

**The Republic of Hwange, Applicant**

**v.**

**The Democratic Republic of Cataya, Respondent**

# **RECORD**

**Twelfth Annual  
International Environmental  
Moot Court Competition  
2007**



NOTIFICATION, DATED 22 MAY 2007, ADDRESSED TO  
THE MINISTER FOR FOREIGN AFFAIRS OF THE REPUBLIC OF HWANGE  
AND  
THE MINISTER FOR FOREIGN AFFAIRS OF THE DEMOCRATIC REPUBLIC OF  
CATAYA

The Hague, 22 May 2007.

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 11 May 2007. I have the further honor to inform you that the case of the Republic of Hwange, Applicant v. the Democratic Republic of Cataya, Respondent, has been entered as 2007 General List No. 112. The written proceedings shall consist of memorials to be submitted to the Court. Oral proceedings are scheduled for 7–10 November 2007.

/s/ \_\_\_\_\_  
Registrar  
International Court of Justice

-----  
JOINT NOTIFICATION, DATED 11 MAY, 2007, ADDRESSED TO  
THE REGISTRAR OF THE COURT

The Hague, 11 May 2007.

On behalf of the Republic of Hwange and the Democratic Republic of Cataya, 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 the Republic of Hwange and the Democratic Republic of Cataya for Submission to the International Court of Justice of Differences Between Them Concerning the Hwange Black Rhinoceros, signed at Buenos Aires, Argentina, on 11 May 2007.

For the Republic of Hwange:

/s/ \_\_\_\_\_  
J. Nkomo  
Minister of Foreign Affairs

For the Democratic Republic of Cataya:

/s/ \_\_\_\_\_  
T.E. Ford  
Minister of Foreign Affairs

SPECIAL AGREEMENT  
BETWEEN  
THE REPUBLIC OF HWANGE  
AND  
THE DEMOCRATIC REPUBLIC OF CATAYA  
FOR SUBMISSION TO THE  
INTERNATIONAL COURT OF JUSTICE OF DIFFERENCES  
BETWEEN THEM CONCERNING  
THE HWANGE BLACK RHINOCEROS

The Republic of Hwange and the Democratic Republic of Cataya,

Recalling that the Republic of Hwange and the Democratic Republic of Cataya are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Observing that the Republic of Hwange and the Democratic Republic of Cataya are Contracting Parties to the Convention on Biological Diversity,

Conscious that the Republic of Hwange and the Democratic Republic of Cataya are Parties to the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES),

Considering that the Hwange Black Rhinoceros is listed in Appendix I of CITES,

Bearing in mind states have the sovereign right to exploit their own resources pursuant to their own environmental and development policies,

Emphasizing that *pacta sunt servanda* is a fundamental principle of international law,

Recognizing that differences have arisen concerning proposed coal mining operations in the Republic of Hwange,

Noting that the Republic of Hwange and the Democratic Republic of Cataya have been unable to settle their differences through negotiation and mediation,

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

The Republic of Hwange and the Democratic Republic of Cataya, 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.

## 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 an oral hearing.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.
3. The written pleadings shall be consistent with the Rules of the 2007 International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading once it has been submitted to a Regional Round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the Regional Round. [See Rule E.7.]

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 Buenos Aires, Argentina, this eleventh day of May 2007, in two copies, each in the English language, and each being equally authentic.

For the Republic of Hwange:

/s/ \_\_\_\_\_  
J. Nkomo  
Minister of Foreign Affairs

For the Democratic Republic of Cataya:

/s/ \_\_\_\_\_  
T.E. Ford  
Minister of Foreign Affairs

ANNEX A  
AGREED STATEMENT OF FACTS

1. The Republic of Hwange is a landlocked country located on the continent of Lemuria with a population of approximately 15 million people. The Republic of Hwange is currently listed as a Least Developed Country by the Economic and Social Council of the United Nations. It has abundant mineral resources, including coal, gold, platinum, copper, and nickel. Also rich in biodiversity, the Republic of Hwange is home to the Hwange Black Rhinoceros. [Note: For purposes of the Competition, the Hwange Black Rhinoceros shares the same characteristics as the South-Central Black Rhinoceros, *Diceros bicornis minor*.]
2. In 1854, the European country of Livonia claimed the current territory of the Republic of Hwange as a colony, which was then named New Livonia. From 1976 to 1982, a War of Independence was fought between the Livonian Army and Hwange nationalists, led by Rabbet Morgue. The War of Independence concluded with the establishment of the Republic of Hwange in 1982. Rabbet Morgue was elected President of the Republic of Hwange the same year.
3. The Democratic Republic of Cataya is located on the continent of Pacifica, more than 4,800 kilometers from the Republic of Hwange. The Democratic Republic of Cataya has one of the world's largest populations of people, currently over 1.1 billion. Although a developing country, the Democratic Republic of Cataya has witnessed great economic growth in the past three decades. Its gross national income (GNI) per capita rose approximately 60% in the 1980s and 175% in the 1990s. In the 2000s, its GNI has averaged 8% annually. The Democratic Republic of Cataya is listed as a Lower Middle-Income Country by the World Bank.
4. With its growing economy and huge labor force, the Democratic Republic of Cataya is frequently described as the "manufacturing capital of the world." The amount of natural resources (per capita) available within the territory of the Democratic Republic of Cataya, especially with respect to coal, oil, and natural gas, is far below the international average. With the increase in its GNI, the Democratic Republic of Cataya must look beyond its territory to obtain resources to meet its growing energy demands.
5. The Republic of Hwange and the Democratic Republic of Cataya are Members of the United Nations, and are Parties to the Statute of the International Court of Justice.
6. The Republic of Hwange became a Party to the Vienna Convention on the Law of Treaties in 1983. The Democratic Republic of Cataya became a Party to the Vienna Convention on the Law of Treaties in 1980.

7. The Republic of Hwange and the Democratic Republic of Cataya became Contracting Parties to the Convention on Biological Diversity in 1993.
8. The Republic of Hwange became a Party to the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES) in 1984. The Democratic Republic of Cataya became a Party to CITES in 1981.
9. High-level representatives from the Democratic Republic of Cataya attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm. Although high-level Livonian representatives attended and fully participated in the 1972 Stockholm Conference, no one from New Livonia attended or participated. High-level representatives from the Republic of Hwange and the Democratic Republic of Cataya attended and fully participated in the 1992 United Nations Conference on Environment and Development at Rio de Janiero, and the 2002 World Summit on Sustainable Development at Johannesburg.
10. In the 1900s, all rhinoceros species suffered significant declines. The Black Rhinoceros, including the subspecies Hwange Black Rhinoceros, had among the greatest reduction of numbers of individual animals in the wild with more than a 90% decrease. The decline of the Hwange Black Rhinoceros was due primarily to poaching. In 1995, the Republic of Hwange established a state-protected area or nature reserve for the Hwange Black Rhinoceros, named the Rabbet Morgue Reserve. Since then, the population of the Hwange Black Rhinoceros has remained stable at approximately 1,200.
11. At the CITES Conference of the Parties in 1985, Appendix 1 of CITES was amended to include the Hwange Black Rhinoceros. No CITES Contracting Party has ever entered a reservation with respect to the Hwange Black Rhinoceros.
12. Rabbet Morgue was re-elected President of the Republic of Hwange to his second six-year term in 1988. At that time, the Republic of Hwange Constitution contained a provision that prohibited any person from serving more than two terms as President. In 1993, the Parliament amended the Constitution to permit Rabbet Morgue to stand for a third term. In 1994, Rabbet Morgue ran unopposed and was elected to a third six-year term.
13. In 1999, the Hwange Parliament declined to amend the Constitution to permit Rabbet Morgue to stand for a fourth term. Rabbet Morgue then ordered the Hwange Army to forcibly dissolve the Hwange Parliament. Forty-two members of the 260-member Parliament were killed, and Rabbet Morgue declared martial law and suspended the Constitution.
14. The European Union, the United States, and numerous human rights organizations issued statements condemning the actions of Rabbet Morgue. The statements urged that Rabbet Morgue resign, that martial law be lifted, and that free and fair elections be held.

15. The Organization of Lemurian States, which consists of representatives from the government of each state located on the continent of Lemuria, issued a statement of support for Rabbet Morgue, noting his history as the liberator of Hwange.
16. In 2000, a newly formed opposition party, the Hwange Independent Party (HIP) nominated Colonel B.C. Jay to run for President. Prior to the election, Colonel B.C. Jay was arrested for treason, and his name was struck from the ballot. Rabbet Morgue ran unopposed and was re-elected President.
17. Since 2000, the economy of the Republic of Hwange has collapsed and living conditions for its people have deteriorated significantly. In 2001, Rabbet Morgue ordered the national government to take ownership of all privately owned farms in the Republic of Hwange. No compensation was paid to the farmers, many of whom fled to neighboring countries. Title to the land was eventually transferred to military veterans loyal to the Morgue administration. The Republic of Hwange's food production collapsed, and it now relies on international food assistance (including assistance from the Democratic Republic of Cataya) to prevent widespread famine.
18. In 2002, purportedly in the name of urban renewal, Rabbet Morgue ordered the forced eviction of tens of thousands of families living in informal settlements throughout the Republic of Hwange. Homes and informal businesses were demolished; areas that had supported HIP were primarily targeted. The individuals who lost their homes and businesses received no compensation or reparations. Human rights organizations condemned the so-called urban renewal program as "unjustified indifference to human suffering and a violation of internationally recognized human rights."
19. Many Hwange health care providers were members of HIP. After several thousand HIP members were arrested, many HIP members (including the vast majority of health care providers) fled to neighboring countries. Accordingly, the health care system in the Republic of Hwange collapsed. By 2004, the average life expectancy for a person born in the Republic of Hwange was 34 years.
20. In 2005, the Republic of Hwange and the Democratic Republic of Cataya entered into bilateral investment treaty entitled the Cataya-Hwange Agreement on Bilateral Investment and Trade (CHABIT). In pertinent part, the CHABIT provides:

Noting with appreciation the Democratic Republic of Cataya's international food assistance program,

The Government of the Republic of Hwange and the Government of the Democratic Republic of Cataya (each hereinafter referred to as a "Contracting Party"),

Desiring to create favorable conditions for greater economic cooperation between them and in particular for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party based on the principles of equality, non-discrimination, and mutual benefit,

Recognizing that the encouragement and reciprocal protection of such investments will be conducive to stimulating business initiative and increasing economic prosperity in both States,

Have agreed as follows:

Article 1  
Definitions

For the purposes of this Agreement:

(1) The term “investments” means all kinds of assets that have been invested in accordance with the laws of the Contracting Party receiving them including though not exclusively any:

(a) movable and immovable property and other property rights such as mortgage, usufruct, lien, or pledge;

(b) title or claim to money or to any contract having a financial value;

\* \* \*

(f) business concessions conferred by law or under contract including any concession to search for, cultivate, extract, or exploit natural resources.

\* \* \*

Article 8  
Expropriation

(1) Neither Contracting Party shall take any measure of expropriation, nationalization, or other measures having effect equivalent to nationalization or expropriation (all of

which measures shall hereinafter be referred to as “expropriation”) against the investment of nationals or companies of the other Contracting Party unless the measures are taken for a purpose authorized by law, on a non-discriminatory basis, in accordance with its laws and in return for payment of just compensation, which shall be made without unreasonable delay. Such compensation shall be the value of the investment immediately before the expropriation, taking into account customary norms of international law.

\* \* \*

### Article 13 Settlement of Disputes

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement that cannot be settled within a reasonable lapse of time by means of diplomatic negotiations shall, unless the Parties have otherwise agreed, be submitted at the request of either Party to mediation.
- (2) If such dispute cannot be settled through negotiation or mediation, the Contracting Parties may agree to submit the matter to an arbitral tribunal or the International Court of Justice.

\* \* \*

The CHABIT is registered with the United Nations Secretariat in accordance with Article 102 of the Charter of the United Nations.

21. In April 2005, a state-owned entity, the Coal Company of Cataya (CoCoCat) entered into a contract with the Government of the Republic of Hwange. The agreement was signed on behalf of the Government of the Republic of Hwange by Rabbet Morgue. The CoCoCat agreement granted CoCoCat the exclusive right to explore for, extract, and exploit any coal reserves located in the Rabbet Morgue Reserve. In exchange for these rights, CoCoCat paid the equivalent of 10 million Euros to the Hwange Ministry of the Treasury. In addition, CoCoCat agreed to pay royalties based on the amount of coal extracted. CoCoCat also was required as part of the agreement to pay the equivalent of 2 million Euros to “offset any adverse impact to the Hwange Black Rhinoceros.” CoCoCat paid this money to the Hwange Ministry of National Resources, which was to use the funds for rhinoceros research.

22. In May 2005, the Hwange Minister of Natural Resources was elected by secret ballot to serve as chair of the U.N. Commission on Sustainable Development.
23. In February 2006, a civil war erupted in the Republic of Hwange between Morgue supporters and an alliance of rebel groups led by HIP. In April 2006, Rabbet Morgue and his two sons (the Minister of the Treasury and Minister of Natural Resources) were killed. Colonel B.C. Jay was released from prison and named President of the Republic of Hwange.
24. By May 2006, the Democratic Republic of Cataya recognized the government of Colonel B.C. Jay as the government of the Republic of Hwange. In the same month, the United Nations accepted the credentials of Colonel B.C. Jay's ambassador as the representative of the Republic of Hwange.
25. On 19 June 2006, the following diplomatic note was forwarded to the Government of the Democratic Republic of Cataya:

The Embassy of the Republic of Hwange presents its compliments to the Government of the Democratic Republic of Cataya and has the honor to request that the Democratic Republic of Cataya enter into consultations with the Republic of Hwange concerning the impact of mineral extraction activities within the B.C. Jay Nature Reserve (formerly the Rabbet Morgue Reserve).

The Government of the Republic of Hwange notes with concern the failure of the previous illegal Hwange administration to conduct an appropriate environmental impact assessment (EIA) prior to entering into the agreement with the Coal Company of Cataya. Accordingly, the Government of the Republic of Hwange has immediately suspended all mineral extraction activities in any protected areas within the territory of the Republic of Hwange until appropriate EIAs have been conducted.

The Government of the Republic of Hwange welcomes the opportunity to discuss these matters at the highest levels.

Please accept the assurance of my highest consideration.

/s/ \_\_\_\_\_  
C. Simum  
Ambassador

26. On 27 June 2006, the following diplomatic note was forwarded to the Government of the Republic of Hwange:

The Embassy of the Democratic Republic of Cataya presents its compliments to the Government of the Republic of Hwange and has the honor to acknowledge receipt of the diplomatic note dated 19 June 2006.

At the outset, the Government of the Democratic Republic of Cataya appreciates the concerns of the Government of Republic of Hwange. The Hwange Black Rhinoceros is the Republic of Hwange's national symbol and embodies the strength and resiliency of the Hwange people.

\* \* \*

While CoCoCat will conduct its operations with the utmost care for the Hwange Black Rhinoceros, it must be emphasized the CoCoCat has purchased the legal right to extract these mineral resources and intends to do so.

\* \* \*

Please accept the assurance of my highest consideration.

/s/ \_\_\_\_\_  
R. Sondaicos  
Ambassador

27. On 1 September 2006, the Hwange Ministry of Natural Resources released the EIA for proposed coal extraction activities within B.C. Jay Nature Reserve. The EIA concluded that the planned coal extraction activities would destroy two-thirds of existing Hwange Black Rhinoceros habitat and that, as a result, there would be a very high probability (90%) that the subspecies would become extinct in the wild within 20 years.
28. On 3 September 2006, the Government of the Republic of Hwange responded to the Government of the Democratic Republic of Cataya with a diplomatic note that stated in part:

In light of the EIA, the Republic of Hwange has no choice but to assert its superior rights over its sovereign natural resources and revoke the CoCoCat agreement. We cannot

permit an activity that would result in the extinction of the Hwange Black Rhinoceros. Our participation in the extirpation of this magnificent animal would be a violation of our international obligations, especially those contained in the Convention on Biological Diversity and the Rio Declaration. Similarly, the Government of the Republic of Hwange respectfully reminds the Government of the Democratic Republic of Cataya of its duty to avoid causing environmental harm beyond its territory.

29. On 10 September 2006, the Government of the Democratic Republic of Cataya responded with a diplomatic note that stated in part:

While states have the sovereign right to exploit or protect their natural resources in accordance with their own developmental policies, it must be observed that such a developmental policy had been established in this case. CoCoCat paid 12 million Euro for the mineral rights in the former Rabbet Morgue Reserve. The CoCoCat agreement and the CHABIT, which prohibits expropriations, were entered into by the Government of the Republic of Hwange. As Grotius and numerous other scholars have noted, a mere change in government leaders or form of government does not affect a state's international obligations and commitments. *See e.g., Tinoco Case*, 1 R. Int'l Arb. Awards 369, 377 (U.K.-Costa Rica 1923) (quoting the well-settled principle of international law that "[c]hanges in the government or internal policy of a state do not as a rule affect its position in international law. . . . The state is bound by engagements entered into by governments that have ceased to exist.").

30. On 24 September 2006, the Government of the Republic of Hwange responded with a diplomatic note that stated in part:

International law recognizes that a state has no international legal responsibility to compensate for damage to or confiscation of property by illegal governments, unsuccessful revolutionists, or belligerent occupants. The actions of Rabbet Morgue were illegal and ultra vires. Accordingly, the Republic of Hwange need not recognize any obligations purportedly assumed by this criminal. Indeed, we read the *Tinoco Case* to support our position that such odious debts may be repudiated. *See e.g., Adam*

Feibelman, *Contract, Priority, and Odious Debt*, 85 N.C. L. Rev. 727, 728 (2007) (defining odious debt as “an obligation incurred in the name of a sovereign nation by a despotic or illegitimate government, the proceeds of which only enrich the despot or fund the repression of his or her subjects”).

\* \* \*

Moreover, the EIA constitutes new information. Because of these changes in circumstances, the Government of the Republic of Hwange may rely on *rebus sic stantibus* to justify its decision.

\* \* \*

To the extent that any obligation to allow the extraction activities exists, the principle of *jus cogens* controls. *Jus cogens* is a peremptory norm which permits no derogation. *Jus cogens* prohibits intentionally causing the extinction of an animal such as the Hwange Black Rhinoceros.

\* \* \*

The Government of the Republic of Hwange regrets to inform the Government of the Democratic Republic of Cataya that it is not in a position to repay the 12 million Euro. Our auditors have discovered that these funds were stolen by Rabbet Morgue and his sons for their own benefit.

31. On 1 October 2006, the Government of the Democratic Republic of Cataya replied with a diplomatic note that stated in part:

On behalf of CoCoCat, the Government of the Democratic Republic of Cataya demands payment of just compensation in accordance with the terms of the CHABIT. The just compensation must include a refund of the 12 million Euro plus interest, payment for other investments (e.g., transporting equipment, cost of initial site preparation work), and the commercial value of the coal reserves, less any royalties that would have been due to the Government of the Republic of Hwange.

32. Representatives from the Republic of Hwange and the Democratic Republic of Cataya then entered into formal negotiations to attempt to resolve the dispute.
33. After consultations and negotiations failed to resolve the matter, in January 2007, the Republic of Hwange and the Democratic Republic of Cataya agreed to enter into mediation.
34. The mediation failed to resolve the dispute, and after continued discussion the Republic of Hwange and the Democratic Republic of Cataya signed an agreement on 11 May 2006 that submitted the matter to the International Court of Justice.
35. The Republic of Hwange opposes the claims in paragraph 36 of this Annex and seeks an order declaring: (1) that the Democratic Republic of Cataya would violate international law if CoCoCat proceeded with coal extraction activities in B.C. Jay Nature Reserve; and (2) that the Democratic Republic of Cataya is not entitled to just compensation as a result of the Republic of Hwange's efforts to protect the Hwange Black Rhinoceros.
36. The Democratic Republic of Cataya opposes the claims in paragraph 35 and seeks an order declaring that either (1) CoCoCat may proceed with its planned mining activities in B.C. Jay Nature Reserve; or (2) the Democratic Republic of Cataya is entitled to just compensation as outlined in paragraph 31.