwildlife.org/threats/oil-and-gas-development (last visited Nov. 6, 2023).
[76] CBD, art. VIII.
[77] National Parks are generally considered to be protected areas. *See* IUCN, *Protected Area Categories*, 14 PARKS 3 (2004).
[78] CBD, art. III.
[79] *Id.*, art. VIII.
[80] Oil exploration activity can release harmful pollutants into the air and contaminate water with chemicals, degrading natural resources that endangered species rely upon. *See Oil and Gas Development*, *supra* note 75.
[81] *See e.g.*, Elizabeth Kamara, et. al., *Effects of Oil and Gas Exploration in Murchison Falls National Park on Wildlife Resources*, 2 AFRICAN J. OF ENV'T & NAT. SCI. RSCH. 48 (2019).
[82] *See* Benjamin Hmiel, et. al., *Preindustrial 14CH4 Indicates Greater Anthropogenic Fossil CH4 Emissions* 578 NATURE 409 (2020).

The purpose of the CBD is the "conservation of biological diversity,"[83] noting that this is a "common concern of humankind."[84] These goals were reaffirmed in a 2022 framework.[85] Given that the RMG is only found in the DRI and Aringuv, the species is vital to the biodiversity of the surrounding region.[86] Replomuté's oil activities, which disturb the habitat of an important contributor to biological diversity without any government action to prevent this harm, undermine the CBD's purpose.

B. Replomuté directly violates customary international law and climate agreements

Replomuté's oil activities in the DRI are contrary to fundamental rules of customary international law such as the "no-harm rule" and the principle of sustainable development, and they conflict with Replomuté's climate commitments.

1. Replomuté's actions are inconsistent with various principles of customary international law

One of the hallmarks of customary international environmental law is that States are under an obligation to avoid causing harm to the environment of areas beyond national jurisdiction. This "no-harm rule," a legal notion dating back to Roman law,[87] prohibits States from conducting activities without regard for environmental protection. Relevant environmental harm includes harm to the intrinsic value of natural ecosystems, biodiversity, and wildlife.[88] In *Pulp Mills*, the Court noted that a State is "obligated to use all the means at its disposal" to prevent activities within its jurisdiction from causing environmental damage in another State.[89]

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[83] CBD, art. I.
[84] *Id.*, preamble.
[85] Kunming-Montreal Global Biodiversity Framework, Decision of the Conference of Parties to the CBD, U.N. Doc. CBD/COP/15/L.25 (Dec. 18, 2022).
[86] R. at 6.
[87] *See* Nuclear Tests (Australia v. France), 1974 I.C.J. 253, 372 (Judge Castro, dissenting).
[88] Marte Jervan, *The Prohibition of Transboundary Environmental Harm,* PLURICOURTS RESEARCH PAPER No. 14-17 (2014).
[89] Pulp Mills, ¶ 101.

Additionally, the obligation to respect the environment of other States incorporates a due diligence standard for transboundary environmental protections,[90] requiring "best environmental practices."[91]

Another custom of international law is sustainable development, a "legal principle"[92] that requires environmental considerations to be integrated into economic development.[93] These customary principles are also reflected in the Rio Declaration, which highlights the responsibilities of States to protect the environment when conducting activities that could have transboundary impacts. States must ensure activities under their jurisdiction "do not cause damage to the environment of other States"[94] and are required to cooperate in the "spirit of global partnership to conserve [and] protect . . . the health and integrity of the Earth's ecosystem."[95]

Here, Replomuté's actions are in clear violation of the "no-harm rule," as the harm it causes to the environment of the DRI is a physical consequence of human activity. By not exercising a duty of care in constructing its pipeline with the "best possible efforts to minimize the risk," Replomuté has breached its no-harm obligation.[96] Its oil activities impact a particular species of mountain gorillas found only in that region, therefore damaging the environment and biodiversity of other States. Moreover, Replomuté's decision to engage in oil activities in the DRI serve to advance its economic interests, yet at no stage did Replomuté directly incorporate

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[90] *See* Corfu Channel (United Kingdom v. Albania), 1949 I.C.J. 244; *see also* Pulp Mills.
[91] Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area, ITLOS, Seabed Disputes Chamber, Advisory Opinion ¶ 136 (Feb. 1, 2011).
[92] Gabcikovo-Nagymaros Project (Hungary v Slovakia), 1997 I.C.J. 162.
[93] *See* Rio Declaration, Principle 4; *see also* Jervan, *supra* note 88.
[94] Rio Declaration, Principle 2.
[95] *Id.*, Principle 7.
[96] Report of the International Law Commission on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 154 (Aug. 10, 2001) (hereinafter "ILC Report").

any environmental analysis. This conduct contradicts the mandate of sustainable development. Additionally, Replomuté's oil activities in the DRI directly contradict the Rio Declaration, as they do not accord with the health and integrity of the Earth's ecosystem.

2. Replomuté's actions are inconsistent with the UNFCCC

The objective of the UNFCCC is to prevent human damage to and interference with the climate system. Article 3 of the Convention requires Parties to take "precautionary measures to anticipate, prevent or minimize the causes of climate change,"[97] specifically noting that these policies may cover a variety of economic sectors. Additionally, the UNFCCC provides that Parties should "promote sustainable development."[98] Here, Replomuté has not considered any precautionary measures to prevent the adverse climate effects of its oil activities, nor has it promoted sustainable development of its pipeline. Although Replomuté relies on the import of crude oil for its economic activity,[99] failing to address its impact on climate change violates the principles of the UNFCCC.

The UNFCCC endorses common but differentiated responsibilities in the climate context. While developing countries are expected to help mitigate climate change, developed countries must "take the lead" in addressing climate change.[100] Replomuté, a developed country, has a responsibility to take action against climate change, especially with regard to endangered species and threatened habitats. Replomuté's oil activities directly oppose this climate action duty.

Additionally, under the Paris Agreement, State NDCs specify national emissions reduction goals and the methods in which each State will seek to achieve them. The DRI's NDC, which targets a 20% reduction in GHG emissions, relies heavily on external support given its

[97] UNFCCC, art. III(3).
[98] *Id.*, art. III(4).
[99] R. at 6.
[100] UNFCCC, art. III(1).

capabilities as a developing country.[101] Replomuté's activities in the DRI increase the DRI's overall emissions in the State and therefore undermine its NDC. Replomuté also undermines its own NDC, which targets a 55% emissions reduction and a decrease in fossil fuel consumption,[102] by choosing to transport the extracted oil back to Replomuté.[103]

C. Replomuté indirectly violates international law by coercing the DRI to commit wrongful acts under the Gorilla Agreement and the Algiers Convention

Replomuté is indirectly violating international law through its coercion of the DRI to commit international wrongs.[104] The ILC has articulated two elements for determining coercion: (1) the act would, but for the coercion, be an internationally wrongful act of the coerced State, and (2) the coercing State engages in coercion with knowledge of the circumstances of the act.[105] The coercing State's intent is relevant in determining whether coercion has occurred.[106]

The concept of indirect State responsibility based upon coercion reflects a principle of international law.[107] When one State's control prevents another from "discharging its international obligations," the controlling State is responsible for the subordinate State's conduct.[108] Recognizing the prevalence of States exerting financial pressure, the UN General Assembly has highlighted a problematic dynamic in which developed countries deploy "economic coercive measures" against developing countries to coerce sovereign decisions.[109]

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[101] R. at 7.
[102] R. at 8; *see* European Union, *Update of the NDC of the European Union and Its Member States*, UNFCCC (Dec. 17, 2020).
[103] R. at 8.
[104] *See* ILC Report at 69, art. 18.
[105] *See id.*
[106] *See* Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.), 1986 I.C.J. 14.
[107] *See* James D. Fry, *Coercion, Causation, and the Fictional Elements of Indirect State Responsibility*, 40 VAND. J. OF TRANSNAT'L L. 3 (2007).
[108] Clyde Eagleton, *The Responsibility of States in International Law*, 22 AM. J. INT'L L. 291 (1928).
[109] U.N.G.A., *Economic Measures as a Means of Political and Economic Coercion against Developing Countries*, Note by the Secretary-General, U.N. Doc. A/48/535, at ¶ 2(a) (Oct. 25, 1993).

Here, Replomuté's intention is to coerce the DRI into conducting activities that impact the RMG, violating the Gorilla Agreement and the Algiers Convention. The DRI had no freedom to act out of accordance with the desires of Replomuté. The power imbalance between the two countries is evident in Replomuté's exaction of a mandatory arbitration clause in the concession agreement between the States.[110] When the DRI sought to withdraw from the project, citing environmental impacts, Replomuté invoked this clause to force compliance.[111] Mandatory arbitration clauses have been found coercive and improper due to the power imbalance between Parties and the lack of alternative options.[112] Replomuté continued to promote its oil extraction activities, despite numerous objections from NGOs and extensive labor strikes in the DRI,[113] further emphasizing its coercive intent and its control over the DRI. Replomuté, a high-income leader in gross value of industrial output and one of the world's largest importers of crude oil,[114] is coercing a low-income country with a "history of colonialism by European states, post-colonialism civil war, and political corruption"[115] to conduct oil extraction activities, and Replomuté is using economic pressure to compel the DRI to comply.[116]

1. Replomuté indirectly violates international law by coercing the DRI to violate the Gorilla Agreement

The Gorilla Agreement incorporates standards for Range States under the CMS, noting a variety of responsibilities including species and habitat conservation.[117] Among other duties, the

[110] R. at 8.
[111] R. at 9.
[112] *See Mandatory Binding Arbitration: Is It Fair and Voluntary*?, Hearing before Subcomm. on Com. and Admin. L. of the Comm. on the Judiciary, 111 CONG. 5 (2009) (Statement of John Conyers, Jr.); *Investor–State Disputes: Prevention and Alternatives to Arbitration*, UN Conference on Trade and Development, U.N. Doc. UNCTAD/DIAE/IA/2009/11 (2010).
[113] R. at 8, 9.
[114] R. at 6.
[115] R. at 6.
[116] R. at 9.
[117] *See* Gorilla Agreement, art. III.

CMS requires the DRI to conserve gorilla habitat and to "prevent, reduce or control factors that are endangering or are likely to further endanger the species."[118] Scholars argue this and other provisions necessarily "imply the application of some suitable process for predicting and evaluating relevant effects" through a thorough EIA.[119] By taking no action to prevent harm to the RMG and preparing an inadequate EIA, the DRI has violated this provision of the Agreement.[120]

Additionally, Parties must take coordinated action to "maintain gorillas in a favorable conservation status"[121] through "protection, management, rehabilitation and restoration"[122] of gorilla habitats. Transboundary habitats are of particular importance in the Agreement, especially when the habitat extends across the boundaries of the contracting Parties. Here, the DRI acknowledges the pipeline's footprint on the RMG population[123] despite its adverse effects on the species. By allowing Lenoir to conduct oil activities in the primary habitat of a gorilla population, the DRI, and therefore Replomuté through its coercion, is not complying with the conservation measures required under the Agreement.

2. Replomuté indirectly violates international law by coercing the DRI to violate the Algiers Convention

As a Contracting Party to the Algiers Convention,[124] the DRI must ensure the conservation of faunal resources and their environment, particularly "within the framework of economic development."[125] With respect to protected species, Parties must "accord a special

[118] CMS, art. III(4)(c).
[119] Dave Pritchard, *Environmental Impact Assessment - A Vital Tool for Implementing CMS*, A Special Report to Mark the Silver Anniversary of the Bonn CMS, UNEP (2004).
[120] *See* CMS, art. III(5).
[121] Gorilla Agreement, art. II.
[122] CMS, art. III(2)(b).
[123] R. at 9.
[124] R. at 7.
[125] Algiers Convention, art. VII, Sept. 15, 1968, 1001 U.N.T.S. 3.

protection" to them and their habitat.[126] The RMG is listed as a protected species under the Convention,[127] and its habitat, which is necessary for its survival, is directly threatened by Lenoir's oil pipeline construction.

Given that Aringuv is also a Party to the Convention, the DRI has violated its interstate cooperation duties "to give effect to the provisions of the convention" when a national action "is likely to affect the natural resources of any other States."[128] Aringuv's concerns regarding the impact of the oil extraction activity on the RMG are well-founded; any change to the RMG population will affect Aringuv as one of the two countries home to this transboundary species. Aside from the RMG, Replomuté's oil activities contribute to climate change, impacting the transboundary park, other native species, and natural resources. By denying Aringuv's request to determine the impact of the oil pipeline construction on the RMG and its surrounding environment, the DRI, and therefore Replomuté through coercive action, is not in compliance with the Algiers Convention.

[126] *Id.*, art. VIII.
[127] *See id.*, art. XXV, Class A.
[128] *Id.*, art. XVI.

CONCLUSION AND PRAYER FOR RELIEF

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

(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, and

(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 FOR THE APPLICANT