

## **The Twigan Cultural Centre Dispute**

1. The Republic of Twiga (“Twiga”) is a small State with a dynamic economy. Besides being rich in natural resources, the country has many industries that are active in the aerospace, defence and security sectors. It also has a vivid artistic and cultural scene. Twiga has been a member of the United Nations since 1961, when it gained independence.
2. The Republic of Pundamilia (“Pundamilia”), also a member of the United Nations, is a large but sparsely populated country. Its economy relies mostly on farming and trade of agricultural products, and on tourism.
3. Both countries have filed a declaration accepting the jurisdiction of the International Court of Justice under Article 36(2) of the Court’s Statute. Neither of these declarations contains any reservation.
4. Pundamilia and Twiga are also party to the 1969 Vienna Convention on the Law of Treaties.
5. In an attempt to foster international peace and security and strengthen their economic relations, Pundamilia and Twiga concluded a military assistance agreement called “Military Assistance Agreement between the Republic of Twiga and the Republic of Pundamilia” (henceforth “Military Assistance Agreement”) in June 1992. The relevant provisions of the Military Assistance Agreement are set out in Annex I.
6. The two countries also have long-standing diplomatic relations. Both States are party to the 1961 Vienna Convention on Diplomatic Relations. Upon signing the Convention, in December 1961, Pundamilia appended a reservation in relation to Article 31; this reservation was confirmed on ratification. The reservation reads as follows: “The Government of the Republic of Pundamilia considers that Articles 31 and 37 are to be interpreted as granting a diplomatic agent and the members of his family immunity from the criminal jurisdiction of the receiving State except in relation to professional or commercial activities.” Twiga ratified the Convention on 2 February 1962, without reservations.
7. The diplomatic mission of Twiga in Pundamilia is located at 20 Baobab Street, a quiet neighbourhood of Savannah, the capital city of Pundamilia.
8. In 2014 the Government of Twiga appointed Mr Fisi, a high-ranking diplomat, as Ambassador to Pundamilia. The Ambassador’s wife, Mrs Fisi – a Twigan national – is the sister of a prominent General in the Twigan Armed Forces who, in 2012, became Twiga’s Minister of Defence. Mrs Fisi does not share her brother’s interest in military matters; she is very fond of art, and owns a large private collection of Twigan paintings and sculptures.
9. In September 2014, after consulting her husband, Mrs Fisi bought, using her own money, the premises located at 22 Baobab Street, adjacent to the embassy’s building. These premises are those of a one-storey building that is approximately 100 square meters in size. It consists of a large room at the front, two smaller rooms at the back

and a bathroom. In Baobab Street this building has its own independent entrance that is located 20 meters away from the embassy's entrance. Mrs Fisi's project was to set up a cultural centre in this building to display her private art collection, which would contribute to the promotion of cultural exchanges between Twiga and Pundamilia.

10. Once Mrs Fisi took possession of the building, she used the front room for an exhibition of paintings and sculptures made by Twigan artists. One of the back rooms served as a space to host workshops on the traditional Twigan painting technique; she used the other room in the back of the building as an office space. She kept mostly paperwork in this office and had a computer, but for printing facilities and phone calls she relied on the embassy's equipment. On the wall next to the building's front door, she put a plaque saying "Twigan Cultural Centre". She also asked the security guards stationed outside the embassy to keep an eye on the Cultural Centre's front door.
11. The opening of the Twigan Cultural Centre was a success, attracting lots of visitors from the local population and tourists. Some of the visitors expressed an interest in purchasing items from the Cultural Centre, but were told by Mrs Fisi that these items were not for sale.
12. Approximately three months after the opening of the Cultural Centre, Mrs Fisi wanted to purchase a sculpture for the garden of her country house in Pundamilia. The sculpture she liked was very expensive. She decided to put some of the most beautiful paintings and sculptures in the Cultural Centre on sale, and use the money to buy the sculpture. When she sold the items, she decided to transfer 30% of the proceeds from the sale to the embassy's bank account, since she was using some of the embassy's services, including for security.
13. Thereafter, Mrs Fisi gradually but steadily increased the sale of artwork from the Twigan Cultural Centre. Within six months of the opening of the Cultural Centre, half of the artworks displayed there – comprising 100 items in total – were for sale. At that point in time, the art collection included two sculptures by an artist from neighbouring country Kima and some paintings by Van Tembo, a XIX century painter also from Kima, who was famous all over the continent for his landscape paintings. Many visitors were surprised at the presence of these Van Tembo masterpieces in the Twigan Cultural Centre. These paintings sold very well, and the volume of sales of the Cultural Centre increased considerably. Mrs Fisi kept transferring 30% of the proceeds to the embassy's bank account. She never paid taxes on the property hosting the Twigan Cultural Centre, which she owned, or on the income resulting from the sales. Throughout the operation of the Cultural Centre, she kept hosting free workshops on the traditional Twigan painting technique in the room that was devoted to that purpose.
14. On 15 June 2015, about nine months after the opening of the Twigan Cultural Centre, Twiga bought from Mrs Fisi the premises where the Cultural Centre was located at 22 Baobab Street, with the stated intention of expanding the premises of the diplomatic mission. Builders contracted by the embassy opened two doors in the wall dividing the premises of the diplomatic mission from those of the Cultural Centre, so that it became possible to access the Cultural Centre directly from the embassy. A sign "Diplomatic Mission of the Republic of Twiga in Pundamilia" was put at the entrance of the Cultural Centre, just above the plaque "Twigan Cultural Centre". A pole displaying the Twigan flag was also put at the entrance. Nonetheless, visitors continued to come in the

Cultural Centre to look at the artwork, and occasionally purchase some items from Mrs Fisi. Twiga's embassy in Pundamilia did not communicate to the authorities of the receiving State that it was using the premises located at 22 Baobab Street for the purposes of the diplomatic mission, nor did it send a formal request for protection of the new premises to Pundamilia's authorities.

15. Under the Pundamilian Code of Criminal Procedure, individuals who believe they have been the victims of a crime can file an individual complaint with the Public Prosecutor. In September and October 2015, three Pundamilian citizens filed separate complaints with the Pundamilia Public Prosecutor against Mrs Fisi, alleging that she sold them a fake Van Tembo painting for 10,000 Pundamilian dollars each. They also initiated a civil action against the Ambassador's wife to recover the money. The investigation uncovered that fake Van Tembo paintings were traded from a small atelier in Mrs Fisi's hometown in Twiga to various countries, including Pundamilia.
16. On 13 January 2016, Pundamilian police searched the premises of the Twigan Cultural Centre as part of the investigation into Mrs Fisi's conduct. There they found and seized a Van Tembo painting which Pundamilian investigating authorities claimed to be a fake.
17. On 14 January 2016, Twiga's embassy in Pundamilia sent a Note Verbale to the Ministry of Foreign Affairs of Pundamilia to protest against Pundamilia's breaches of the inviolability of the premises of the Twigan embassy in Pundamilia. The Note Verbale explained that Twiga owns the building located at 22 Baobab Street, which it uses for the performance of certain functions of its diplomatic mission. The embassy further requested Pundamilia to respect the inviolability of the premises of its diplomatic mission and to assure its protection for the future.
18. Two days later, the Savannah investigating judge issued a summons for Mrs Fisi to appear for a preliminary examination (a step that precedes the issuance of an indictment under Pundamilian law). The judge also ordered the attachment of the premises of the Twigan Cultural Centre under the Pundamilian Code of Criminal Procedure. Mrs Fisi did not appear before the investigating judge, claiming she had immunity from the jurisdiction of the receiving State.
19. On 19 January 2016, Pundamilia's Ministry of Foreign Affairs replied to the Note Verbale of 14 January 2016 informing the Twigan diplomatic mission that the Ministry was unable to grant the diplomatic mission's request because the building located at 22 Baobab Street was not part of the premises of the diplomatic mission of the Republic of Twiga.
20. On 3 February 2016, Twiga's embassy in Pundamilia sent another Note Verbale to Pundamilia's Ministry of Foreign Affairs, suggesting a negotiated solution to the dispute concerning Pundamilia's failure to recognize the jurisdictional immunity of Mrs Fisi, as well as the inviolability and immunity of the premises located at 22 Baobab Street. Pundamilia did not reply.
21. In March 2016, Mrs Fisi was indicted on criminal charges.

22. In June 2012, the Minister of Defence of Pundamilia had concluded a contract with Twiga Helicopters Inc., a Twigan firm, for the delivery of 12 military helicopters to Pundamilia. Specifically, Twiga Helicopters Inc. had undertaken to deliver to Pundamilia two military helicopters within a year of the signing of the contract, and the remaining 10 helicopters within four years of the said date. The deal was worth 10 million Pundamilian dollars in total. In June 2013, two helicopters were delivered to Pundamilia, as per the contract.
23. Since the Twigan Cultural Centre incident, the diplomatic relations between Twiga and Pundamilia deteriorated. In a joint press statement in May 2016, Twiga's Minister of Defence and the Minister of Foreign Affairs announced that the delivery of military helicopters was suspended in reaction to Pundamilia's conduct. In this press statement, they declared that: "Pundamilia breached the inviolability and immunity of a family member of one of Twiga's diplomatic agents who was performing official functions. It also breached the inviolability and immunity of the premises of Twiga's diplomatic mission in Pundamilia. Twiga regards these violations as acts of the utmost gravity and urges Pundamilia to cease its wrongful conduct immediately."
24. On 3 July 2016, Twiga filed an application against Pundamilia before the International Court of Justice. Twiga requests the Court to adjudge and declare that:
  - By instituting proceedings against Mrs Fisi, Pundamilia breached the immunity from jurisdiction and the inviolability enjoyed by her under international law, notably the Vienna Convention on Diplomatic Relations and customary international law.
  - By searching and attaching the premises of the Twigan Cultural Centre located at 22 Baobab Street in Savannah, which are the property of the Republic of Twiga and used for the purposes of its diplomatic mission in Pundamilia, Pundamilia breached its obligations under international law, notably the Vienna Convention on Diplomatic Relations and customary international law.
25. Twiga further requests the Court to order Pundamilia to put an end to the ongoing proceedings against Mrs Fisi, to recognize the status of the building located at 22 Baobab Street in Savannah as part of the premises of its diplomatic mission in Pundamilia and to ensure its protection as required by international law.
26. Pundamilia does not contest the jurisdiction of the Court or the admissibility of Twiga's claims, but requests the Court to dismiss them on the merits. In addition, it makes a counter-claim, and requests the Court to adjudge and declare that by suspending the delivery of 10 military helicopters, Twiga breached its obligations under Article I of the Military Assistance Agreement, and that no circumstance justifies that breach.
27. Twiga does not contest the admissibility of the counter-claim, but requests the Court to dismiss it on the merits.
28. To this date, Pundamilia has neither discontinued the judicial proceedings against Mrs Fisi nor repealed the attachment order related to the premises of the Twigan Cultural Centre. The delivery of military helicopters to Pundamilia is still suspended.

## **Annex I**

### **Military Assistance Agreement between the Republic of Pundamilia and the Republic of Twiga**

The Governments of the Republic of Pundamilia and the Republic of Twiga;

Desiring to foster international peace and security within the framework of the Charter of the United Nations through measures which will further the ability of nations dedicated to the purposes and principles of the Charter to participate effectively in arrangements for individual and collective self-defense in support of those purposes and principles;

Taking into consideration the support that the Government of the Republic of Twiga has brought to these principles by providing for the furnishing of military assistance to certain nations;

Desiring to set forth the conditions which will govern the furnishing of such assistance;

Have agreed as follows:

#### **Article I**

1. The Government of the Republic of Twiga will make available to the Government of the Republic of Pundamilia equipment, materials, services, or other assistance in accordance with such terms and conditions as may be agreed. The furnishing of such assistance shall be consistent with the Charter of the United Nations and may be restricted only for imperative security reasons. The two Governments will, from time to time, negotiate detailed arrangements necessary to carry out the provisions of this paragraph.

2. The Government of the Republic of Pundamilia will use the assistance exclusively in furtherance of the purposes of the Charter the United Nations for the promotion of international peace and security and for strengthening its defenses against aggression.

#### **Article II**

The Government of the Republic of Pundamilia undertakes to make available to the Government of the Republic of Twiga the military base of Nyasiville located on its territory.

[...]

#### **Article XXII**

This Agreement shall enter into force on the date of signature by the contracting Parties.