

**Questions Relating to Mountain Gorillas
and Impact Assessment
(Aringuv v. Replomuté)**

RECORD
Twenty-Eighth Annual
Stetson International Environmental
Moot Court Competition
2023–2024



Copyright © 2023, Stetson University College of Law. All rights reserved.

31 JULY 2023

NOTIFICATION, DATED 31 JULY 2023, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF ARINGUV
AND
THE MINISTER OF FOREIGN AFFAIRS OF REPLOMUTÉ

The Hague, 31 July 2023.

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 24 July 2023. I have the further honor to inform you that the case of Questions Relating to Mountain Gorillas and Impact Assessment (Aringuv v. Replomuté) has been entered as 2023 General List No. 303. The written proceedings shall consist of memorials to be submitted to the Court by 10 November 2023. Oral proceedings are scheduled for 10–13 April 2024.

/s/

Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 24 JULY 2023, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 24 July 2023.

On behalf of Aringuv and Replomuté, and in accordance with Article 40, paragraph 1 of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the English texts of the Special Agreement Between Aringuv and Replomuté for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to Mountain Gorillas and Impact Assessment, signed at Kampala, Uganda, on 16 June 2023.

For Aringuv:

/s/

F.R. von Beringe
Minister of Foreign Affairs

For Replomuté:

/s/

B.I. Wind
Minister of Foreign Affairs

SPECIAL AGREEMENT
BETWEEN
ARINGUV
AND
REPLOMUTÉ
FOR SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE
OF DIFFERENCES BETWEEN THEM CONCERNING
QUESTIONS RELATING TO
MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

Aringuv and Replomuté,

Recalling that Aringuv and Replomuté are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Noting that Aringuv and Replomuté are Parties to the Convention on the Conservation of Migratory Species of Wild Animals,

Considering that Aringuv and Replomuté are Parties to the Convention on Biological Diversity,

Observing that Replomuté is a Party to the Convention on Environmental Impact Assessment in a Transboundary Context,

Also observing that Aringuv and Replomuté are Parties to the United Nations Framework Convention on Climate Change and the Paris Agreement,

Recognizing that differences have arisen between Aringuv and Replomuté concerning the proposed activities related to oil extraction in the territory of the Democratic Republic of Ibirunga,

Acknowledging that Aringuv and Replomuté have been unable to settle their differences through negotiation,

Desiring that the International Court of Justice, hereinafter referred to as “the Court,” consider these differences,

Desiring further to define the issues to be submitted to the Court,

Have agreed as follows:

Article I

Aringuv and Replomuté, hereinafter referred to as “the Parties,” shall submit the questions contained in Annex A of this Special Agreement to the Court pursuant to Article 40, paragraph 1 of the Statute of the International Court of Justice. The Parties agree that the Court has jurisdiction to decide this matter and that they will not dispute the Court’s jurisdiction in the written or oral proceedings.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties.
2. The Parties also shall request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A, which is an integral part of this Agreement.
3. The Parties also shall request the Court to determine the legal consequences, including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties. To the extent that the Parties make treaty-based arguments, they shall focus on the treaties referenced in the Annex.
3. The written pleadings shall be consistent with the Rules for the 2023–2024 Stetson International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading after it has been submitted to a national or regional round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the national or regional round.

Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
2. Immediately after the transmission of the Judgment, the Parties shall enter into negotiations on the modalities for its execution.

3. If the Parties are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article V

This Special Agreement shall enter into force upon signature.

DONE at Kampala, Uganda, this 16th day of June 2023, in two copies, each in the English language, and each being equally authentic.

For Aringuv:

/s/

F.R. von Beringe
Minister of Foreign Affairs

For Replomuté:

/s/

B.I. Wind
Minister of Foreign Affairs

ANNEX A

1. The Democratic Republic of Ibirunga (DRI) is a coastal sovereign state in central Africa with a population of 50 million people. According to the World Bank, for fiscal year 2020/21, the DRI's gross national income per capita was \$820, classifying the DRI as a low-income country. Its economy is primarily agrarian-based, although it is rich in natural resources. Proven oil resources (oil in place) exceed 9.5 billion barrels, of which 4.4 billion are recoverable using current technology. A history of colonialism by European states, post-colonialism civil war, and political corruption have hindered economic development in the DRI.
2. Aringuv is a sovereign state in central Africa that shares its eastern border with the DRI. It has a human population of 25 million. Under the World Bank's classification system, Aringuv is a lower-middle-income country. Among the least densely populated African states, Aringuv has a strong and growing hospitality and wildlife tourism industry, including mountain gorilla tourism.
3. Replomuté is a sovereign state in Europe with a population of 80 million people. Under the World Bank's classification system, Replomuté is a high-income country. In addition to its service sector, Replomuté is among the world's leaders in gross value of industrial output through its mining and ore industry; iron, steel, aluminum, and other metal production; and consumer goods manufacturing, including electronics and telecommunications equipment. Replomuté is among the world's largest importers of crude oil, which supports its economic activity.
4. Aringuv, Replomuté, and the DRI are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
5. Aringuv, Replomuté, and the DRI are Parties to the Vienna Convention on the Law of Treaties.
6. High-level representatives from Aringuv, Replomuté, and the DRI attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm; the 1992 United Nations Conference on Environment and Development at Rio de Janeiro; the 2002 World Summit on Sustainable Development at Johannesburg; the 2012 Rio+20 Conference; and the Stockholm+50 Conference. Aringuv, Replomuté, and the DRI were part of the consensus of any documents adopted at these conferences.
7. Aringuv, Replomuté, and the DRI are Parties to the Convention on Biological Diversity (CBD). Aringuv, Replomuté, and the DRI ratified the CBD in 1993, becoming Parties to the CBD in the same year.
8. Aringuv, Replomuté, and the DRI are Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS), all since 1983.

9. Aringuv and the DRI are Parties to the Agreement on the Conservation of Gorillas and Their Habitats (Gorilla Agreement), having signed and ratified it in 2007. The provisions of the Gorilla Agreement apply to the Royal Mountain Gorilla (*Gorilla ibirungai rojali*), which is a species of mountain gorilla found only in the DRI and Aringuv. There are two populations of the Royal Mountain Gorilla. The northern population of the Royal Mountain Gorilla occupies a transboundary national park, and members of this population frequently cross the boundary between the DRI and Aringuv. The southern population of the Royal Mountain Gorilla occupies a national park in the DRI, and its members have rarely been sighted in Aringuv. A census conducted in 2020 found that the northern population of Royal Mountain Gorillas had 640 individuals, and the southern population had 295 individuals. The northern and southern populations have no contact with each other. The Royal Mountain Gorilla is included in Appendix I of the CMS and is classified as critically endangered on the IUCN Red List of Threatened Species.
10. Replomuté is not a Range State for purposes of the Gorilla Agreement and has not signed the Gorilla Agreement.
11. Aringuv and the DRI are Parties to the African Convention on the Conservation of Nature and Natural Resources (Algiers Convention), both since it entered into force in 1969. Aringuv has been a Party to the Revised African Convention on the Conservation of Nature and Natural Resources since it entered into force in 2016. The DRI is not a Party to the Revised African Convention on the Conservation of Nature and Natural Resources. Replomuté is not a Party to either the Algiers Convention or the Revised African Convention on the Conservation of Nature and Natural Resources.
12. Replomuté is a Party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), since September 1997. The DRI is a Party to the Espoo Convention, since January 2015. Aringuv signed the Espoo Convention in January 2017 but has not ratified it. [For purpose of this scenario, assume that an amendment to the Espoo Convention entered into force in August 2014 that allows non-UNECE Member States to join.]
13. Aringuv, Replomuté, and the DRI are Parties to the United Nations Framework Convention on Climate Change (UNFCCC), both having signed and ratified the UNFCCC in 1992. Replomuté is an Annex I Party to the UNFCCC, and Aringuv and the DRI are Non-Annex I Parties to the UNFCCC. Aringuv, Replomuté, and the DRI are Parties to the Paris Agreement, having signed and ratified the Paris Agreement in 2016.
14. Aringuv's Nationally Determined Contribution (NDC) focused on adaptation and, subject to international support, committed to reducing greenhouse gas emissions economy-wide between 5 and 10 percent relative to the Business-As-Usual (BAU) scenario by 2040. In 2018, Aringuv amended its NDC to commit to reducing greenhouse gas emissions economy-wide by 40 percent relative to the BAU scenario by 2030, with 20 percent to be achieved with external support and 20 percent to be based on national efforts.

15. Replomuté did not submit its own NDC but is covered by the NDC of the European Union and its Member States.
16. The DRI's NDC is a commitment to a 20 percent reduction in greenhouse gas emissions from 2022 to 2031, with 18.5 percent to be achieved with external support and 1.5 percent on the basis of national efforts.
17. In 1981, the DRI and Replomuté entered into a concession agreement that granted the Lenoir Corporation, a corporation wholly owned and operated by the government of Replomuté, the right to explore and extract oil from the area inhabited by the southern population of the Royal Mountain Gorilla. The agreement also permitted the Lenoir Corporation to construct a pipeline to transport any oil extracted from the DRI to a coastal city in the DRI, where the oil would then be transferred to tankers to be shipped to Replomuté. Prior to signing the agreement, which contained a mandatory binding arbitration clause as the exclusive mechanism for dispute resolution, the DRI conducted an environmental impact assessment (EIA) in accordance with its national laws. The EIA focused on the impacts on nearby human populations of the likely quantity of water to be used and waste to be produced by the proposed exploration and extraction activities, including the pipeline. The EIA, which complied with the DRI's national laws, did not take potential impacts to gorillas, gorilla habitat, or climate change into account.
18. From 1983 to 1986, the Lenoir Corporation conducted oil exploration activities in the DRI in accordance with the terms of the 1981 DRI-Replomuté agreement. The Lenoir Corporation was forced to suspend its operations in the DRI from 1987 to 2002 due to a civil war and insurgent activity by the Holy Spirit's Resistance Army in the area. In 2003, the government of the DRI defeated the insurgents, and the Lenoir Corporation resumed oil exploration activities in the DRI.
19. From 2006 to 2008, an Ebola outbreak in the area required the Lenoir Corporation to suspend its operations in the DRI. The Lenoir Corporation resumed oil exploration activities in the DRI in 2009, and construction on the pipeline began at that time.
20. In February 2012, the Lenoir Corporation announced its plans to begin oil extraction activities from the DRI upon completion of the pipeline. The Lenoir Corporation noted that the anticipated completion date for the pipeline was August 2014.
21. Local and international nongovernmental organizations (NGOs) expressed serious concern to the DRI, Replomuté, and the CMS Secretariat about the negative impacts to the Royal Mountain Gorillas that would likely occur as a result of oil extraction activities. The NGOs called on the Lenoir Corporation to abandon the project, emphasizing that the project's footprint would encompass the primary habitat of the southern population of the Royal Mountain Gorilla.
22. In May 2012, a military coup occurred in the DRI. In June 2012, General Mina, the DRI's new president, declared that in light of the Gorilla Agreement, the DRI was compelled to withdraw from the 1981 DRI-Replomuté agreement, unless Replomuté established a \$50

million (USD) fund, subject to the control of the DRI president, to compensate the DRI for environmental and societal impacts. The government of Replomuté accused General Mina of seeking to renegotiate the deal for his own personal profit and invoked the mandatory arbitration provision of the DRI-Replomuté agreement.

23. In March 2015, Replomuté prevailed in the binding arbitration, and the arbitral panel ordered the DRI to permit the Lenoir Corporation to proceed with its oil exploration and extraction activities or be subject to more than \$825 million (USD) in penalties. The DRI acquiesced to the Lenoir Corporation's oil-related activities in the DRI. As a gesture of good will, the government of Replomuté established a \$10 million (USD) "Friendship Fund" for economic development activities in the DRI, to be administered jointly by representatives from both governments.
24. In March 2015, the construction of the pipeline was 80% complete but was then delayed due to labor challenges, including a series of general strikes in the DRI, as well as supply chain issues.
25. In November 2017, national elections were held in Aringuv, and Melanie Waitz of the Green Path Party was elected president. President Waitz campaigned on a "green" platform, which included Aringuv acceding to international environmental conventions, such as the Espoo Convention, and amending Aringuv's NDC under the Paris Agreement.
26. In May 2018, the Aringuv Ministry of Foreign Affairs contacted the Replomuté Ministry of Foreign Affairs to express concerns about Replomuté's planned oil extraction activities in the DRI with respect to the activities' impact on the Royal Mountain Gorilla and the activities' implications for contributing to climate change. Periodic informal discussions and negotiations were conducted for several months.
27. On 11 December 2018, the following diplomatic note was forwarded to the Government of Replomuté:

The Embassy of Aringuv presents its compliments to the Government of Replomuté and wishes to convey its concerns about the Lenoir Corporation's proposed oil extraction activities in the territory of the Democratic Republic of Ibirunga. The proposed activities will likely have a devastating impact on the southern population of the critically endangered Royal Mountain Gorilla. Because there is likely to be a significant adverse transboundary impact, the Espoo Convention requires that Replomuté conduct an environmental impact assessment (EIA), which will form the basis for further consultations under Article 5 of the Espoo Convention. We also draw your attention to the EIA requirements mandated by the Revised African Convention on the Conservation of Nature and Natural Resources, as well as Article 14.1(a) of the Convention on Biological Diversity. Such an EIA must also take into account the climate impacts associated with oil extraction activities. We note, in particular, the applicability of Article 4.1(f) of the U.N. Framework Convention on Climate Change in this regard.

Please accept the assurance of my highest consideration.

/s/ _____
Diane Fossy
Ambassador

28. On 21 March 2019, the following diplomatic note was forwarded to the Government of Aringuv:

The Embassy of Replomuté presents its compliments to the Government of Aringuv and has the honor to acknowledge receipt of the diplomatic note dated 11 December 2018. Respectfully, Replomuté declines the suggestion to conduct an environmental impact assessment (EIA) regarding the oil extraction activities of the Lenoir Corporation. We note that these long-planned actions were the subject of an EIA conducted by the Democratic Republic of Ibirunga (DRI). This EIA fully complied with the DRI's national laws and any international obligations that may have been in place at that time, such as the Algiers Convention. Neither the DRI nor Replomuté is a Party to the Revised African Convention on the Conservation of Nature and Natural Resources.

With respect to the invocation of the Espoo Convention, we wish to point out that Aringuv is not a Party to the Espoo Convention.

While Replomuté acknowledges the applicability of the Convention on Biological Diversity, we observe that Article 14.1(a) is best read to apply to proposed projects within a Party's own territory. Regarding a proposed project that is "likely to significantly affect adversely the biological diversity of other States," Article 14.1(c) controls, with which we have fully complied. Indeed, Replomuté has encouraged non-UNECE Member States to join the Espoo Convention. As emphasized above, Aringuv has not done so, and thus no reciprocity exists between Replomuté and Aringuv.

We also note that the pipeline that is to be constructed in accordance with the 1981 agreement between Replomuté and the DRI is progressing, despite labor and other challenges. It is now 95% complete.

Please accept the assurance of my highest consideration.

/s/ _____
Val Siberck
Ambassador

29. On 1 June 2019, the Government of Aringuv sent a diplomatic note to the Government of Replomuté that stated in part:

The EIA conducted by the DRI was done prior to the entry into force of the Gorilla Agreement and the climate change conventions, and it did not consider impacts to either the gorilla population or the global climate. Threats to the gorilla population and to the global climate are now better understood. Under Article 6.3 of the Espoo Convention, this constitutes “additional information on the significant transboundary impact of a proposed activity,” which requires the EIA and decision to be revised. Beyond Replomuté’s Espoo Convention and CBD obligations, customary international law also applies, and the ICJ has emphasized in the Costa Rica-Nicaragua cases that customary international law requires EIAs to be conducted for activities with the potential to cause a significant adverse impact in a transboundary context.

In addition, as a substantive matter, if the Lenoir Corporation proceeds with the oil extraction activities, Replomuté will be in breach of its non-Range-State obligations under the Convention on Migratory Species. Furthermore, Replomuté is responsible for any breach by the DRI of the Gorilla Agreement, as Replomuté is coercing the DRI to commit an internationally wrongful act (see Article 18 of the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts). The Gorilla Agreement (Article III, paragraph 2(a)) requires the DRI to “accord the same strict conservation for gorillas” as provided for under CMS Article III, paragraph 4. Among other duties, the CMS requires the DRI to conserve gorilla habitat and to “prevent, reduce or control factors that are endangering or are likely to further endanger the species.”

30. On 24 September 2019, the Government of Replomuté sent a diplomatic note to the Government of Aringuv that stated in part:

In our view, the proposed oil extraction activities will not have a transboundary impact as the southern population of the Royal Mountain Gorilla does not “migrate” across boundaries (indeed, gorillas are not properly classified as a migratory species in the first instance).

Regarding the CMS, we emphasize that the duties pertaining to Appendix I species contained in Article III apply to Range States only. Replomuté is not a Range State for the Royal Mountain Gorilla, and thus Article III’s duties do not apply. Turning to the Gorilla Agreement, Replomuté strongly rejects the characterization that the DRI is the subject of any coercion. The DRI signed the concession agreement with Replomuté voluntarily and under no duress. The DRI has the sovereign right to decide how its resources should be used, and it did so in that agreement.

Furthermore, like other States, Replomuté views the ILC’s work on the Draft Articles on Responsibility of States for Internationally Wrongful Acts as going beyond its mandate. In many instances, the ILC has not codified customary

international law but rather has proposed new substantive rules. Most relevant here is that “state practice” is lacking with respect to the notion of coercion.¹

31. On 27 December 2019, the Government of Aringuv sent a diplomatic note to the Government of Replomuté that stated in part:

The impact to the Royal Mountain Gorilla most certainly has transboundary implications—it is a migratory species protected under an agreement to which Aringuv is a party. While the southern population may not regularly cross a state border, the species as a whole is considered to be migratory by the CMS.

We also reiterate our grave concern about climate change. If the world is to transition to a sustainable future, projects such as the Lenoir Corporation’s oil extraction project must be re-evaluated.

32. On 11 March 2020, the World Health Organization declared COVID-19 a pandemic. Replomuté suspended its activities in the DRI. Pipeline construction, 98% complete at the time, was also halted.
33. On 22 April 2022, the Government of Replomuté sent a diplomatic note to the Government of Aringuv that stated that because the pandemic had ebbed and demand for oil had resumed, the Lenoir Corporation would immediately resume its activities in the DRI. The diplomatic note also stated that the pipeline was expected to be finished in June 2022.
34. On 22 May 2022, the Aringuv Minister of the Environment called for the DRI to revoke the permits required for construction and operation of the pipeline. She explained that this action was needed out of concern for both the Royal Mountain Gorilla and the “climate crisis.” She called the threat of the \$825 million (USD) arbitral penalty “colonial extortion.”
35. Negotiations between Aringuv and Replomuté continued and were facilitated by the Government of Uganda, to which Aringuv and Replomuté express their deep appreciation. As a result of the negotiations, Aringuv and Replomuté agreed to submit certain questions to the International Court of Justice (ICJ). Replomuté agreed that the Lenoir Corporation would not proceed with the project until the ICJ issues its judgment.
36. Aringuv opposes the claims in paragraph 37 below and seeks an order from the ICJ declaring 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, and (2) as a substantive matter, the actions of Replomuté with respect to the proposed oil extraction activities in the DRI violate international law.
37. Replomuté opposes the claims in paragraph 36 above and seeks an order from the ICJ declaring that (1) as a procedural matter, Replomuté has not violated international law with

¹ See James D. Fry, *Coercion, Causation, and the Fictional Elements of Indirect State Responsibility*, 40 Vand. J. Transnat’l L. 611 (2007), available at <https://scholarship.law.vanderbilt.edu/vjtl/vol40/iss3/1>.

respect to the preparation of an EIA, and (2) as a substantive matter, the actions of Replomuté with respect to the proposed oil extraction activities in the DRI comply with international law.

38. With respect to the procedural EIA issue, both Parties agree to address in their written submissions and oral arguments the applicability of treaties and customary international law.
39. With respect to the substantive issue, both Parties agree to address in their written submissions and oral arguments the *direct* responsibility, if any, of Replomuté (under, e.g., the CMS), as well as the *indirect* responsibility, if any, of Replomuté (through alleged coercion of the DRI).
40. The DRI takes no position regarding the claims raised in paragraphs 36 and 37.