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Re: Case No. PCA 2020-21: *Patel Engineering Ltd. v. Republic of Mozambique*

Dear Members of the Tribunal,

Pursuant to the Tribunal's invitation and permission, *see* **A-64**, Respondent Republic of Mozambique ("Mozambique") submits this response to Claimant's Letter regarding corrections to the Final Award and Dissenting Opinion dated March 15, 2024 (**C-94**) ("Request"). In the Request, Claimant seeks a number of proposed substantive revisions to the Final Award and Dissenting Opinion to essentially editorialize and challenge the Majority's and Dissenting Opinion's reasoning. Claimant's Request is a highly inappropriate and improper use of Article 36 of the UNCITRAL Rules and should be denied.

Article 36 of the UNCITRAL Rules, titled "Correction of the Award," provides, in relevant part, that a party may request that the Tribunal "correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature." Article 36(1), UNCITRAL Arbitration Rules (1976).[1] The plain language of this rule makes clear that it authorizes only "the correction of errors that are computational, clerical, typographical or have a 'similar nature'" and "does not encompass any alleged mistake of law or any factual determination or discretionary assessment made by the Tribunal."[2] Corrections under this rule

[1] Article 36 of the 1976 UNCITRAL Rules, titled "Correction of the Award", is Article 38 under the 2010 UNCITRAL Arbitration Rules. Article 38(1) of the 2010 UNCITRAL Rules is substantially identical to the 1976 Article 36(1).

[2] *See* **RLA-160**, *Nelson v. The United Mexican States*, ICSID Case No. UNCT/17/1, Corrections to the Final Award of 5 June 2020, ¶¶ 17-18 (31 July 2020).

require only a "technical formal review" of the arbitral tribunal and does not require the tribunal to revisit its reasoning or interpretation.[3]

Procedures for corrections "are intended to allow the correction of blatant 'slips' on the face of the award and typically narrowly restrict the circumstances in which corrections may be made."[4] The strict narrow scope of corrections permitted under Article 36 has been repeatedly affirmed by tribunals and literature interpreting the UNCITRAL Rules.[5] The purpose of a correction under Article 36 "is to conform the award to the decision intended by the arbitral tribunal" by addressing self-evident and inadvertent errors.[6] As one scholar noted, "provisions for *correction* have a restricted meaning and should not be raised as an appeal of the arbitral award."[7] This is in clear contrast to a request for *interpretation* of the Award or for an additional award, both of which are separately contemplated under the UNCITRAL Rules under a different procedure.[8] PEL did not, and did not claim to avail itself of the procedures under either Article 35 or 37.[9]

[3] *See* **RLA-161**, Luiz Olavo Baptista, "Correction and Clarification of Arbitral Awards," ICCA Congress, at p. 7 (May 25, 2010) (noting that post-award motions for *correction* address "rectification of obvious mistakes" whereby "[n]othing will be interpreted again by the arbitral tribunal, which will only perform a technical formal review.").

[4] **RLA-162**, Shaparak Saleh and Etienne Vimal du Monteil, "Awards: Challenges," GLOBAL ARBITRATION REVIEW (May 17, 2023).

[5] *See, e.g.*, **RLA-160**, *Nelson*, *supra*, at ¶¶ 15-19; Baptista, *supra*, at p. 10 (citing 10 different decisions of the Iran-US Claims Tribunal affirming the strict scope of [former] Article 36).

[6] *See* **RLA-163**, David Caron & Lee Caplan, THE UNICTRAL ARBITRATION RULES: A COMMENTARY (2d. ed. 2013), Art. 38, p. 811 (discussing correction procedure under 2010 UNCITRAL Rules).

[7] *See* **RLA-161**, Baptista, *supra*, at p. 10 (emphasis in original).

[8] *See* Article 35 (Interpretation of the Award) and Article 37 (Additional Award), UNCITRAL Arbitration Rules (1976).

[9] As with Article 36, requests under both Articles 35 and 37 must be made within thirty days after the receipt of the award. PEL made no such request; nor did PEL cite either Article in seeking an extension "to submit its **corrections**." (Email dated March 8, 2024 from Sarah Vasani (emphasis added)). The Tribunal previously made clear it considered PEL's submission of its "corrections" to be made pursuant to Article 36, (email dated March 8, 2024 from Tribunal President Juan Fernández-Armesto), and Mozambique's agreement to the requested extension was also premised on Article 36 (email dated March 8, 2024 from Theresa Bevilacqua).

The purported "corrections" sought by PEL in its Request clearly fall outside the limited scope of the types of obvious error contemplated under Article 36. PEL seeks to rewrite the Tribunal's recitation of facts and of the parties' positions, nitpicking at the ways in which the Majority has summarized Claimant's position and the facts at issue. For example, PEL—apparently dissatisfied with the Majority's recitation of Claimant's position—seeks to compel the Tribunal to add significant substantive arguments into paragraphs 346, 351, and 352 of the Award.[10] The Tribunal is not required to recite every last argument of the Claimant, and the fact that the Tribunal has not recounted the parties' position in the exact manner that Claimant wishes is far from the type of "computational, clerical, or typographical" errors contemplated under Article 36. PEL's attempt to insert its preferred recitation of its position into the Award is precisely the type of substantive revision that tribunals routinely reject as improper for corrections under Article 36.[11]

Moreover, the fact that the Tribunal has not re-created every argument of Claimant in its Final Award does not mean those issues were not before the Tribunal, or that the Tribunal failed to consider them, as Claimant seems to imply. Indeed, as the Request itself confirms (at some length), the issues that Claimant seeks to inject into the Final Award now were squarely contested before the Tribunal, and were ultimately rejected.

There is also no logical rationale for burdening the Tribunal with a rehash of PEL's already submitted arguments. There is no indication that the Tribunal failed to consider, or misunderstood, any arguments of the parties, and the multitude of times PEL has repeatedly made the same arguments it now attempts to reiterate as redlined "corrections" belie any suggestion that PEL was denied presentation or consideration of these arguments. The fact that the Tribunal does not ascribe the same significance or effect to certain events as PEL argued (such as the Council of Ministers correspondence on 16 April 2013) does not render the Final Award infirm, incomplete, or inaccurate in any way, and certainly does not entitle PEL to reargue its case under the guise of "corrections."

Most simply, the Tribunal is not required or permitted to make substantive changes to the Award and Dissenting Opinion simply because PEL believes its arguments could have been recounted or recast, or even just repeated in a manner more favorable to Claimant.

[10] Claimant's Request, **C-94** at ¶¶ 6-11.

[11] *See* **RLA-160**, *Nelson*, *supra*, at ¶ 22 (rejecting Claimant's "claim that he was not granted the opportunity to submit his position on costs and that the Award should reflect such allegation.")

PEL's requested "correction" to ¶ 14 of the Dissenting Opinion is similarly improper—PEL seeks to remove an entire sentence of Professor Tawil's reasoning simply because PEL believes it misstates the procedural stage of the ICC proceedings, which is neither a relevant nor appropriate correction to the Dissenting Opinion.[12] There is simply no basis for PEL's Request to substantively editorialize the Award and Dissenting Opinion, and PEL has cited to no authority allowing for this type of overreaching revision under Article 36.

Without taking anything away from the above, or implying that a substantive response would be required to any or every requested change, Mozambique takes particular exception to the redline edits PEL proposes with regard to the ICC proceedings. As PEL's own Request admits, PEL – for its own reasons – declined to raise affirmative claims in the ICC proceedings. *See* Request ¶ 22. Indeed, PEL, for its own reasons, declined to adhere to the jurisdictional findings of the ICC Tribunal, and flaunted the Order for Injunction. The fact that PEL no longer has the ability to raise new contractual claims in the ICC arbitration is a fact of PEL's own making, and does not render inaccurate that the ICC proceedings afforded PEL a ful opportunity to adjudicate its claims.

For the foregoing reasons, with the exception of the requested correction to Paragraph 4 of the Dissenting Opinion, Respondent objects to each of the remaining purported "corrections" to the Award and Dissenting Opinion sought by PEL in the Request, and respectfully requests that the Tribunal deny Claimant's Request as to all but Paragraph 4 of the Dissenting Opinion.

Very truly yours,

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[12] The requested correction to Paragraph 4 of the Dissenting Opinion appear to be for two minor clerical or typographical errors, to which Mozambique does not object.

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cc. PCA and All Counsel