

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

**BETWEEN THE REPUBLIC OF VHAMA (APPLICANT) AND THE
FEDERAL REPUBLIC OF RABAK (RESPONDENT)**

Jointly notified to the Court on 10th August 2021

COMPROMIS

**ELEVENTH AMITY INTERNATIONAL LAW MOOT COURT
COMPETITION (AIM), 2021**

**AMITY LAW SCHOOL, NOIDA
AMITY UNIVERSITY**

**JOINT NOTIFICATION
ADDRESSED TO THE REGISTRAR OF THE COURT**

The Hague, 10th August 2021

On behalf of the Republic of Vhama and Federal Republic of Rabak , 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 Special Agreement for submission to the International Court of Justice on the Differences between the Applicant and the Respondent concerning the Extradition, Asylum and Diplomatic Immunities, signed in The Hague, The Netherlands, on the first day of August in the year two thousand twenty one.

Republic of Vhama

Federal Republic of Rabak

SPECIAL AGREEMENT

SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY THE REPUBLIC OF VHAMA AND THE FEDERAL REPUBLIC OF RABAK CONCERNING EXTRADITION, ASYLUM AND DIPLOMATIC IMMUNITIES.

The Republic of Vhama (“the Applicant”) and the Federal Republic of Rabak (“the Respondent”) (hereinafter “the Parties”);

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

Considering that a dispute has arisen between them concerning extradition, asylum and diplomatic immunities;

Noting that the Parties have been unable to settle these differences by direct negotiations;

Desiring further to define the issues to be submitted to the International Court of Justice (the Court) for resolution;

In furtherance thereof the Parties have concluded this Special Agreement:

Article 1

The Parties submit the questions contained in this Special Agreement (the Case) to the Court pursuant to Article 40(1) of the Statute of the International Court of Justice.

Article 2

It is agreed by the Parties that the Republic of Vhama, shall act as Applicant and the Federal Republic of Rabak, as Respondent, but such agreement is without prejudice to any question of the burden of proof.

Article 3

- (a) The Court is requested to decide the Case on the basis of applicable conventions and other rules and principles of international law.
- (b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its Judgment on the questions presented in the Case.

Article 4

- (a) Procedures shall be regulated in accordance with the applicable provisions of the Official Rules of the Amity International Moot Court Competition, 2021.
- (b) The Parties agree that the written proceedings should consist of Memorials presented by each of the Parties.
- (c) Procedures shall be regulated in accordance with the applicable provisions of the Official Rules of the Amity International Moot Court Competition, 2021.

Article 5

- (a) The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
- (b) Immediately after the receipt of any Judgment, the Parties shall enter into negotiations on the modalities for its execution.

In witness whereof, the undersigned, being duly authorized, have signed the present Special Agreement and have affixed thereto their respective seals of office.

Done in The Hague, The Netherlands, this Tenth day of August in the year two thousand twenty one.

Republic of Vhama

Federal Republic of Rabak

Case Concerning the Extradition, Asylum and Diplomatic Immunities

Vhama v. Rabak

1. The Republic of Vhama (hereinafter “Vhama”) is a country in West Africa. It spans the Gulf of Vhama and the Atlantic Ocean to the south, sharing borders with Pharica in the west, Dono in the north and Rsaka in the east. Vhama covers an area of 3,29,350 square kilometers, spanning a diverse geography and ecology that ranges from coastal savannahs to tropical rain forests. With over 30 million people, Vhama is the second most populous country in Africa. The Capital and the largest city of Vhama is Mackra. Vhama is home to a variety of ethnic, linguistic and religious groups; while the ackra are the largest ethnic group, they constitute only a plurality. The vast majority of Vhamians are Christian (72%), with close to 10% being Muslim and the rest practicing traditional faiths or reporting no religion.
2. Vhama is an average natural resource enriched country. It is known for its industrial minerals, it is the 2nd largest producer of gold in the world and largest producer in Africa, producing 210 metric tons in 2020. Vhama has the fourth largest reserves and the fifth largest production rate of diamonds in the world. Industrial minerals and exports from Vhama includes gold, silver, timber, diamonds, bauxite and manganese. Vhama also has other mineral deposits.
3. It is a newly industrialized country and an emerging digital economy with mixed economy hybridisation and an emerging market. It has an economic plan target known as the "Vhama’s Vision 2020". This plan envisions Vhama as the first African country to become a developed country between 2020 and 2029. Political decisions over the last few years have actively promoted a differentiated access to and control over land-based resources in Vhama, excluding local communities from accessing environmental goods in their territories while favouring private stakeholders, in particular multinational companies from overseas.
4. Conflict between large and small-scale mining and the criminalisation of artisanal miners are becoming frequent in Vhama. The miners who have historically inhabited the gold-mining regions are not recognised politically, making it very difficult for them to formalise their operations. Without title, artisanal miners are mostly treated as illegal and/or criminal producers. However, informal methods of gold production, have provided a livelihood to millions of Vhamians and help some make more money than they could dream of from traditional trades.

This has also given way to “large-scale and dangerous” operations run by foreign-controlled criminal syndicates.

5. People’s Liberation Front of Vhama (PLFV) is a rebel group active in Vhama mainly consisting of indigenous people and ethnic minorities. It started as movement in 2008 for protecting rights of local communities but over the years had started committing crimes and acts of terror throughout the country- including bombing and violent attacks against military and police facilities. In 2016, PLFV was listed as a terrorist organisation by the Vhamian government.
6. The Federal Republic of Rabak (hereafter “Rabak”) is a landlocked country in West Asia. Rabak is a democratic republic, formed from a federation of ten states. Its total area is 76, 430 square kilometers. It shares border with the state Losan in north, Daben in the south, Shagha in the east and Madaba in the west. Rabak’s population in 2020 stands at 9.5 million. Expatriates and immigrants account for 88 % while Rabak’s make up the remaining 12 %. Rabak has world’s highest migration rate. Rabak is exceptionally diverse and 90% of its population is urban. Islam is the major religion in Rabak constituting 75% of its population, other religions include Christianity, Hinduism, Buddhism etc. The government of Rabak follows a policy of tolerance towards all religions and rarely interferes in the religious activities.
7. Rabak’s economy is categorized as a high-income economy and is highly diversified. A significant portion of Rabak’s economy involves tourism and trading fish, dates and other agricultural produce. Beginning in the 1980s, the Rabak promoted industrial development by establishing firms in manufacturing industries associated with oil and gas, including refineries, fertilizer plants and aluminium smelters to make use of the Rabak’s natural resource endowments as feedstock and fuel for industries. In addition, industrial development departments were established in the Rabak to support industrial activity. Industrial enterprises were exempt from customs duties on imports of machinery, equipment, spare parts and raw materials required for production. These firms were also exempt from export duties and taxes.
8. The Rabak’s oil and natural gas reserves are the sixth largest in the world. It is also one of the world’s major gold trading hubs. In 2019, it was the fifth-biggest importer and fourth-biggest exporter of gold globally. Rubai is the capital city of Rabak, and is a business hub of west Asia. It is also known as the Golden capital because a major part of the economy is based on gold trades.

9. On 2nd April 2020, at around 8.00am the Vhama's Police authorities got a call of a Bomb planted by the PLFV inside one of the baggage in the Vhama's International Airport, in the capital city of Mackra. A detailed search operation was carried out by the Bomb Disposal Squad and the Central Industrial Security Forces (CISF) of Vhama. All the baggages including the loaded one were unloaded and sent to the terminal for further scanning. After detailed search operation, no bomb was found but one of the diplomatic bag bearing visible external marks of its character sent by Mr. Azek Adala, Consulate-General of Rabak, in Vhama addressed to Mr. Wahi Rodala, Secretary, Ministry of External Affairs of Rabak, was suspected to contain contraband. The bag was scanned without the permission of the Rabak's authorities and was forcefully opened in presence of Mr. Uzbek Shaza, diplomatic courier designated by the Rabak authorities. The permission was not sought from the Embassy of Rabak or the Consulate-General office in Vhama.
10. A cache of gold weighing 35 kilograms (at the official market rate- more than \$3.8 million) was seized from the diplomatic bag at 11.00am. It was listed as official stationery and xerox machine. In return, the Rabak's authority sent an official letter issued on the same day, and claimed violation of consular and diplomatic immunities 'by scanning and opening the diplomatic bag without official permission'. In the letter, Rabak blamed the ex-employees for the crime and promised to cooperate in the investigation of the case.
11. The incident was immediately aired and became the most captured news nationally and internationally. A report by Mark X, a reputed news agency revealed that billions of dollars' worth of gold is being smuggled out of Vhama every year through the Federal Republic of Rabak—a gateway to markets in Europe, and beyond. The report claimed that Customs data shows that the Rabak imported \$15.1 billion worth of gold from Vhama in 2016, more than any other country and up from \$1.3 billion in 2006. Much of the gold was not recorded in the exports of Vhama. Trade economists interviewed by Mark X, said this indicates large amounts of gold is leaving Vhama with no taxes being paid to the states that produce them.
12. The DDC, an international news organisation, reported that "much of the gold is smuggled from Vhama and is acquired from local artisanal and small-scale producers". It was also reported that "the criminal networks exploit features of the Rabak's laws and systems, in order to move cash and gold easily into and out of the country, as well as engage in money laundering through the Rabak's property market, international trade, and newer areas such as crypto

assets. Rabak has little documentation and limited regulation as a result, informally mined gold can be legally imported, tax-free.”

13. On 9th April 2020, Vhama referred the gold smuggling matter to the National Investigating Agency (NIA), the highest investigating agency in Vhama. Subsequent investigation into the matter led to the chain of organised crimes and many persons including a host of alleged facilitators, financiers, and gold traders, were interrogated but no arrest was made. The NIA, claimed that over 30 such consignments allegedly left Mackra to Rubai since April 2018, around 27 of which were sent by Rabak’s Consul General.” The NIA was also quoted as saying that “250 kilograms of gold was smuggled through Macka Airport in a similar fashion and most of the money was used for funding terrorism.”
14. The investigation also brought into light a ‘Vhama National Bank (VNB) Scam’ which related to fraudulent letter of undertaking worth US\$1.4 billion issued by Vhama National Bank at its Macka branch, making Vhama National Bank liable for the amount. The fraud was allegedly organized M/s Scodik Diamond owned by the businessman Mr. Viron Scodik, engaged in gold and diamond business in Vhama. On 12th April, Mr. Scodik was charged of criminal conspiracy, criminal breach of trust, cheating and dishonesty including delivery of property, corruption, money laundering, fraud, embezzlement and breach of contract. He is also accused of illegally financing PLFV. However, Mr. Viron Scodik, after selling all his properties in Vhama worth about \$75 million, absconded in March 2019, days before the news of scam came to light.
15. Soon, a nationwide protest erupted in Vhama, and the media criticised the government for not taking adequate and timely actions in the matter. On 25h April, the Vhamian police approached the Interpol to issue a Red Corner Notice (RCN) against Mr. Viron Scodik in connection with its probe into the VNB fraud.
16. On 29th April, Ms. Roselle Almatha, a private staff at the consular office, was arrested and detained by the Vhamian authorities when she went to pick her son from school. She was interrogated for more than 5 hours and then released on bail. On the same day, the police authorities of Vhama and team of national investigating agency (NIA) reached the official residence of Mr. Azek Adala Consulate -General of Rabak, in Vhama, with a search warrant. The residence of the Mr. Adala was searched and his personal laptop and a pen drive was seized.

17. On 31st April, after substantial and credible evidence was found against Mr. Azek, he was put under house arrest by the Vhamian authorities for his involvement in the gold smuggling case. Mr. Azek was booked under Sections 16, 17 and 18 of the Unlawful Activities Prevention, Act and Customs Act of Vhama. This further escalated the tension between Rabak and Vhamian authorities. In the letter dated 1st May, the Government of Rabak accused Vhamian authorities for blatantly violating the consular and diplomatic immunities under the Vienna Conventions and customary laws. The Government of Vhama responded by claiming that Mr. Azek enjoyed “only functional immunity”. Since he is the prime accused in the case his arrest and detention was required for further investigation into the case.

18. On 2nd May, arrest warrant was also issued against Ms. Roselle, who was also charged under Section 16, 17 and 18 of Unlawful Activities Prevention, Act of Vhama. However, due to sudden turn of the events on the previous day, Ms. Roselle anticipated her arrest and had sought asylum in the Embassy of Rabak in the early hours of the day. On 4th May, the Vhamian Authorities sent an official letter to the Rabak’s embassy, seeking cooperation and requesting Rabak to surrender Ms. Roselle to the Vhamian authorities. In the letter Vhamian authorities claimed that “no general rule in international law existed permitting States to grant diplomatic asylum”. However, Rabak responded by claiming that there is a long established practice of providing asylum in embassies. It also claimed that Ms. Roselle and Mr. Azek Adala were innocent and that they were targeted to divert the attention of the Vhamians from the bigger economic and social problems in Vhama.

19. Meanwhile, On 10th May, the news that Mr. Scodik has found safe haven in Rubai, surfaced. It was also reported that Mr. Scodik has bank account and assets worth \$100 million in Rabak. On 20th May, the special court in Vhama declared Mr. Scodik as ‘Fugitive economic offender’ and the Vhamian authorities requested his extradition from Rabak. The authorities also requested Rabak to freeze his bank accounts and to seize his assets, in order to recover the dues in VNB fraud. However, the Rabak authorities stated that they were unable to locate Mr. Scodik.

20. In June 2020, a report published by the Global Action against Money laundering (an independent inter-governmental body), quoted the customs data provided by governments to United Nations database, which showed that Rabak has been a prime destination for gold from

Vhama for some years. Most of the gold is traded in Rubai, home to the Rabak's gold industry. From 2006 to 2016, the share of Vhama's gold in Rabak's reported gold imports increased from 10 percent to nearly 31 percent. The report restated its findings that "gold is an extremely attractive vehicle for laundering money. It provides a mechanism for organised crime groups to convert illicit cash into a stable, anonymous, transformable and easily exchangeable asset to realise or reinvest the profits of their criminal activities." The report also highlighted the link between money laundering and terrorist financing risks emanating from illegal smuggling of gold, diamonds and other minerals.

21. The Association for Economic Cooperation (AEC), a regional organisation in Africa, to which Vhama is a member, passed a Resolution in July 2020, condemning illegal mining and smuggling of industrial minerals. The resolution stated that "gold is being illegally produced and smuggled out of their countries on a vast scale, sometimes by criminal operations, and often at a high human and environmental cost." The resolution also called Rabak to clean up their bullion trade.
22. The Resolution soon gained support by the international community. On 8th August 2020, UNSC Counter-Terrorism Committee called on Rabak and few other countries "to ensure income from the gold trade is not used to finance terrorism". Since Gold was the Rabak's largest export after oil, the authorities responded by quickly pledging support to crack down on illegal gold trading and improve regulation around issues like money laundering and unethical sourcing. On 20th August, Mr. Scodik was arrested in Rubai after a warrant was issued against him by the Rabak's authorities, however, he was released on bail after few weeks on the ground of "deteriorating mental health and risk of suicide".
23. The release of Mr. Scodik and the failure of the government to extradite him led to severe criticism of the Vhamian government by the national media. As the public pressure mounted, the External Affairs Minister of Vhama tweeted "Fugitives & economic offenders will be actively pursued; their properties attached & dues recovered."
24. In September, 2020 it was reported that Mr. Scodik has applied for asylum in Rabak, claiming that he was a victim of "political persecution" and denying any wrongdoing. He also claimed that "he would not get a fair trial in Vhama. The Vhamian Government and the media has already pronounced him a criminal and that no lawyer will pick his case". In February, 2021 the Rabak's High Court rejected Mr. Scodik's extradition request considering his "mental

health” and on the ground that he “will not get fair trial in Vhama”. In response, the Government of Vhama again requested the extradition of Mr. Scodik under the International Convention for the suppression of the financing of terrorism.

25. On 10th March 2021, the High Court of Vhama, ordered extension of house arrest of Mr. Azek by one year on the ground that “there are strong reasons to believe that Mr. Azek will leave the country if released and will escape the trial”. In response to the order, the government of Rabak on 15th March, promoted Mr. Azek from Consulate General of Rabak, in Vhama to the Ambassador of Rabak to United Nations Mission in New York, which would entitle him to full diplomatic immunity. The Government of Rabak requested the Vhamian government to immediately release Mr. Azek and allow him to leave the country, as he enjoys absolute immunity “from the criminal jurisdiction” of Rabak. Vhama however, denied the request and claimed that Mr. Azek is responsible for his actions exercised in receiving State “outside his official functions” and the immunity from criminal jurisdiction cannot be claimed retrospectively.

26. After several negotiations between the Government of Vhama and the Government of Rabak, no progress was made regarding release of Mr. Azek Adala; surrender of Ms. Roselle Almatah and extradition of Mr. Viron Scodik. Both the countries have therefore decided to submit the matter of the dispute to the International Court of Justice under special agreement.

27. The laws of Republic of Vhama and the Federal Republic of Rabak are in *pari materia* with laws of Republic of India and United Arab Emirates respectively. All the international instruments applicable to India and UAE are also applicable to Vhama and Rabak respectively. Both the countries are parties to the Vienna Convention on Diplomatic Relations (1961); Vienna Convention on Consular Relations (1963); Optional Protocol to the Vienna Convention on Consular Relations (1963); Convention for the suppression of the financing of terrorism (1999). The Extradition treaty between the Republic of Vhama and Federal Republic of Rabak is identical to the extradition treaty between the Government of the Republic of India and United Arab Emirates.

Applicant, the Republic of Vhama, respectfully requests the Court to adjudge and declare that:

a. The Federal Republic of Rabak is under an obligation to extradite Mr. Scodik under the extradition treaty and the Convention on Suppression of Terrorist Financing.

b. The Federal Republic of Rabak has abused its diplomatic immunities by providing asylum to Ms. Roselle in its embassy, as no such rule is recognized under general international law.

c. The Federal Republic of Rabak has abused Consular immunities by smuggling gold from Rabak in diplomatic bags, and the Republic of Vhama is entitled to reparation for the same.

Respondents, the Federal Republic of Rabak respectfully requests the Court to adjudge and declare that:

a. The Republic of Vhama has violated Diplomatic and Consular immunities by scanning and opening the diplomatic bag without seeking permission from the Rabak's authorities; and by seizure of laptop and pendrive from the residence of Mr. Azek Adala, Consulate General of Rabak in Vhama.

b. The Republic of Vhama has violated the provisions of the Vienna Convention on Consular Relation, Vienna Convention on Diplomatic Relations and the United Nations Charter by keeping Mr. Azek Adala under house arrest even after his promotion to the United Nations Mission in New York.

c. The Federal Republic of Rabak has not violated the obligation under the extradition treaty or any other Convention as Mr. Scodik has not committed any international crime.

(The issues are not exhaustive and the participants are free to frame other relevant issues in the matter.)

* The events and the characters depicted in the moot court problem are fictitious and hypothetical. Any similarity to actual persons living or dead is purely coincidental.