

**INTERNATIONAL CENTRE FOR SETTLEMENT  
OF INVESTMENT DISPUTES  
BERNHARD VON PEZOLD AND OTHERS (CLAIMANTS)**

**v.**

**REPUBLIC OF ZIMBABWE (RESPONDENT)  
(ICSID CASE NO. ARB/10/15)**

**- AND -**

**BORDER TIMBERS LIMITED, BORDER TIMBERS INTERNATIONAL (PRIVATE)  
LIMITED, AND HANGANI DEVELOPMENT CO. (PRIVATE) LIMITED  
(CLAIMANTS)**

**v.**

**REPUBLIC OF ZIMBABWE (RESPONDENT)  
(ICSID CASE NO. ARB/10/25)**

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**PROCEDURAL ORDER NO. 11**

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**Members of the Arbitral Tribunals**

Mr. L. Yves Fortier, P.C., C.C., Q.C., President  
Professor David A.R. Williams, Q.C., Arbitrator  
Professor Michael Hwang, S.C., Arbitrator

*Secretary of the Tribunals*  
Aurelia Antonietti

*Assistant to the Tribunals*  
Alison FitzGerald

*Representing the Claimants*

Mr. Matthew Coleman  
Mr. Anthony Rapa  
Ms. Helen Aldridge  
Steptoe & Johnson, London, United Kingdom

Mr. Charles O. Verril, Jr.  
Wiley Rein LLP, Washington, D.C., U.S.A.

*Representing the Respondent*

The Honorable Johannes Tomana  
Advocate Prince Machaya  
Ms. Fortune Chimbaru  
Ms. Elizabeth Sumowah  
Attorney General's Office  
Harare, Republic of Zimbabwe

Mr. Phillip Kimbrough  
Mr. Tristan Moreau  
Kimbrough & Associés, Paris, France

## I. INTRODUCTION

1. The Tribunals have received and considered:
  - 1) Claimants' Statement Regarding Inadmissible Material in Respondent's Post-Hearing Brief of 6 June 2014 ("Claimants' 6 June 2014 Submission");
  - 2) Respondent's Procedural Statement in reply to Claimants' 6 June 2014 Procedural Statement of Inadmissibility of 2 July 2014 ("Respondent's 2 July 2014 Submission");
  - 3) Claimants' Observations on the Respondent's Filing of 2 July 2014 Concerning Admissibility and Procedural Requests of 9 July 2014 ("Claimants' 9 July 2014 Observations").
2. On 11 July 2014, the Respondent informed the Tribunals' Secretary, Ms. Frauke Nitschke, that it "intends" to reply to the Claimants' 9 July 2014 Observations. The Tribunals note, however, that the Respondent did not seek leave from the Tribunals to file an additional submission but rather simply requested "equal length and equal time" to prepare its submission.
3. On 11 July 2014, the Claimants wrote that "further exchanges are over the top", that the Respondent should not be allowed to submit a further filing in breach of Procedural Order No. 10, dated 24 February 2014 and that Procedural Order No. 9, dated 15 October 2013, should stand.
4. The Tribunals recall that in Procedural Order No. 10, it was decided, *inter alia*:
  - "42. (f) The parties shall file their Post-Hearing Briefs within 60 days from receipt of the corrected Hearing transcript;
  - (g) The parties may file a brief statement with the Tribunals within 30 days from receipt of the other party's Post-Hearing Submission identifying any inadmissible material contained in that Submission."

5. The parties Post-Hearing Briefs were filed on 7 May 2014.
6. The Tribunals note that, while the Claimants did file, on 6 June 2014, a statement identifying material they considered inadmissible in the Respondent's Post-Hearing Brief, the Respondent, by email of 10 June 2014, confirmed to the Secretariat that the Respondent had "made no submission pursuant to PO No 10 as to the Claimants' Post-Hearing Brief."
7. Pursuant to its' request of 13 June 2014, the Tribunals granted the Respondent leave to file a response to the Claimants' 6 June 2014 submission, which it did on 2 July 2014.
8. The Tribunals observe that the Respondent's 2 July 2014 Submission, although titled "Respondent's 2 July 2014 Procedural Statement in Reply to Claimants' 6 June 2014 Procedural Statement of Inadmissibility" is, in fact, both a submission that the Respondent's Post-Hearing Brief is admissible in its entirety<sup>1</sup> as well as an application that a series of procedural requests be granted.<sup>2</sup>
9. The Respondent now intends to reply to the Claimants' 9 July 2014 Observations.

## **II. DECISION**

10. At the Tribunals' direction, each party simultaneously filed their Post-Hearing Briefs on 7 May 2014 and was further invited to file a limited submission addressing the admissibility issues contained in the other party's Post-Hearing Brief. However, only the Claimants' filed a submission on admissibility.

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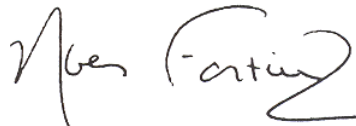
<sup>1</sup> See, *inter alia*, Respondent's 2 July 2014 Submission, ¶ 47.

<sup>2</sup> See Respondent's 2 July 2014 Submission, Section 8.5 entitled "Respondent's Procedural Requests".

11. Subsequently, on 13 June 2014, the Respondent sought leave to file a response to the Claimants' 6 June 2014 submission. Leave was granted on 18 June 2014 and the Respondent filed a substantial submission on 2 July 2014.
12. The Claimants were in turn granted the right to reply to the Respondent's submission of 2 July 2014 and did so on 9 July 2014.
13. The Tribunals see no need for another round of submissions as they consider themselves sufficiently informed to continue their deliberations. Moreover, the Tribunals see no special circumstances within the meaning of ICSID Arbitration Rule 26(3), to the extent applicable, that would justify allowing the Respondent a further written submission beyond what has been granted to it through the Tribunals' various procedural orders and directions, and in particular Procedural Order No. 10 and the Tribunals' decision of 18 June 2014.
14. Accordingly, having deliberated, the Tribunals have decided that they are sufficiently briefed on the matter and as a result, no further submissions by the Respondent shall be accepted or considered.
15. There shall be no order as to costs.

Dated as of 15 July 2014

Signed on behalf of the Arbitral Tribunals



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L. Yves Fortier, P.C., C.C., Q.C.  
President