

**IN THE ARBITRATION UNDER THE RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW AND THE UNITED STATES –
PERU TRADE PROMOTION AGREEMENT**

PCA Case No. _____

BACILIO AMORRORTU

CLAIMANT,

v.

THE REPUBLIC OF PERU

RESPONDENT.

NOTICE OF ARBITRATION

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DEFINED TERMS

2021 UNCITRAL Arbitration Rules	2021 Arbitration Rules of the United Nations Commission on International Trade Law, as amended
Amorrortu I	<i>Bacilio Amorrortu v. Republic of Peru</i> , PCA Case No. 2020-11
August 2022 Partial Award	Partial award on jurisdiction issued on August 5, 2022 in the <i>Amorrortu v. Peru</i> , PCA Case No. 2020-11
Baspetrol SAC	A company organized under the laws of Peru; also referred to as <i>Baspetrol</i>
Baspetrol Proposal or Proposal	The proposal prepared by Baspetrol to initiate direct negotiation to operate Blocks III and IV, also referred to as the <i>Baspetrol Proposal</i> or the <i>Proposal</i>
Block III	One of the hydrocarbon blocks in the Talara Basin that was awarded to Amorrortu in the 1990s and later to Graña y Montero
Block IV	One of the hydrocarbon blocks in the Talara Basin that was awarded to Amorrortu in the 1990s and later to Graña y Montero
Claimant	Bacilio Amorrortu, also referred to as <i>Amorrortu</i> or the <i>Claimant</i>
FET	Fair and equitable treatment
Graña y Montero. S.A.A.	The parent company of <i>GMP</i> . A company organized under the laws of Peru, also known as <i>Graña y Montero</i>
Graña y Montero Petrolera	The subsidiary company of Grana y Montero, S.A.A., also referred to as <i>GMP</i>
GSP Project	Geasoducto Sur Peruano Pipeline Project. Gas pipeline project in the southern part of Peru

ILC Articles	The 2001 International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts
Interoil Peru, S.A.	Interoil
Mercantile Peru Oil & Gas, SA.	A company organized under the laws of Peru to which Propetsa transferred 80% of its rights in Block III
Ministerio de Energía y Minas del Perú	Peruvian Ministry of Energy and Mines, also referred to as MEM
Notice of Intent	Amorrortu's notice of intent to submit his claims to arbitration, served onto Peru on September 24, 2019; referred to as the Notice of Intent
Parties	Claimant and Respondent
PCA	Permanent Court of Arbitration
PeruPetro, S.A.	PeruPetro
PetroPeru, S.A.	The state-owned oil company in Peru, Predecessor company of PeruPetro
Promociones Petroleras Talara, S.A.	Promociones Petroleras Talara, S.A. An oil company formed by Bacilio Amorrortu, and organized under the laws of Peru; referred to as Propetsa
Provisa	The consortium, made up of 50% ownership each of Propetsa and Visisa Serpet Asociados, which was awarded the right to operate Block III in 1993
Respondent	The Republic of Peru; referred to as Peru or Respondent
Treaty	United States-Peru Trade Promotion Agreement, February 2009, also referred to as the Treaty or the Agreement or the USPTPA

CAST OF CHARACTERS

Bacilio Amorrortu	Referred to as <i>Amorrortu</i> or the <i>Claimant</i>
Augusto Baertl	Augusto Baertl, CEO of Graña y Montero
Jorge Henrique Simões Barata	Director of Odebrecht in Peru from 2011 to 2016; also referred to as <i>Jorge Barata</i>
Luis Miguel Castilla Rubio	Minister of Economy and Finance of Peru under President Ollanta Humala; also referred to as <i>Castilla</i>
President Alberto Fujimori	President of Peru from 1990 to 2000; also referred to as <i>President Fujimori</i>
Hernando Graña Acuña	Graña y Montero's Head of Commercial since 1996; also referred to as <i>Hernando Graña</i>
José Alejandro Graña Miró-Quesada	CEO of Graña y Montero from 1982 to 2016; also referred to as <i>Jose Graña</i>
Nadine Heredia Alarcón de Humala	First Lady of Peru from 2011 to 2016; also referred to as <i>First Lady Heredia</i>
President Ollanta Moisés Humala Tasso	President of Peru from 2011 to 2016; also referred to as <i>President Humala</i>
Eleodoro Octavio Mayorga Alba	Minister of Energy and Mines from 2014 to 2015; also referred to as <i>Mayorga</i>
Luis Enrique Ortigas	President of PeruPetro in 2013; also referred to as <i>Ortigas</i>
Isabel Tafur	Chief Administrator of PeruPetro in 2014; also referred to as <i>Tafur</i>

I. INTRODUCTION

1. Bacilio Amorrortu (*Amorrortu* or *Claimant*), a citizen of the United States of America, requests the institution of arbitration proceedings against the Republic of Peru (*Peru* or *Respondent*) according to Article 3 of the 2021 Arbitration Rules of the United Nations Commission on International Trade Law as amended (*2021 UNCITRAL Arbitration Rules*).

2. This notice of arbitration (*NOA*) is submitted according to Chapter 10 of the United States-Peru Trade Promotion Agreement (*USPTPA*), which entered into force on February 1, 2009.¹

3. The USPTPA seeks “*to promote transparency and prevent and combat corruption, including bribery, in international trade and investment.*”² However, Amorrortu’s investments and legitimate expectations were frustrated precisely by a corrupt scheme designed to benefit a local company that bribed Peru to obtain a government contract that Amorrortu was negotiating through a process of direct negotiation.

4. This case arises out of Amorrortu’s investment in Peru with the expectation of obtaining a contract to resume the oil drilling and extraction operations in two oil blocks located in the Talara Basin in the Province of Talara, Piura Region, Peru. The Talara Basin is one Peru’s most important crude oil reserves, having produced more than 1.68 billion barrels of oil.³

5. Since 1976, Amorrortu has been involved in drilling and extraction operations in the Talara Basin. Indeed, Block III of the Talara Basin is popularly known in the industry as the “*Amorrortu oil block*” because it has been successfully serviced and operated by the Amorrortu family company for more than twelve years.

¹ USPTPA Investment Chapter (**CL-001**).

² USPTPA Preamble (**CL-002**).

³ D. Higley, *The Talara Basin Province of Northwestern Peru: Cretaceous-Tertiary Total Petroleum System*, August 2004, available at <https://pubs.usgs.gov/bul/2206/A/> (6 February 2020), p. 1.

6. In 1995, Amorrortu had to surrender the contractual rights to operate Block III due to the fierce political persecution launched by the dictatorial government of President Alberto Fujimori (*President Fujimori*). This political persecution led Amorrortu to seek asylum in the United States, which he obtained from the United States Department of Justice on April 26, 2000.⁴

7. Amorrortu continued his involvement in the oil industry in the United States with his wife – a high executive in the industry – and, in 2010, he became a citizen of the United States. Amorrortu has since officially renounced his Peruvian citizenship and is not a citizen of any other country.

8. In 2012, after the return of democracy in Peru, Amorrortu formed Baspetrol S.A.C. (*Baspetrol*) with the expectation to seek – and indeed recover – the contractual rights to operate Block III of the Talara Basin. To this end, Amorrortu approached PeruPetro, S.A. (*PeruPetro*)—the Peruvian governmental entity responsible for the operation of the oil blocks—to negotiate an agreement to operate Block III. After various presentations to PeruPetro about his successful history operating Block III, his persecution leading to his asylum, and his proposal to benefit the community of Talara through the investment of foreign capital, Amorrortu was invited to submit a direct negotiation proposal for Block III and for the adjacent Block IV, which he did on May 28, 2014.

9. Under Peruvian law, the presentation of a direct negotiation proposal commences a direct negotiation process unless the proposal is formally rejected within ten days.⁵ When a direct negotiation proposal is presented by invitation, the ten-day period is a formality that officially confirms the commencement of the direct negotiation phase. In any event, it is

⁴ Letter from the U.S. Department of Justice, Immigration and Naturalization Service, 29 January 2001 (C-001).

⁵ Regulation on the Qualification of Petroleum Companies approved through Supreme Decree No. 030-2004-EM (CL-003), Art. 9.

undisputed that the ten-day period expired, giving Amorrortu the right and the legitimate expectation of completing the direct negotiation of the agreement, consistent with Amorrortu's conversations with the President of PeruPetro. At this point, Amorrortu was willing, ready, and able to complete the direct negotiation process with PeruPetro.

10. Notwithstanding, in violation of Amorrortu's acquired right to direct negotiation and his legitimate expectations, PeruPetro initiated a public bidding process for the license to operate Blocks III and IV. This public bidding process was clearly designed to benefit the local company Graña y Montero, S.A.A. (*Graña y Montero*), as the request for proposal issued by PeruPetro included a series of arbitrary requirements that only Graña y Montero could satisfy.

11. For years, Amorrortu has been claiming that PeruPetro had violated Peruvian law and that the public bidding process was unfairly designed and rigged to benefit Graña y Montero. However, as of March 2017, Peru and Graña y Montero denied their participation in any corruption scheme, and Amorrortu did not have any information corroborating his claims.

12. The evidence of corruption began to surface in June 2019 when Graña y Montero admitted that the company had, in fact, bribed the government of Peru to obtain several government projects. Based on this admission of Graña y Montero, after years of denial, Amorrortu launched an investigation to elicit more information. Whistleblowers who were reluctant to talk about the corruption were willing to provide more information after Graña y Montero's admission. Today, there is undisputed evidence that in 2011, during Peru's Presidential campaign, Graña y Montero, together with Odebrecht, paid US\$ 3,000,000.00 to President Ollanta Humala (*President Humala*) and his wife Nadine Heredia (*First Lady Heredia*). Then, during President Humala's presidency (2011-2016), Graña y Montero paid in over US\$ 3,700,000.00 in bribes to members of President Humala's government to be adjudicated government contacts.

Because of these payments and other payments of bribes currently under investigation, Graña y Montero was favored with numerous contracts by President Humala's government, including contracts for the operation of oil Blocks III and IV granted in 2014-2015.

13. It is by now well established that a host State breached its fair and equitable treatment obligations under a bilateral treaty when it corruptly exercises its discretion to assign government contracts in which foreign investors have acquired interests.⁶ That is exactly what happened in this dispute. Peru breached its obligations under the USPTPA by aborting the direct negotiation process with Baspetro to favor Graña y Montero.

14. There are usually two significant challenges in these types of cases: (1) proving that the bidding process was, in fact, influenced by corruption and (2) establishing that in the absence of corruption, the investor would have been awarded the contract.

15. This case, however, is **unique** in that the Claimant can easily overcome both challenges.

- a. *First*, the evidence of corruption is **overwhelming at this point**. Indeed, this is one of several cases in which the office of President Humala handpicked Graña y Montero to receive a government contract in exchange for illegitimate payments. The notes from the First Lady about her meetings with Graña y Montero confirm it.⁷
- b. *Second*, Peru cannot seriously dispute that Baspetro had commenced the direct negotiation process. This process, in practice, guarantees the contract to Baspetro if it could satisfy the good faith requirements for the drilling and extraction project.

⁶ See, e.g., *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009 (CL-004), ¶ 221.

⁷G. Castañeda Palomino, Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia (C-029).

The President of PeruPetro had confirmed that Baspetro's offer met these conditions. Indeed, Baspetro was the only company with more than twenty years of successful experience servicing the Blocks.

- c. *Third*, there is no dispute that Amorrortu's direct negotiation with PeruPetro was aborted by the corrupt relationship between Graña y Montero and the government of Peru. Therefore, in the absence of corruption, Peru would have given the contract to conduct the oil drilling and extraction operations in Blocks III and IV to Baspetro.

16. In this NOA, Amorrortu will establish the jurisdictional and substantive bases of his treaty claim. Specially, Amorrortu will show that:

- a. Peru breached its obligations under the USPTPA by aborting the direct negotiation process with Amorrortu with the corrupt intent to benefit Graña y Montero, a local company that had a corrupt relationship with Peru (**Section V**);
- b. Amorrortu is an investor of the United States with investments in Peru protected by the USPTPA (**Section IV**); and
- c. Amorrortu has the right to initiate this arbitration because both Peru and Amorrortu have consented to UNCITRAL arbitration and all the conditions precedent to bringing this arbitration have been performed or have occurred (**Section VII**).

II. PARTIES

17. Amorrortu is a U.S. investor with more than thirty years of experience in the industry of exploration and exploitation of oil and gas.

18. All correspondences and notices relating to this case should be addressed to:

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19. Peru is a party to the USPTPA. Pursuant to Annex 10-C of the USPTPA, Peru shall be notified of claims arising under the Treaty at the following address:

Dirección General de Asuntos de Economía Internacional
Competencia e Inversión Privada
Ministerio de Economía y Finanzas
Jirón Lampa 277, piso 5
Lima, Perú.

III. BACKGROUND

A. AMORRORTU'S LEADERSHIP IN THE TALARA BASIN SINCE 1976

20. Talara is a province in the northwestern region of Piura, Peru, and is home to the Talara Basin, one of Peru's most important crude oil reserves. Amorrortu was born in Talara and became a successful petroleum engineer in the region, building on his family tradition and experience of more than 100 years in the oil industry in Peru.

21. In 1978, Amorrortu's first oil company, Promociones Petroleras Talara, S.A. (*Propetsa*), began operations to furnish well services and workover services using their oilrigs and equipment to the oil industry in Talara, Peru. Amorrortu was responsible for overseeing the day-to-day operations of Propetsa.

22. Initially, Propetsa's primary client was the U.S. oil company Occidental Petroleum Corporation (OXY) in the Talara Basin. Later, in June 1982, Propetsa was additionally retained by Petr leos del Per , S.A. (*PetroPeru*)—the state-owned petroleum company responsible for managing and administrating the oil industry in Peru—to maintain oil wells in Talara.⁸ Because of his work ethic and his knowledge of the Talara Basin, Amorrortu became one of the most recognizable names in the industry.

23. In 1991, the government of Peru initiated a process to privatize the oil drilling and extraction operations in the country to attract foreign investment and make the industry more modern and efficient. As part of this process, the Talara Basin was divided into approximately 14

⁸ Special Examination on PetroPeru's debt in Propetsa's favor, 18 June 1992 (C-002).

oil and gas blocks. Peru offered these blocks to local and foreign investors through direct negotiations or public bidding.

24. In October of 1991, PetroPeru requested a proposal for a contract to conduct the drilling and extraction operations in Block III.⁹ This Block was recognized for its potential, with confirmed crude oil reserves of more than 10 million oil barrels and potential production of more than 2000 oil barrels per day.

25. To take advantage of this opportunity, Propetsa, under the leadership of Amorrortu, presented a proposal. Another company presented a similar complementary proposal, resulting in the formation of a 50/50 consortium. The consortium was called Provisa.¹⁰ Amorrortu was the head of the consortium and was responsible for its operations. Provisa's proposal was approved on October 28, 1992, and the contract was ultimately awarded, signed on March 4, 1993.¹¹

26. Under the contract, Provisa had the right to conduct the drilling and extraction operations in Block III for twenty years, from April 1993 until April 2013.

27. Given Amorrortu's familiarity with the Talara Basin, Provisa was able to begin its operations immediately. After taking over the drilling and extraction operations of Block III, Provisa was able to increase the production of the Block and the benefits received by the Talara local community.

28. Block III became known as the "Amorrortu oil block." Amorrortu became one of the most recognized figures in the oil industry in Talara, in the Piura Region, and Peru, particularly

⁹ Supreme Decree No. 177-92-EF, 28 October 1992 (CL-005).

¹⁰ Directory Agreement No. 034-2014, 20 March 2014 (C-003).

¹¹ Hydrocarbons Exploitation Services Contract signed between PetroPeru and PROVISA, 4 March 1993 (C-004).

after he received the support of more than two hundred thirty thousand citizen signatures to be the leader of a new national political alternative party headquartered in the Piura Region.

B. AMORRORTU BECOMES A CITIZEN OF THE UNITED STATES

29. Unfortunately, the business and political success of Amorrortu was perceived as a threat to the repressive regime headed by President Fujimori. Motivated by political bias, President Fujimori launched a plan to financially bankrupt Amorrortu. As part of this plan, the state-owned PetroPeru abruptly and arbitrarily denied Propetsa its payment for services rendered before the company's operation of Block III. This situation later translated into a lack of liquidity that rendered Propetsa insolvent. Propetsa had no choice but to transfer its valuable rights over Block III to the Canadian oil company Mercantile Oil & Gas (*Mercantile*) on October 26, 1995.¹²

30. Amorrortu was forced to flee Peru and seek asylum in the United States. The U.S. Department of Justice granted Amorrortu's asylum petition on April 26, 2000. He moved to Houston, Texas, where he remained active in the oil industry.

C. AMORRORTU COMMENCES DIRECT NEGOTIATION FOR BLOCKS III AND IV

31. By 2012, Peru had held three democratic presidential elections, and the contract to operate Block III—that Provisa transferred to Mercantile (later known as InterOil Peru S.A. (*Interoil*))—was near expiration.

32. Aware of the contract's expiration, Amorrortu saw an opportunity to finish what he had started before the political persecution against him and hoped to operate Block III again.

¹² Licensing Contract for Hydrocarbon Exploitation entered between PeruPetro and Mercantile, 19 December 1995 (C-005).

33. To this end, in 2012, Amorrortu formed Baspetro, a company organized under the laws of Peru. Amorrortu invested millions of dollars in putting Baspetro in a position to negotiate directly the contract to conduct the oil drilling and extraction in Block III. At the time, the Talara Basin was under the control of PeruPetro—the state-owned entity created by Peru to facilitate the oil industry’s privatization.

34. On August 8, 2013, Amorrortu delivered a letter to Luis Ortigas (*Ortigas*), the president of PeruPetro, stating Baspetro’s interest and ability to operate Block III immediately. In his letter, Amorrortu explained his past success in leading his company’s operation of Block III.

35. On August 12, 2013, PeruPetro replied that Block III would not be open to direct negotiation.¹³ Instead, PeruPetro approved temporary operation contracts in favor of InterOil for Blocks III and IV.¹⁴

36. On January 16, 2014, Amorrortu sent a letter to PeruPetro expressing his disagreement with the decision to extend InterOil’s contract on Block III.¹⁵ In the same letter, Amorrortu reiterated Baspetro’s willingness and ability to operate Block III immediately.

37. On February 6, 2014, Amorrortu had a phone conference with Ortigas. During the call, Amorrortu gave Ortigas more details about his plan to modernize the oil industry in the Talara Basin.

¹³ Letter from Luis Ortigas to Bacilio Amorrortu, 12 August 2013 (C-006). It is worth noting that on April 17, 2008, through Supreme Decree No. 024-2008-EM, Block III’s Hydrocarbons Operations Contract’s modification was approved given that Mercantile changed its social denomination to InterOil. This change was elevated to Public Deed on May 20, 2008.

¹⁴ Directory Agreement No. 034-2014, 20 March 2014 (C-003).

¹⁵ Email from Bacilio Amorrortu to Maria Angelica Cobena, 16 January 2014 (C-007).

38. On March 20, 2014, Amorrortu, through Baspetro, reiterated to PeruPetro—this time copying the Ministry of Energy and Mines (*MEM*)—Baspetro’s immediate availability to operate Block III.

39. Ortigas agreed to meet with Amorrortu on May 22, 2014, shortly after PeruPetro approved temporary operation contracts for Blocks III and IV in favor of Interoil.¹⁶ In the meeting with Ortigas,¹⁷ Amorrortu once again went over his professional background in the oil industry in Talara, the abuses committed by the government of Peru against his property, the political persecution he suffered, and how this persecution had ultimately resulted in the U.S. Department of Justice granting him political asylum. Before the end of the meeting, Ortigas instructed Amorrortu to prepare a proposal for direct negotiation (*Baspetro Proposal* or *Proposal*) to operate Blocks III and IV. Ortigas further represented to Amorrortu that the Baspetro Proposal would be subject to a legal-technical analysis by PeruPetro and that PeruPetro’s board would discuss it.

40. As instructed by Ortigas, Amorrortu sent the Baspetro Proposal to PeruPetro electronically on May 28, 2014.¹⁸ Amorrortu also submitted a hard copy of the Proposal to PeruPetro at their offices in Lima, Peru.¹⁹ The Proposal complied with all the requirements instructed by Ortigas, including the additional proposal to operate Talara’s Block IV.²⁰

¹⁶ Directory Agreement No. 034-2014, 20 March 2014 (C-003).

¹⁷ Email exchange between Bacilio Amorrortu, Maria Angelica Cobena, and Magali Hernandez, May 2014 (C-008).

¹⁸ Email from Bacilio Amorrortu to Maria Angelica Cobena, 28 May 2014 (C-009).

¹⁹ Receipt of Baspetro Proposal Stamped by PeruPetro, 28 May 2014 (C-010).

²⁰ Proposal from Baspetro SAC to PeruPetro to operate Blocks III and IV of the Peruvian North-West, 27 May 2014 (C-011).

D. PERUPETRO TERMINATES ITS NEGOTIATIONS WITH AMORRORTU TO BENEFIT GRAÑA Y MONTERO

41. Peruvian law makes clear that a party that presents a proposal for direct negotiation is certified to start the direct negotiation of an agreement if the government of Peru or the corresponding agency does not reject the proposal within ten days.²¹ When the direct negotiation proposal is presented by invitation, the ten-day period is a formality that officially confirms the commencement of the direct negotiation phase. In any event, it is undisputed that the ten-day review period expired and that PeruPetro accepted Amorrortu's direct negotiation Proposal. Therefore, as of June 28, 2014, Amorrortu had an acquired interest in the "direct negotiation" of a contract to conduct the drilling and extraction operations in Blocks III and IV.

42. However, on July 14, 2014, to Amorrortu's surprise, and again contrary to the representations made by Ortigas, PeruPetro opened an international bidding process for the operation of Blocks III and IV.²²

43. Shortly thereafter, in response to the July 14, 2014 announcement, Amorrortu traveled to Peru and met with Ortigas on July 16, 2014. Ortigas told Amorrortu that the PeruPetro board had rejected the Baspetro Proposal and started the international bidding process.

44. After the July 16, 2014 meeting with Ortigas—where Ortigas told Amorrortu that PeruPetro's board of directors had rejected the Baspetro Proposal—Amorrortu went directly to the office of Isabel Tafur (*Tafur*), PeruPetro's General Manager, who told Amorrortu that the board was never informed of the Baspetro Proposal and that the Proposal was, therefore, never

²¹ Regulation on the Qualification of Petroleum Companies approved through Supreme Decree No. 030-2004-EM (CL-003), Art. 9.

²² PeruPetro S.A., Press Release, 14 July 2014 (C-012).

submitted for the legal-technical analysis mentioned by Ortigas. Subsequently, in a communication to Tafur, Amorrortu complained that the international bidding process for Blocks III and IV had been a charade with the only purpose of benefitting Graña y Montero. PeruPetro rejected Amorrortu's claims and took the position that it had legitimately awarded Graña y Montero the operation contracts to exploit Blocks III and IV.

45. At that time, Amorrortu did not have any evidence confirming his claim that Grana y Montero had, in fact, obtained the contracts for Blocks III and IV through corrupt means.

46. Without any formal letter explaining why the Proposal was rejected, on August 20, 2014, PeruPetro sent a letter to Baspetro inviting the company to present a proposal for Block III's international public bidding process, "*in line with the Proposal that [Baspetro] presented to PeruPetro on May 28, 2014*."²³

47. On October 31, 2014, Amorrortu submitted, through Baspetro, the documents required to participate in the international bidding process.²⁴ Amorrortu's Proposal allocated 5% of the project's earnings to the development of the local community, following the standards of current international practice.²⁵

48. On November 3, 2014, PeruPetro informed Amorrortu that Baspetro did not fulfill the technical standards outlined in the bidding process.²⁶ These technical requirements were purposefully designed to exclude Baspetro and award the contract to Graña y Montero.

²³ Letter from PeruPetro, S.A. to Bacilio Amorrortu, 20 August 2014 (C-013).

²⁴ Letter from Bacilio Amorrortu to "Comisión de la Licitación Pública Internacional No. PERUPETRO-001-2014", 31 October 2014 (C-014).

²⁵ Proposal from Baspetro SAC to PeruPetro to operate Blocks III and IV of the Peruvian North-West, 27 May 2014 (C-011), p. 13.

²⁶ Letter from Roberto Guzman to Bacilio Amorrortu, 3 November 2014 (C-015).

49. On December 12, 2014, Graña y Montero was announced as the winner of the bidding process as the sole bidder for Block III and Block IV.

50. In light of this irregular process, Amorrortu suspected that the bidding process had been illegitimate. In a letter to PeruPetro, Amorrortu described how this irregular bidding process was evidently discriminatory towards him and Baspetrol.²⁷ Similarly, in another letter sent to PeruPetro, Amorrortu described how this irregular bidding process would affect the communities of Talara and the Vichayal District.²⁸

51. Baspetrol sent a compilation of these letters to the MEM, the Peruvian Congress (Piura Congressman, Leonidas Huayama), and the U.S. State Department (Amorrortu specifically sent this letter on February 6, 2015).

E. THE TRUTH IS REVEALED: GRAÑA Y MONTERO PAID MILLIONS OF DOLLARS IN BRIBES TO PRESIDENT HUMALA

52. Amorrortu has since discovered that at the time that he was negotiating the agreement for the drilling and extraction operations in Blocks III and IV, Graña y Montero was exerting its corrupt influence on President Humala and First Lady Heredia to seize two major contracts that the government of Peru was adjudicating: (1) the contract for Blocks III and IV and (2) the contract to develop a gas pipeline in the Southern part of Peru (*GSP Project*). Peru assigned both public work contracts in 2014 to Graña y Montero and their affiliates under highly prejudicial conditions to Peru.

²⁷ Letter from Bacilio Amorrortu to Mrs. Isabel Tafur, 5 February 2015 (C-016).

²⁸ Letter from Bacilio Amorrortu to Mrs. Isabel Tafur, 15 December 2014 (C-017).

53. In the GSP Project, for example, Graña y Montero, together with Odebrecht and another company, was awarded the agreement to maintain and develop the gas pipeline in a public bidding process in which their only competitor was arbitrarily disqualified before the bidding proceedings had commenced. The disqualification of Graña y Montero's competitor was inexplicable as their proposal was US\$ 150,000,000.00 below the proposal of Graña y Montero and its affiliates.²⁹

54. On June 7, 2019, Graña y Montero acknowledged that it paid US\$ 3,700,000.00 to obtain government contracts during President Humala's presidency and signed an agreement with the office of the Attorney General in Peru to collaborate in the investigation of corrupt payments to President Humala and First Lady Heredia regarding several government projects.³⁰ This admission prompted Amorrortu to launch an investigation that led him to the filing of an arbitration proceeding against Peru.

55. Further, Jose Alejandro Graña Miroquesada (*Jose Graña*) and Hernando Graña Acuña (*Hernando Graña*), President and CEO of Graña y Montero 2014-2017 and Executive Director of Graña y Montero 2014-2017, respectively, have pled guilty for money laundering and have agreed to collaborate with the Peruvian prosecutors in connection with the allegations of corruption involving a series of construction contracts and infrastructure cases.

56. In 2017, Jose Graña was separated from his role as a member of Graña y Montero's Board of Directors. Graña y Montero's new president, Augusto Baertl (*Baertl*), is collaborating

²⁹ A. Aguirre, Gasoducto: Hunden a Humala, Heredia y a sus exfuncionarios, 8 December 2019, <https://peru21.pe/politica/gasoducto-hunden-a-humala-heredia-y-a-susexfuncionarios-noticia/?ref=p21r> (24 January 2020).

³⁰ Agencia EFE, Constructora admite un soborno por 3,7 millones de dolares en el Gobierno de Humala, 7 June 2019, <https://www.efe.com/efe/america/politica/constructoraadmite-un-soborno-por-3-7-millones-de-dolares-en-el-gobierno-humala/20000035-3995567> (4 February 2020).

with the Peruvian authorities in the investigation of bribes paid in connection to various government contracts and infrastructure projects. Additionally, on November 20, 2019, Judge Richard Concepcion Carhuacho issued an order restraining Jose Graña and Hernando Graña from leaving the country for 36 months.

57. Jose and Hernando Graña have confirmed and acknowledged the existence of an agreement between First Lady Heredia and Jorge Barata (*Barata*)—Odebrecht’s Executive Director in Peru from 2001 through 2016—where the office of President Humala would guarantee Odebrecht’s success in the GSP Project bidding process, evidently favoring Graña y Montero as well.

58. After the confession of Graña y Montero and its former executives and having conducted an exhaustive investigation, Amorrortu has confirmed that the bidding of Blocks III and IV was also designed, in the mold of the bidding for the GSP Project, to favor Graña y Montero. Further, Amorrortu has established that at the time Blocks III and IV operations were awarded to Graña y Montero, Ortigas was following direct orders from the offices of Humala and Heredia to ensure that Graña y Montero was awarded the contracts.³¹

59. In a corruption scheme like the one acknowledged by key participants in the GSP Project, President Humala and First Lady Heredia instructed PeruPetro to abort the direct negotiation process that Ortigas had initiated with Amorrortu and to begin a rigged bidding process designed to grant the contracts for Blocks III and IV to Graña y Montero.

³¹ Luis Ortigas has been formally implicated by the Peruvian Attorney General’s Office in corrupt activities related to the GSP Project

60. First Lady Heredia exercised significant influence over the former Minister of Economy and Finances, Luis Miguel Castilla (*Castilla*), and the former Minister of Energy and Mines, Eleodoro Mayorga (*Mayorga*).³² She was behind the awarding of the Blocks to Graña y Montero. Granting the Blocks operation to Graña y Montero benefited President Humala and First Lady Heredia. Indeed, President Humala and First Lady Heredia had a significant interest in gaining political influence in the Talara region and benefitting Graña y Montero with the operation of the Blocks supported this goal.

61. To date, Graña y Montero Petrolera (*GMP*), the Graña y Montero subsidiary that signed the operation contracts for Blocks III and IV, has failed to fulfill its contractual obligations with PeruPetro. GMP committed itself to drill 23 oil wells for Block III and 33 oil wells for Block IV annually, starting on 2016.³³ However, GMP has not drilled a single oil well in Block III, citing a questionable *force majeure* excuse.³⁴

62. Due to GMP's breach of its contractual obligations, the government of Peru had the right to execute the respective warranty bonds as contained in the operation contract for Block III.³⁵ However, the government of Peru has decided to ignore this situation, and GMP has not been penalized for its failure to perform its contractual obligations.

63. Moreover, since April 2015, Peru has received only 40.5% of the revenue generated by Blocks III and IV operations.³⁶ If Baspetrol had operated these Blocks under its Proposal, Peru

³² The Minister of Economy and Finances and the Minister of Energy and Mines are shareholders of PeruPetro

³³ Licensing Contract for Hydrocarbon Exploitation in Block III celebrated between PeruPetro and Graña y Montero Petrolera, S.A., 1 April 2015 (**C-018**); see also Licensing Contract for Hydrocarbon Exploitation in Block IV celebrated between PeruPetro and Graña y Montero Petrolera, S.A., 1 April 2015 (**C-019**).

³⁴ J. Saldarriaga, *GYM destraba su ingreso al lote III*, Diario El Comercio, 9 December 2019 (**C-020**).

³⁵ Licensing Contract for Hydrocarbon Exploitation in Block III celebrated between PeruPetro and Graña y Montero Petrolera, S.A., 1 April 2015 (**C-018**), Clause 3.4.

³⁶ PeruPetro Effective Royalties, November 2019 (**C-021**).

would have received 50% of the revenues. In other words, the Graña y Montero corruption scheme has resulted in a loss to the Peruvian government of around US\$ 25,930,000.00.

64. Worse yet, during this period, the local communities of Talara and Vichayal/Miramar have not received any revenue from Graña y Montero for Blocks III and IV operations. If Baspetro had operated these Blocks under its Proposal, these local communities would have already received US\$ 11,950,000.00 following Baspetro's offer to commit 5% of its production to these communities.³⁷

65. On February 4, 2020, Graña y Montero launched a new marketing campaign acknowledging its participation in the corruption that plagued Peru during the Humala administration.³⁸

F. AMORRORTU'S ATTEMPTS TO RESOLVE THIS MATTER THROUGH CONSULTATION

66. On September 24, 2019, Amorrortu served Peru with a detailed Notice of Intent to Submit Claims to Arbitration (*NOI*), expressly inviting Peru to resolve this dispute amicably.³⁹ Indeed, according to Article 10.16.2 of the USPTPA, the Claimant submitted his NOI more than ninety days before this submission. Nothing in the USPTPA precludes Amorrortu from resubmitting his claim after the waiver in an initial submission was deemed non-conforming. The Claimant now refiles and resubmits the same Treaty claims presented in his prior arbitration against Peru.

³⁷ Proposal from Baspetro SAC to PeruPetro to operate Blocks III and IV of the Peruvian North-West, 27 May 2014 (**C-011**), p. 13.

³⁸ Graña y Montero Marketing Campaign, 4 February 2020 (**C-022**). Through this media campaign, Graña y Montero expressly communicated that it will not commit corrupt acts ever again. Along with the company's current active involvement in effective collaboration processes related to corruption in highly controversial infrastructure projects, this media campaign confirms Graña y Montero's admission of guilt with respect to the commission of corrupt acts.

³⁹ Bacilio Amorrortu's Notice of Intent to Arbitrate Against Peru, 19 September 2019 (**C-023**).

IV. JURISDICTION

A. BASPETROL CONSTITUTES AN INVESTMENT UNDER THE USPTPA

67. Article 1.3 of the USPTPA defines the term “*covered investment*” to mean, “*with respect to a Party, an investment, [. . .], in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter.*”⁴⁰

68. “*Investment*” is defined as follows:

[E]very asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans;

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and

*(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.*⁴¹

⁴⁰ USPTPA Chapter One (CL-006), Art. 1.3.

⁴¹ USPTPA Investment Chapter (CL-001), Art. 10.28.

69. Amorrortu's interest in Peru qualifies as investment as defined under the USPTPA.

70. Amorrortu created Baspetro, under the laws of Peru,⁴² with the primary objective of operating Blocks III and IV located in Talara. Amorrortu further holds shares/stocks and other forms of equity participation in Baspetro. Amorrortu, a U.S. citizen, has maintained control over Baspetro since its inception.

71. Amorrortu committed capital and other resources and assumed risks in Baspetro with the expectation of profiting from its extraction and drilling operations for Block III and eventually Block IV. In October of 2012, Amorrortu opened Baspetro's offices in the area of Talara to invest in activities related to the production and exploitation of oil and gas in Peru. From June 2012 through May 2015, Amorrortu invested more than US\$ 5,000,000.00 in the company's operational, technical, and legal costs. This investment further required infrastructure development, travel expenses, and the recruitment of personnel to undertake Baspetro's operation both in Talara and Lima, as well as the investment of time by Amorrortu and his partners, all well-versed professionals in the oil industry.

72. Further, since 1992, the government of Peru had recognized a debt of approximately US\$ 8,000,000.00 in favor of Amorrortu, which he contributed to Baspetro and used as an incentive for PeruPetro to start direct negotiations. This credit against the government stemmed from services rendered by Amorrortu to PetroPeru from 1988 to 1989.

⁴² Certificate of Incorporation of Baspetro S.A.C., 17 October 2012 (C-024).

B. AMORRORTU QUALIFIES AS AN INVESTOR UNDER THE USPTPA

73. Article 10.28 of the USPTPA defines “investor of a Party” as follows:

*[A] Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.*⁴³

74. As required by definition, Amorrortu (1) is a national of a Party (2) who has made investments in the territory of Peru, the other Party to the USPTPA.

75. The USPTPA makes clear that the conditions of acquisition and loss of nationality are subject to national law.⁴⁴

76. The Immigration and Nationality Act (*INA*), which was enacted in 1952, defines a “national of the United States” as “(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance of the United States.”⁴⁵

77. During the repressive regime of President Alberto Fujimori, Amorrortu was persecuted,⁴⁶ and he had to flee to the United States, where he has been exiled since April 26, 2000. In 2010, Amorrortu became a naturalized citizen of the United States and had held this

⁴³ USPTPA Investment Chapter (**CL-001**), Art. 10.28.

⁴⁴ *Champion Trading Company, Ameritrade International, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/02/9, Decision on Jurisdiction, 21 October 2003 (**CL-007**), pp. 11-13; see also *Hussein Nuaman Soufraki v. The United Arab Emirates*, ICSID Case No. ARB/02/7, Award, 7 July 2004 (**CL-008**), ¶ 55, upheld by the ad hoc Committee, Decision on Annulment, 5 June 2007 (**CL-009**), ¶ 60; *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Decision on Jurisdiction, 11 April 2007 (**CL-010**), ¶¶ 152, 171-72, 193; *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Award, 8 May 2008 (**CL-011**), ¶¶ 275-323; *Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction, 24 September 2008 (**CL-012**), ¶ 86.

⁴⁵ 8 U.S.C. § 1101 (a)(22) (**CL-013**).

⁴⁶ Fujimori was later accused and convicted for crimes against humanity.

nationality, without interruption, since then.⁴⁷ Furthermore, as required by the Peruvian Constitution,⁴⁸ Amorrortu **expressly** renounced his Peruvian nationality before the commencement of these proceedings. Clearly, from the moment he had to seek asylum in the United States, Amorrortu no longer held any strong connection with Peru or his Peruvian nationality. On the other hand, he has a long-standing and close connection to the United States and has strong personal, economic, commercial, and political ties with that country.

78. As previously discussed, Amorrortu has “*made an investment in the territory of another Party,*” namely, Peru. Therefore, Amorrortu is a national of the United States and qualifies as a protected investor under the USPTPA.

C. THE INVESTMENT WAS IN EXISTENCE AS OF THE DAY OF ENTRY INTO FORCE OF THE USPTPA

79. The USPTPA applies not only to investments “*established, acquired, or expanded*” after the entry into force, but also to investments “*in existence as of the date of entry into force of [the USPTPA].*”⁴⁹ The USPTPA entered into force on February 1, 2009.

80. The USPTPA further states that “[f]or greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.”⁵⁰

81. Amorrortu’s claims in this arbitration are based on acts by Peru that took place after February 1, 2009, the date of the USPTPA’s entry into force.

⁴⁷ See, e.g., U.S. Passport Issued to Bacilio Amorrortu, 1 March 2010 (C-025); see also U.S. Passport Issued to Bacilio Amorrortu, 21 March 2016 (C-026).

⁴⁸ Peru’s Political Constitution, December 1993 (CL-014), Art. 53.

⁴⁹ USPTPA Chapter One (CL-006), Art. 1.3.

⁵⁰ USPTPA Investment Chapter (CL-001), Art. 10.1.3.

V. PERU BREACHED ITS OBLIGATIONS UNDER THE USPTPA

82. The measures outlined above have deprived Amorrortu of the value of his extensive investment in Peru.

83. These measures violate Peru's obligations under the USPTPA, namely Peru's obligation to treat U.S. investors and their investments no less favorable than it treats, in like circumstances, domestic and other foreign investors and investments.

A. PERU VIOLATED PROTECTIONS AFFORDED TO AMORRORTU'S INVESTMENT UNDER ARTICLE 10.5 OF THE USPTPA

84. Article 10.5 of the USPTPA provides that Peru "*shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.*"⁵¹ To further explain what the parties meant by their reference to "customary law" the parties agreed, in the USPTPA, as follow:

2. For greater certainty, paragraph 1 [of Article 10.5] prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide: (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.⁵²

⁵¹ USPTPA Investment Chapter (CL-001), Art. 10.5.1. and Annex 10-A.

⁵² USPTPA Investment Chapter (CL-001), Art. 10.5.2.

85. The treaty standard of fair and equitable treatment is no different from the minimum standard of treatment protected by customary law.⁵³

1. *Peru deprived Amorrortu of his reasonable expectations under the USPTPA*

86. Fair and equitable treatment is a “*broad requirement*,”⁵⁴ and a “*flexible*”⁵⁵ concept.

87. Protection of an investor’s legitimate expectations is one of the most commonly invoked elements of the fair and equitable treatment standard particularly where, as here, the treaty itself requires a “*predictable legal and commercial framework for business and investment*.”⁵⁶ Indeed, the protection of legitimate expectations is the primary objective of the fair and equitable standard.⁵⁷ “[T]he investor’s legitimate expectations are usually based on (i) a specific representation made by the host state to such an investor regarding its investment or (ii) an assumption on the part of the investor that the general regulatory framework relied upon by it at

⁵³ See *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008 (CL-015), ¶ 592 (“as found by a number of previous arbitral tribunals and commentators, . . . the actual content of the treaty standard of fair and equitable treatment is not materially different from the content of the minimum standard of treatment in customary international law.”); see also *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005 (CL-016), ¶ 284 (“the Treaty standard of fair and equitable treatment and its connection with the required stability and predictability of the business environment, founded on solemn legal and contractual commitments, is not different from the international law minimum standard and its evolution under customary law.”).

⁵⁴ *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009 (CL-017), ¶ 450.

⁵⁵ *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, 6 November 2008 (CL-018), ¶ 185.

⁵⁶ USPTPA Preamble (CL-002).

⁵⁷ See *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008 (CL-015), ¶ 602 (where the tribunal stated that “the purpose of the fair and equitable treatment standard is to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment, as long as these expectations are reasonable and legitimate and have been relied upon by the investor to make the investment.”); see also *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010 (CL-019), ¶ 222; *AWG Group Ltd. v. The Argentine Republic*, UNCITRAL, Decision on Liability, 30 July 2010 (CL-020), ¶ 222 (in which it was stated that “[i]n an effort to develop an operational method for determining the existence or nonexistence of fair and equitable treatment, arbitral tribunals have increasingly taken into account the legitimate expectations that a host country has created in the investor and the extent to which conduct by the host government subsequent to the investment has frustrated those expectations.”).

the time the investment was made will remain stable.”⁵⁸ These representations can be contained, for example, in the host state’s legislation or in contractual commitments.⁵⁹ The investor may reasonably expect that its expectations are legitimate if they are based on specific and unambiguous state representations.⁶⁰

88. The “*dominant element*” of fair and equitable treatment is “*the notion of legitimate expectations.*”⁶¹ With this in mind, tribunals viewing provisions virtually identical to the provisions in the USPTPA concerning fair and equitable treatment have held that the “*legitimate expectations*” inherent in any foreign investment include the expectation that the host state will act: (a) in a transparent manner; (b) in good faith; (c) in a manner that is not arbitrary, grossly unfair, unjust, idiosyncratic, or discriminatory; and (d) with respect for due process.⁶²

⁵⁸ Y. Levashova, *The State’s Right to Regulate and the Legitimate Expectations of the Investor*, 50, *The Right of States to Regulate in International Investment Law: The Search for Balance Between Public Interest and Fair and Equitable Treatment (C-027)*, pp. 113–114.

⁵⁹ *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010 (CL-019), ¶ 222 (The tribunal explained that “[w]hen an investor undertakes an investment, a host government through its laws, regulations, declared policies, and statements creates in the investor certain expectations about the nature of the treatment that it may anticipate from the host State.”).

⁶⁰ *Total S.A. v. The Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability, 27 December 2010 (CL-021), ¶ 117; see also *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008 (CL-022), ¶ 351.

⁶¹ *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006 (CL-023), ¶ 302.

⁶² *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016 (CL-024), ¶¶ 540-542 (citing the decisions of the tribunals in *Rumeli v. Kazakhstan*, *Lemire v. Ukraine*, and *Bayindir v. Pakistan*). The tribunal in *Rumeli v. Kazakhstan* confirmed that “the State must respect the investor’s reasonable and legitimate expectations.” *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008 (CL-025), ¶ 609. Similarly, the tribunal in *Lemire v. Ukraine* noted that investors have a right to expect that host States will: (a) offer a stable and predictable legal framework; (b) honor specific representations to the investor; (c) accord investors’ due process; (d) act in a transparent manner; and (e) refrain from acting in bad faith or in a discriminatory manner. *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010 (CL-026), ¶ 284. The *Bayindir v. Pakistan* tribunal considered the list of factors “which emerge from decisions of investment tribunals . . . compris[ing] the obligation to act transparently and grant due process, to refrain from taking arbitrary or discriminatory measures, from exercising coercion or from frustrating the investor’s reasonable expectations with respect to the legal framework affecting the investment.” *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009 (CL-027), ¶ 178; see also *Waste Management, Inc. v. United Mexican States II*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004 (CL-028), ¶ 98.

89. Indeed, the tribunal in *EDF v. Romania* established that a host state breaches its fair and equitable treatment obligations under a bilateral treaty, as well as international public policy, when it corruptly exercises its discretion to assign government contracts in which foreign investors have acquired interests.⁶³ A corrupt bidding process is a violation of international public policy, and “*exercising a State’s discretion on the basis of corruption is a [. . .] fundamental breach of transparency and legitimate expectations.*”⁶⁴

90. In disregard of its obligations to Amorrortu’s investment under the USPTPA, Peru breached the minimum standard of treatment outlined in Article 10.5 because it aborted the direct negotiation process with Baspetro to give the contract to Graña y Montero based on corrupt motives.

91. In addition to the representations made by Peru to Amorrortu in particular, Peru made general representations regarding its intent to provide foreign investors with a stable and transparent framework for investment to encourage such investments. This is clearly reflected in Peru’s establishment of constitutional guarantees of nondiscriminatory treatment to foreign investors,⁶⁵ and the USPTPA.⁶⁶

92. Relying on this framework, Amorrortu proceeded to inject additional capital into Baspetro, the company created with the primary purpose of operating Blocks III and IV in the region of Talara. However, with the unquestionably corrupt and unfair international bidding

⁶³ *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009 (CL-004), ¶ 221.

⁶⁴ *Ibid.*

⁶⁵ Peru’s Political Constitution, December 1993 (CL-014), Art. 63.

⁶⁶ USPTPA Preamble (CL-002).

process, Peru diminished and destroyed the value of Baspetro and contravened the assurances and representations it made.

VI. DAMAGES

A. CUSTOMARY INTERNATIONAL LAW REQUIRES FULL REPARATION FOR DAMAGES RESULTING FROM THE BREACH OF AN INTERNATIONAL OBLIGATION

93. The customary international law standard for compensation best enunciated in the *Chorzow Factory* case, *i.e.*, the “*full reparation*” standard for compensation should apply here.⁶⁷

In particular, in *Chorzow Factory*, the Permanent Court of International Justice stated that:

*The essential principle contained in the actual notion of an illegal act [. . .] is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it [. . .].*⁶⁸

94. The “*full reparation*” principle is also codified in the International Law Commission Articles on State Responsibility (*ILC Articles*), which reflect customary international law on State responsibility.⁶⁹ ILC Article 31 embodies *Chorzow*’s holding that “[*t*]he responsible

⁶⁷ See, e.g., *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016 (CL-029), ¶ 640 (“[t]he compensation provided for in Article VII only covers cases of expropriation. In all other breaches, absent any specific Treaty language, damages must be calculated in accordance with the rules of international law. The relevant principle was originally formulated in the seminal judgement of the Permanent Court of International Justice in the *Chorzów* case: reparation must wipe-out the consequences of the breach and reestablish the situation as it is likely to have been absent the breach. This well-established principle complements those found in the ILC Articles, and particularly in Article 31, to make full reparation for injury caused as a consequence of a violation of international law.”); see also *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016 (CL-024), ¶¶ 841-853.

⁶⁸ *Case Concerning The Factory at Chorzów (Germany v. Poland)*, Decision on the Merits, 13 September 1928, PCIJ Rep. Series A. – No. 17 (CL-030), p. 47; see *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007 (CL-037), ¶ 8.2.7. (“[b]ased on these principles, and absent limiting terms in the relevant treaty, it is generally accepted today that, regardless of the type of investment, and regardless of the nature of the illegitimate measure, the level of damages awarded in international investment arbitration is supposed to be sufficient to compensate the affected party fully and to eliminate the consequences of the state’s action.”); see also *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014 (CL-031), ¶¶ 678-681.

⁶⁹ See, e.g., *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and Merits, 3 September

*State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.*⁷⁰ ILC Article 34 (“Forms of reparation”) gives further guidance to the form that “full reparation” may take by providing that “[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination...”⁷¹ “The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”⁷²

95. The customary international law standard applies to all host State treaty breaches.⁷³ The purpose of an award of damages is the same irrespective of the nature of the host State’s breaches of international obligations: to fully wipe out the consequences of the stated illegal acts and to provide full reparation so as to place the claimant in the same position in which it would have been if the State had not violated the applicable treaty.

B. AMORRORTU’S INITIAL ASSESSMENT OF DAMAGES

96. Amorrortu currently estimates its damages to be over US\$ 90,000,000.00, including US\$ 64,345,351.00 that Graña y Montero has already received for Blocks III and IV operations in virtue of corrupt acts plus pre- and post-award interest.

2013 (CL-032), ¶ 339 (listing and concurring with several tribunals and authorities declaring the ILC Articles to codify or declare customary international law).

⁷⁰ Intl. Law Commission’s Arts. on the Responsibility of States for Internationally Wrongful Acts (CL-033), Art. 31.

⁷¹ Id. Art. 34.

⁷² ILC Arts. On State Responsibility, Art. 36.

⁷³ *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011 (CL-034), ¶ 149 (applying *Chorzów* to breach of the fair and equitable treatment standard even where such breach “does not lead to total loss of the investment”); see also *BG Group Plc. v. The Republic of Argentina*, UNCITRAL, Final Award, 24 December 2007 (CL-035), ¶¶ 421-429 (applying the *Chorzów* principle as a matter of customary international law and noting that “the Arbitral Tribunal may have recourse to such methodology as it deems appropriate in order to achieve the full reparation for the injury [...]”).

97. Amorrortu reserves his right to quantify and modify his monetary claims at an appropriate stage of these proceedings.

C. AMORRORTU IS ENTITLED TO ARBITRATION COSTS AND EXPENSES

98. The principle of full reparation also requires that Amorrortu be made whole for the costs of this arbitration, including his legal and expert fees, translation and other related fees and expenses.

99. The USPTPA provides that the tribunal “*may also award costs and attorney’s fees in accordance with [Section 10.26] and the applicable arbitration rules.*”⁷⁴ In turn, Article 42 of the 2021 UNCITRAL Arbitration Rules provides that “[t]he costs of the arbitration shall in principle be borne by the unsuccessful party or parties.”⁷⁵ Therefore, Amorrortu will submit a statement of his fees and costs at an appropriate time, as the tribunal may order.

⁷⁴ USPTPA Investment Chapter (CL-001), Art. 10.26.

⁷⁵ 2021 United Nations Commission on International Trade Law Arbitration Rules (CL-036), Art. 42.

VII. AGREEMENT TO ARBITRATE

100. The USPTPA sets out a few requirements and suggestions before an arbitration can be brought, all of which have been met here.

101. In Article 10.17 of the USPTPA, Peru “*consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.*” Under the USPTPA, a party may pursue arbitration if (a) it has provided written notice of its intention to submit the claim to arbitration at least 90 days before submitting any claim to arbitration⁷⁶ and (b) six months have elapsed since the events giving rise to the claim.⁷⁷ Moreover, to submit a claim for breach of an investment agreement, the claimant should not have submitted “*the same alleged breach*” to an administrative tribunal or court of the host State or to any other binding dispute settlement procedure.⁷⁸ The USPTPA suggests that the parties should initially seek a resolution through consultation and negotiation.⁷⁹

102. Each of these requirements and suggestions has been met here.

- a. Peru received the NOI on September 24, 2019,⁸⁰ and acknowledged receiving it by letter dated November 28, 2019.⁸¹ The 90-day period has thus expired.
- b. More than six months have elapsed since the events giving rise to Amorrortu’s claims.

⁷⁶ USPTPA Investment Chapter (CL-001), Art. 10.16(2).

⁷⁷ USPTPA Investment Chapter (CL-001), Art. 10.16(3).

⁷⁸ USPTPA Investment Chapter (CL-001), Art. 10.18(4)(a).

⁷⁹ USPTPA Investment Chapter (CL-001), Art. 10.15.

⁸⁰ Bacilio Amorrortu’s Notice of Intent to Arbitrate Against Peru, 19 September 2019 (C-023).

⁸¹ Letter from La Republica de Peru’s President Ricardo Ampuero Llerena to Akerman LLP representatives of Bacilio Amorrortu, 28 November 2019 (C-028)

- c. Amorrortu submits an irrevocable waiver and consent to arbitrate with this Notice of Arbitration [herewith as **Annex A**].⁸²
- d. Amorrortu attempted to resolve the present dispute with Peru, but these meetings were unsuccessful.

103. Amorrortu filed its first Notice of Arbitration on February 13, 2020, which was administered by the Permanent Court of Arbitration (*PCA*) as PCA Case No. 2020-11 (*Amorrortu I*).

104. The tribunal in *Amorrortu I* rendered a partial award on jurisdiction on August 5, 2022 (*August 2022 Partial Award*). In that August 2022 Partial Award, the tribunal rejected Peru's objection that Amorrortu's allegations, if proven true, were insufficient to state a claim for violation of the Treaty. Indeed, the tribunal held that in its view, "*the Respondent has failed to establish that the express invitation of PeruPetro to Mr. Amorrortu by Chief Administrator Ms. Tafur to participate in the International Public Tender could not give rise to rights of procedural fairness on which an award might be made in Mr. Amorrortu's favor.*"⁸³ The tribunal further held that "*it would be open to the Tribunal to conclude that the refusal of PeruPetro to take these (or any) steps in a procedure which Mr. Amorrortu says PeruPetro through its President instructed him to pursue, constituted a denial of FET in the application of Direct Negotiation Procedure 8 as promised by the President himself, thereby justifying an award in Mr. Amorrortu's favor.*"⁸⁴

⁸² It is worth noting that by the plain text of Article 10.18.2 of the USPTPA, Amorrortu is not required to present this irrevocable waiver in a document separate from this Notice of Arbitration. See *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award, 5 August 2022, ¶ 224 (the award has not been added, as it has not been made public at the time of this filing).

⁸³ *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award, 5 August 2022, ¶ 170 (the award has not been added, as it has not been made public at the time of this filing).

⁸⁴ *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award, 5 August 2022, ¶ 155 (the award has not been added, as it has not been made public at the time of this filing).

However, a majority of the tribunal concluded that the waiver submitted by Amorrortu under Article 10.18 of the USPTPA was non-compliant and dismissed the claim on a technical jurisdictional ground without prejudice. In his Dissenting Opinion, the Honorable Ian Binnie, Q.C., President of the tribunal in *Amorrortu I*, acknowledged that Amorrortu had filed a compliant waiver as of April 25, 2021, that is, well over a year before that tribunal ruled on its jurisdiction. Indeed, Judge Binnie reasoned, “*there is nothing in the Treaty to support this ‘one strike and you’re out’ limitation. Peru’s ‘offer to arbitrate’ remained open (and remains open to this day) for acceptance and was in fact accepted by Mr. Amorrortu when he supplemented his initial filing with a compliant waiver on April 25, 2021.*”⁸⁵

105. Amorrortu now refiles and resubmits the same treaty claims presented in *Amorrortu I*.

⁸⁵ *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award, 5 August 2022, ¶ 269 (emphasis added) (the award has not been added, as it has not been made public at the time of this filing).

VIII. CONSTITUTION OF THE ARBITRAL TRIBUNAL, PLACE, APPLICABLE ARBITRATION RULES, AND LANGUAGE OF THE ARBITRATION

A. CONSTITUTION OF THE ARBITRAL TRIBUNAL

106. According to Article 10.19 of the USPTPA, the Claimant suggests that the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties, and the presiding arbitrator appointed by agreement of the disputing parties.

107. In accordance with Article 10.16.6(a) of the USPTPA, the Claimant appoints Dr. Bryan Schwartz as arbitrator to hear the present dispute. Dr. Schwartz may be contacted at Bryan.Schwartz@umanitoba.ca or bryanpschwartz@gmail.com. Dr. Schwartz's physical address is 1550 Mathers Bay West, Winnipeg, Manitoba R3N0T7.

B. APPLICABLE ARBITRATION RULES

108. Pursuant to Article 10.16.3(c) of the USPTPA, the Claimant submits this claim in accordance with the 2021 UNCITRAL Arbitration Rules.

C. PLACE AND LANGUAGE OF THE ARBITRATION, ADMINISTERING AUTHORITY

109. Pursuant to Article 3 of the 2021 UNCITRAL Arbitration Rules, Amorrortu proposes that the arbitral proceedings be conducted in English and that the place of arbitration be fixed as Paris, France.

110. Furthermore, Amorrortu proposes that the Permanent Court of Arbitration serve as the administering and denominating authority.

IX. THE CLAIMANT'S REQUEST FOR RELIEF

111. Based on the foregoing and reserving his right under the 2021 UNCITRAL Arbitration Rules as to modify his prayer for relief at any time in the course of the proceedings if the circumstances of the case so require, Amorrortu respectfully requests that the Arbitral Tribunal:

- a. DECLARE that Peru breached its obligations under the USPTPA;
- b. ORDER Peru to pay Amorrortu compensation for damages caused to him;
- c. ORDER Peru to pay interest on all amounts awarded, at a commercially reasonable rate or such other rate determined by applicable law, from the date of the award until full payment of the award;
- d. ORDER Peru to pay Amorrortu's arbitration costs, including the costs of the PCA, the Arbitral Tribunal, and the legal and other costs incurred by Amorrortu in an amount to be determined by the Tribunal; and
- e. AWARD such other and further relief as the Tribunal may deem appropriate.

DATE: August 16, 2022

Reed Smith LLP

/s/ Francisco A. Rodriguez
Reed Smith LLP

Attorneys for the Claimant