

Dispute concerning Climate Change Obligations and Maritime Boundaries

(Republic of Sinq v. Kingdom of Oyelle)



1. The Republic of Sinq (“Sinq” or “the Republic”) is a small island State located in the Verum Sea which achieved independence from colonial rule in 1990. Sinq is composed of a string of atolls and archipelagos covering 400km². It is one of the lowest-lying countries in the world. On average, Sinq’s islands lie only 3 metres above sea level. The Republic’s economy is predominantly based on international tourism and fishing. Sinq is also classified by the United Nations (“UN”) Committee for Development Policy as an LDC, a ‘least developed country’. In 2023, the GDP per capita of Sinq was 980 US dollars. In the same year, Sinq emitted 0.5 tonnes of carbon dioxide per capita.

2. To the southeast of Sinq lies the Kingdom of Oyelle (“Oyelle” or “the Kingdom”), a large nation with vast supplies of natural resources. The Kingdom achieved independence in 1815 and soon after began to industrialise. Today, Oyelle’s economy is dependent on resource extraction and processing, and heavy industry. To support these economically important activities, the Kingdom of Oyelle maintains a ‘National Energy and Resources Development Plan’ (“NERDP”). Energy and resource extraction companies are classified under the Plan as ‘strategic enterprises’. Companies which are recognised as ‘strategic enterprises’ are granted a variety of incentives and benefits: they do not have to pay corporation tax, their employees are not permitted to join independent trade unions, and their exports are subject to zero export tariffs. In 2023, Oyelle’s GDP per capita was 45,000 US dollars. In the same year, Oyelle emitted 7 tonnes of carbon dioxide per capita.

3. The jewel in the crown of Oyelle’s economy is the Western Royal Energy Corporation, commonly known as ‘WREC’, a conglomerate of resource extraction companies which operates coal mines, oil and gas wells, power stations, and petroleum refineries. WREC is a ‘strategic enterprise’ and a publicly traded company on Oyelle’s stock exchange, although it maintains a close relationship with Oyelle’s government. The Kingdom’s Ministry of Economic Development owns a 30% stake in WREC, with another 25% stake owned by the Ministry of Energy and Resources. On WREC’s executive board, four of the twelve board members are appointed by the Ministries. In 2023, WREC reported that the carbon dioxide directly emitted from its operations was approximately 30 million tonnes, and the carbon dioxide emitted from its energy products was approximately 900 million tonnes. Due to companies like WREC, Oyelle has contributed approximately 5.5% of global greenhouse gas emissions since 1750.

4. Sinq and Oyelle are separated by the Khi Channel. Following Sinq’s independence, Oyelle and Sinq concluded the Kaya Agreement in 1992 to determine their maritime boundaries in the Khi Channel. Under Article 1(1) of the Kaya Agreement, all islands within the Khi Channel are recognised as being the territory of Sinq. The islands grant Sinq territorial waters and an exclusive economic zone (“EEZ”) limited, where relevant, by Oyelle’s own EEZ. For the purposes of Article 1(1), Article 2(1)(a)(iii) of the Kaya Agreement defines ‘island’ with reference to the meaning of ‘island’ under the United Nations Convention on the Law of the Sea (“UNCLOS”).

5. Both Sinq and Oyelle are States Parties to the International Covenant on Civil and Political Rights (“ICCPR”), UNCLOS, the United Nations Framework Convention on Climate Change (“UNFCCC”), and the Paris Agreement. Under the UNFCCC, Sinq is categorised as a Non-Annex I Party, whereas Oyelle is categorised as an Annex II Party.

6. Both Sinq and Oyelle are UN Member States that have recognised the compulsory jurisdiction of the International Court of Justice (“ICJ”) under Article 36(2) of the ICJ Statute. On 1 June 1991, the Republic of Sinq declared that it recognized the compulsory jurisdiction of the ICJ in the following declaration deposited with the UN Secretary-General:

On behalf of the Government of the Republic of Sinq, I, the Minister of Foreign Affairs, declare that the Republic of Sinq recognizes as compulsory ipso facto and without special agreement the jurisdiction of the International Court of Justice in relation to any other State which accepts or has accepted the same obligation on a reciprocal basis.

On 1 July 2002, Oyelle declared that it recognized the compulsory jurisdiction of the ICJ in the following declaration which was deposited with the UN Secretary-General:

On behalf of Her Majesty’s Government, as Minister of External Relations, I hereby declare that the Kingdom of Oyelle recognizes as compulsory ipso facto and without special agreement the jurisdiction of the International Court of Justice over any and all disputes between the Kingdom of Oyelle and other Members of the United Nations which have accepted the same obligation, other than disputes concerning:

(a) the essential interests of the Kingdom’s national security, sovereignty and territorial integrity; and

(b) the essential interests of the Kingdom’s self-determination.

7. In its first Nationally Determined Contribution (“NDC”), submitted in 2017, Oyelle committed to reduce its carbon dioxide emissions by 25% by 2030 relative to its 1990 levels. As part of this process, Oyelle announced that it would be investing heavily in sources of renewable energy to ‘supplement and support its existing energy sector’, and agreed to conduct a ‘strenuous review’ of the ‘strategic enterprise’ system with a view to reforming its operation.

8. In late 2022, Oyelle updated its NDC. Therein, Oyelle reported that its carbon dioxide emissions had fallen by around 20% relative to 1990 levels due to a combination of a greater usage of renewable energies to power domestic infrastructure, the increasing availability of electric cars, and the introduction of new technologies within the energy sector, such as carbon dioxide scrubbing in power stations. In particular, Oyelle highlighted that its newest NERDP, coming into effect in 2025, would designate wind and solar energy companies as ‘strategic enterprises’. In its updated NDC, Oyelle committed to reduce its carbon dioxide emissions by 25% relative to its 2005 levels by 2030.

9. In response to the updated NDC, Sinq’s Ministry of Environmental Protection released a press statement:

“Time and time again, historical emitters of greenhouse gases, who have led us into the current climate crisis that we are facing, show their unwillingness to take responsibility and steps towards further mitigation of climate change. The most recent example we see is the Kingdom of Oyelle’s updated Nationally Determined Contribution, which is a clear regression of its previous targets. Whilst we applaud their efforts to invest further in renewable energy, this clear breach of the Paris Agreement cannot be ignored.”

Shortly thereafter, the Oyelle's Minister of External Affairs responded to the statement in a press conference:

"In line with our obligations under the Paris Agreement, and in light of our achievements in mitigating climate change over the past few years, we have updated our Nationally Determined Contribution. We are committed to this legally binding target, which includes enhanced commitments to renewable energy, and vehemently deny any accusation that we have somehow breached the Paris Agreement."

10. On 1 January 2023, Sinq was hit by Hurricane Gabi, an immense tropical storm. Critical infrastructure across Sinq, including Sinq's largest hospital, the national university, and the country's main secondary school were flooded and rendered unusable for weeks. In the Khi Channel, Cinnamon Stack, an island located 100 nautical miles from Oyelle's coast inhabited by 200 Sinqians, was completely submerged: Cinnamon Stack's infrastructure was destroyed and the island's topsoil and sand washed away. An assessment by the Sinqian Coast Guard on 8 January 2023 reported that, 'No-one can return to Cinnamon Stack. The island no longer exists.' In response to the havoc caused by Hurricane Gabi, the international community, including Oyelle, mobilised to provide relief to Sinq under UN auspices.

11. On 2 January 2023, President Neelie, Sinq's Head of State and Head of Government, delivered a recorded speech which was shared on the government's social media pages, including X (formerly Twitter) and Instagram. In her speech, President Neelie explained the ongoing measures being taken to alleviate the disastrous conditions across Sinq. Her speech culminated in a denunciation of the policies of States which had caused the adverse climatic conditions which caused the tropical storm:

"We all know that the storm which devastated our country could only cause such destruction because of the irresponsible, selfish actions of certain members of the global community. As the world bakes, they focus only on their comfort and luxury, on their own precious economic development. To squeeze a few more dollars from the Earth for their corporations, they are willing to choke the rest of us. We call upon all States, especially those in our region, to cease their dangerous policies and fulfil their international obligations to protect our climate from further destruction."

12. On 16 January 2023, Oyelle's Ministry of External Relations sent a Note Verbale to Sinq's Ministry of Foreign Affairs concerning the maritime boundary between the States:

"On 9 January 2023, a vessel of the Oyelle National Navy conducting routine hydrological surveying in the Khi Channel observed that the island known as 'Cinnamon Stack' can no longer support habitation. Accordingly, the Republic of Sinq is no longer entitled to claim that the maritime area surrounding Cinnamon Stack, which previously abutted the Exclusive Economic Zone of the Kingdom, is within the Republic's territorial waters and/or the Republic's Exclusive Economic Zone in accordance with the 1992 Kaya Agreement. In accordance with the UNCLOS, the maritime area now falls within the Exclusive Economic Zone of the Kingdom of Oyelle.

The Kingdom of Oyelle respectfully requests that the Republic of Sinq complies with its international obligations by recognising the correct maritime boundaries and zones of the Kingdom of Oyelle."

13. On 26 January 2023, Sinq's Ministry of Foreign Affairs sent a Note Verbale to Oyelle's Ministry of External Relations:

“The Republic of Sinq acknowledges receipt of the Kingdom of Oyelle's Note Verbale of 16 January 2023. The Republic of Sinq severely regrets that the Kingdom of Oyelle has taken the outlined position with respect to the maritime areas under the jurisdiction of the Republic, particularly due to the circumstances currently faced by Sinq and its people.

The Republic of Sinq would like to clarify its position regarding its maritime zones and entitlements in light of the destruction of Cinnamon Stack. Cinnamon Stack was rendered uninhabitable and for all intents and purposes destroyed due to a combination of rising sea levels and increasingly intense tropical storms caused by climate change. That climate change has been caused by significant greenhouse gas emissions from many States, including the Kingdom of Oyelle. The Republic of Sinq does not and will not recognise changes to its maritime zones and entitlements which result from climate change. This is especially the case where the State which seeks to benefit from such alleged changes has wilfully contributed to catastrophic climate change.

The Republic of Sinq expects and requests that the Kingdom of Oyelle will formally withdraw its claim over Sinq's internationally-recognised maritime areas and entitlements.”

14. On 1 March 2023, Oyelle's Ministry of Energy and Natural Resources published a press release announcing that it had granted a licence for WREC to conduct exploratory surveys for marine hydrocarbon deposits in the vicinity of Cinnamon Stack. The press release summarily stated:

“MARCH 1 - MINISTRY OF ENERGY AND NATURAL RESOURCES - PRESS RELEASE:

The Ministry of Energy and Natural Resources has granted approval for WREC to conduct exploratory surveying in the vicinity of the former Cinnamon Stack within the Exclusive Economic Zone of the Kingdom of Oyelle.

The Ministry of Energy and Natural Resources is committed to the Government's policy of supporting the hydrocarbon sector to ensure the economic development and energy security of the Kingdom.”

15. Also on 1 March 2023, Oyelle's Ministry of External Relations sent a Note Verbale to Sinq's Ministry of Foreign Affairs:

“The Kingdom of Oyelle, having regard to the Republic of Sinq's response to its polite request to recognise the changes to the Kingdom's maritime boundaries, reaffirms that the geographical changes in the Khi Channel referenced in the Note Verbale of 16 January 2023 entitle the Kingdom to exercise jurisdiction over expanded areas of the Khi Channel. The Kingdom of Oyelle directs the Republic of Sinq to the position of the Kingdom expressed by the Ministry of Energy and Natural Resources in its press release of 1 March 2023.”

16. On 14 April 2023, Sinq's Ministry of Foreign Affairs sent a written communication to Oyelle's Ministry of External Relations stating that Oyelle was not giving effect to certain provisions of the ICCPR. Both Sinq and Oyelle have filed declarations under Article 41 of the Covenant. The relevant part of Sinq's written communication stated:

“On account of the Kingdom of Oyelle's unmitigated emission of greenhouse gases into the atmosphere and the effect that those emissions are having and will have on the vulnerable people of Sinq, the Ministry of Foreign Affairs observes that Oyelle is not giving effect to its obligations under Articles 1(1), 6(1) and 17(1).”

17. On 1 May 2023, the Republic of Sinq filed an application before the International Court of Justice against the Kingdom of Oyelle alleging that Oyelle was violating its obligations under international climate change law, the international law of the sea, and the principles of self-determination and territorial integrity. Sinq identified three bases of jurisdiction for the Court: Oyelle's declaration recognising the Court's compulsory jurisdiction pursuant to Article 36(2) of the ICJ's Statute; Article 24 Paris Agreement, and Article 14 UNFCCC. In its prayer for relief, Sinq requested that the Court:

“a) Adjudge and declare that, by its actions and omissions, the Kingdom of Oyelle has violated its obligations under the Paris Agreement to mitigate its greenhouse gas emissions under Article 2 of that Agreement;

b) Adjudge and declare that, by recognising the maritime area around Cinnamon Stack as falling within the Exclusive Economic Zone of the Kingdom of Oyelle and by granting approval for WREC to survey the area, the Kingdom of Oyelle has violated UNCLOS, including Articles 2, 3 and 58 of that Convention; and

c) Adjudge and declare that, by recognising the maritime area around Cinnamon Stack as falling within the Exclusive Economic Zone of the Kingdom of Oyelle and by granting approval for WREC to survey the area, the Kingdom of Oyelle has violated the Republic of Sinq's self-determination as protected by Article 1(2) Charter of the United Nations and customary international law, and the Republic of Sinq's right to territorial integrity as protected by Article 2(4) Charter of the United Nations and customary international law.

d) Adjudge and declare that, by its actions and omissions which have and continue to contribute to the adverse effects of climate change currently experienced and to be experienced by persons in Sinq, the Kingdom of Oyelle has violated its obligations under the International Covenant on Civil and Political Rights under Articles 1(1), 6(1) and 17(1).”

18. On 7 May 2023, Oyelle's Ministry of External Relations responded to the written communication of Sinq's Ministry of Foreign Affairs dated 14 April 2023. In its response, the Ministry of External Relations gave the following reply:

“The Ministry of External Relations regrets that the Republic of Sinq groundlessly accuses the Kingdom of Oyelle of violating its human rights obligations. Such accusations are all the more concerning in light of Sinq's initiation of frivolous proceedings before the World Court. Nonetheless, the Kingdom of Oyelle is sincerely committed to the international rule of law and respecting the rights of the people of the

Republic of Sinq: the Kingdom will continue to supply disaster relief to the Republic's citizens via the appropriate international mechanisms, and it invites the Republic of Sinq to discontinue its unnecessary 'lawfare' in all forms in favour of constructive dialogue with the Kingdom of Oyelle."

19. On 21 May 2024, President Neelie held a press conference addressing Sinq's decision to initiate proceedings before the ICJ against Oyelle:

"In January, our people suffered from a terrible natural catastrophe worsened by climate change. We thank the generous peoples of the world that have contributed to our rebuilding efforts. However, one country, one, in fact, responsible for causing the climate change which ravaged our islands, took advantage of our situation. The predatory Kingdom of Oyelle decided to violate our national borders and declare that it had the right to exploit our seas, steal from our waters.

We are not like those vultures in Oyelle. We do not believe in unilateral action which violates international law. We believe in the values of the UN Charter, the values of international peace and solidarity. I therefore instructed the Ministry of Foreign Affairs to initiate proceedings against Oyelle before the International Court of Justice to ensure that Oyelle will be held accountable for its actions.

But we will not hold this international outlaw accountable ourselves. Over the coming weeks I will be assembling a coalition of countries that will support our legal action. Together, we will show that international law can and will work for the disadvantaged."

20. When asked by a journalist why, according to anonymous sources within Oyelle's government, Sinq was allegedly engaging in bilateral discussions with Oyelle concerning the Kingdom's compliance with international human rights norms, President Neelie responded:

"These reports are incorrect. The Ministry of Foreign Affairs has communicated with the Oyelle's Ministry of External Relations for the sole purpose of asking Oyelle to admit that it has breached its human rights obligations by its catastrophic greenhouse gas emissions. I can tell you now that Oyelle has refused to acknowledge its responsibility and so we will be taking the matter to the Human Rights Committee. I repeat: we bring these proceedings in multiple institutions to ensure accountability."

21. On 8 September 2023, Sinq's Ministry of Foreign Affairs sent a written communication to Oyelle's Ministry of External Relations. The relevant part stated:

"The Kingdom of Oyelle's reply of 7 May 2023 was not satisfactory for Sinq. In accordance with Article 41(1)(b) of the ICCPR, Sinq notifies Oyelle that it will be referring this dispute to the Human Rights Committee."

On the same day, the Human Rights Committee received notification from Sinq that Sinq was referring its dispute concerning Oyelle's ICCPR compliance to the Committee.

22. On 13 September 2023, Sinq filed its Memorial with the Registry of the Court. On the same day, a group of forty-one countries filed a combined declaration of intervention with the Court pursuant to Article 63(1) of the ICJ Statute, basing their right to intervene on their memberships of the UN Charter, the ICCPR, UNCLOS and the Paris Agreement and addressing the

interpretation of all four of those instruments. On 14 September 2023, the forty-one States released a joint press release stating:

“Yesterday, our countries, acting in solidarity with the people of Sinq, filed an intervention with the International Court of Justice. Our intervention seeks to support the Court to reach the right interpretation of the ICCPR, Paris Agreement, UNCLOS, and UN Charter to ensure that the Kingdom of Oyelle is held to account for its contribution to climate change and its violation of Sinq’s territorial and maritime rights.”

23. On 14 January 2024, Oyelle filed its Counter-Memorial with the Registry of the Court. Its prayer for relief requests that the Court:

“a) Dismiss the Republic of Sinq’s Application on the basis that the Court does not have jurisdiction over the alleged dispute because:

i) there is no dispute between the Republic of Sinq and the Kingdom of Oyelle concerning the compliance of the Kingdom of Oyelle with its climate change obligations and/or the compliance of the Kingdom of Oyelle with the international law of the sea and the Charter of the United Nations vis-a-vis the Kingdom’s approval of surveys in the Khi Channel and/or the compliance of the Kingdom of Oyelle with its international human rights obligations; or

ii) alternatively, the alleged dispute falls outside of the Kingdom of Oyelle’s declaration accepting the compulsory jurisdiction of the Court under Article 36(2) ICJ Statute; or

iii) alternatively, in relation to the Paris Agreement, neither the Republic of Sinq nor the Kingdom of Oyelle have accepted the jurisdiction of the International Court of Justice under Article 14(2) UNFCCC.

b) Alternatively, dismiss the Republic of Sinq’s Application on the ground of inadmissibility:

i) in full, due to the Republic of Sinq’s abuse of process in facilitating a mass intervention; or

ii) in relation to the Republic of Sinq’s claim concerning the ICCPR on the basis of lis pendens due to the pending proceedings between the Republic of Sinq and the Kingdom of Oyelle before the Human Rights Committee.

c) Alternatively, dismiss the Republic of Sinq’s Application on the merits.

24. At the time of hearing the Human Rights Committee has not held hearings in relation to the alleged dispute between Sinq and Oyelle, although it has scheduled hearings concerning Oyelle’s objections to jurisdiction and admissibility.