

**IN THE ARBITRATION UNDER THE 2013 RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW AND THE UNITED STATES –
PERU TRADE PROMOTION AGREEMENT**

PCA Case No. 2023-22

BACILIO AMORRORTU

CLAIMANT,

v.

THE REPUBLIC OF PERU

RESPONDENT.

CLAIMANT'S REPLY IN SUPPORT OF HIS STATEMENT OF CLAIM

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December 22, 2025

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I. INTRODUCTION

1. In its Statement of Defense, Peru does not deny that then President Ollanta Humala and First Lady Nadine Heredia received millions of dollars in bribes from Graña y Montero S.A.A. (“Graña y Montero” or “GyM” or “Graña y Montero Petrolera S.A.”)¹ in exchange for the adjudication of public works and government concessions. Peru cannot deny this fact, as Graña y Montero has pled guilty and admitted the corruption scheme.

2. Faced with this overwhelming and undisputable evidence of corruption, Peru now argues that the adjudication of Blocks III and IV was not part of the pay-to-play corruption scheme. Peru is in essence asking this Tribunal find that the adjudication of Blocks III and IV was the only government contract that Graña y Montero won during the Humala administration that was magically not motivated by corruption. This argument defies logic and ignores the pervasive nature of the Graña y Montero corruption scheme. Graña y Montero paid bribes to secure government contracts. This was not a per-contract scheme. Graña y Montero paid multi-million-dollar bribes to get any contract it wanted. No questions asked. Therefore, every government contract Graña y Montero obtained during the Humala administration was by definition motivated by corruption.

3. Further, Peru’s attempt to carve out the adjudication process for Blocks III and IV from the corruption scheme is belied by the evidence. Discovery in this case has confirmed that Blocks III and IV were an important part of the corruption scheme. Indeed, it is now clear that Graña y Montero executives met with the first lady on several occasions to talk about the contract for Blocks III and IV.

¹ Unless specifically referenced otherwise, all references to Graña y Montero in this Reply should be read to collectively include all entities forming part of the Graña y Montero group.

4. There is no legitimate reason why the First Lady met so many times with Jose Graña to discuss Blocks III and IV. Discovery has further evidenced the modus operandi followed by Graña y Montero to pay the bribes, including how their meetings with the First Lady were completely clandestine.

5. Peru, therefore, cannot seriously deny the corruption that truncated Amorrortu's legitimate expectations to resume the financially successful operation of Blocks III and IV.

6. Peru's remaining arguments are similarly unavailing.

7. Peru claims that Amorrortu is not a protected investor. But Amorrortu is an American national (dominantly and effectively) and is a protected investor under the Treaty.

8. Peru claims that Amorrortu does not have a protected investment. But Amorrortu's Baspetro enterprise investment is explicitly protected by the Treaty.

9. Further, Peru cannot ignore the findings of the Tribunal in Amorrortu I, where the Tribunal made clear that Amorrortu had commenced a direct negotiation process. Specifically, the Tribunal in Amorrortu I concluded that:

- a. Both legal experts for Amorrortu (Mr. Quiroga) and for Peru (Mr. Carlos Raul Jose Vizquerra Perez Albela, the same legal expert in this case) agreed that a Direct Negotiation is started with an applicant's Letter of Interest, the tribunal in *Amorrortu I* found it "clear that Mr. Amorrortu's letter of May 28, 2014 expressed 'an interest in conducting exploration and exploitation activities' within Blocks III and IV."²

² See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, PCA Case No. 2020-11 ¶¶ 149, 161,162,165,170,171,174.

- b. Confirming that “[a]s the Respondent’s legal expert, Mr. Vizquerra explained, PeruPetro was required to ask the oil company at a later stage in Direct Negotiation Procedure 8 to appoint its representative for the negotiation “because these negotiations are to be carried out by specific individuals representing the Companies for the License Agreement.”³ At that point, Mr. Vizquerra says, PeruPetro will also ask the oil company “to establish the date of the start of the first meeting, the kickoff meeting” and, Mr. Vizquerra explains, “**this is when the Direct Negotiation begins**, and this has to be done within 60 days.”⁴ “This comment by Mr. Vizquerra [“This is when the Direct Negotiation begins”] reflects his distinction between the “Direct Negotiation **Process**” which begins with the first meeting of negotiators and the Direct Negotiation **Procedure** which starts with receipt of the Letter of Interest.”⁵
- c. “Mr. Amorrortu claims an award in his favor based on PeruPetro’s alleged non-compliance with the Direct Negotiation **Procedure**. The fact the Direct Negotiation **Process** never began (to adopt Mr. Vizquerra’s nomenclature) is the essential subject matter of Mr. Amorrortu’s complaint.”⁶ “The [t]ribunal accepts that Direct Negotiations never actually commenced. That is Mr. Amorrortu’s complaint.”⁷

³ See (CLA-117).

⁴ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, PCA Case No. 2020-11 ¶ 160.

⁵ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, PCA Case No. 2020-11 ¶ 161.

⁶ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, PCA Case No. 2020-11 ¶ 162.

⁷ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, PCA Case No. 2020-11 ¶ 160.

- d. “[I]t 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 [Fair and Equitable Treatment] in the application of Direct Negotiation Procedure 8 as promised by the President himself, thereby justifying an award in Mr. Amorrortu’s favor.”^[4]

10. Peru’s argument that Amorrortu’s claims are time barred is similarly unavailing. The corruption at the heart of this dispute was denied by Graña y Montero and the Peruvian government for years. The limitations period began to run on August 31, 2020, only when Amorrortu gained knowledge of the corrupt scheme, the date upon which information became available reflecting the diaries showing that the First Lady Nadine Heredia met with Graña y Montero’s executives to discuss Lots III and IV before the Direct Negotiation process was aborted.

11. “Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government’s ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.”

12. Here, there is no question that Baspetro was the ideal candidate to operate Blocks III and IV. Not only was Baspetro led by Mr. Amorrortu, who had successfully operated the blocks for his entire career, but the Baspetro proposal was also the most generous to the local population. Corruption deprived Mr. Amorrortu of the opportunity to close its negotiations with PeruPetro causing Amorrortu significant damages that Peru now must compensate.

13. The USPTPA requires the promotion of transparency and the prevention and combating of corruption, including bribery, in international trade and investment.⁸ But for Peru's corruption, PeruPetro would have continued with the Direct Negotiation process it had concretely and undisputedly commenced with Baspetro. Peru's misguided efforts to hide the rancid stench of the egregious and wide scope of its corruption scheme should be disallowed from this action. This Tribunal must enforce the mandate of the Treaty and compensate Amorrortu for the damages he suffered as a result of Peru's corruption.

14. This Reply is filed with the following supporting expert reports:

- a. BRG, damages Expert.
- b. Mr. Jose Zamalloa, oil and gas Expert.
- c. Ms. Monica Yaya, expert on Peruvian law, including on corruption.
- d. Mr. Anibal Quiroga, expert on Peruvian law, including on the Direct Negotiation and International Bidding Procedure and Processes.

15. This Reply is filed with the following witness declarations:

- a. Claimant Mr. Bacilio Amorrortu.
- b. Claimant's son, Mr. Basilio Amorrortu.

⁸ See (CLA-2) USPTA, Preamble, and (CLA-42) USPTA, Ch. 19. See also Claimant's Statement of Claim ("SoC"); (C-48), (C-49), (C-80), (C-91), (C-112), (CLA-48), (CLA-103), (CLA-112).

- c. Claimant’s son, Mr. Sebastian Amorrortu.
- d. Baspetrol team member Mr. Rigoberto Francia Gonzaga, a petroleum engineer and Operations Superintendent for Baspetrol.
- e. Baspetrol team member Mr. Mario Chavez Cerna, a geological engineer and Geology Superintendent for Baspetrol.

II. ARGUMENTS

A. The corruption of the adjudication process for Blocks III and IV can no longer be disputed

- a. [REDACTED]

16. In its Statement of Defense stage, Peru argued that Amorrortu had not been able to link the corruption to the adjudication process for Blocks III and IV.⁹ Peru maintained that:

“[t]he majority of the evidence Amorrortu proffers in support of the alleged corruption scheme affecting the Blocks’ adjudication bears no relation to the facts of this case.”¹⁰

“Amorrortu’s narrative of the issues...including the three construction projects, spans 19 pages yet tellingly fails to mention, much less prove, that any of the allegations of corruption described therein extend to Peru’s petroleum industry, PeruPetro, the Blocks or the Bidding Process. It is also telling that, despite offering detailed accounts of the allegations of corruption underlying those projects and exhibiting various sources in support of those allegations, Amorrortu’s account as it relates to the Blocks and the Bidding Processes is skeletal and unsupported.”¹¹

“Claimant’s efforts to connect the Lava Jato scandal to the adjudication of the Blocks fails.”¹²

⁹ See Procedural Order No. 4, Procedural Order No. 5, and Procedural Order No. 8.

¹⁰ See SoD, ¶ D (1), 170 (emphasis added).

¹¹ See SoD, ¶ 174 (emphasis added).

¹² See SoD, ¶ 175.

“The scant ‘evidence’ presented by Amorrortu that bears any relation to the facts of this case also fails to prove that the Blocks were adjudicated as the byproduct of corruption.”¹³

“If one sets aside Amorrortu’s allegations of corruption that plainly bear no relation to this case, Claimant is left with a single argument (without supporting proof) and two pieces of purported evidence as the sole basis of his claim on corruption.”¹⁴

17. [REDACTED]

18. As a starting point, it is public knowledge that Peru’s Head of State, President Humala, and his wife Nadine Heredia, requested and received bribes in exchange for governmental contracts.¹⁶ As part of this scheme, Graña y Montero, together with Norberto Odebrecht, paid millions of dollars in unlawful bribes.¹⁷ Critically, two additional criminal proceedings are underway against the presidential couple Humala–Heredia: the Club de la Construcción and the Southern Gas Pipeline. Because Nadine Heredia was the executor of state decisions to award public works and state contracts in Peru and because Heredia was the recipient of the million-dollar

¹³ See SoD, ¶ D (2), 177.

¹⁴ See SoD, ¶ 177.

¹⁷ See (C-114).

bribes paid to the presidential couple by the favored company GyM and others, the prosecutors have requested she serve more than double the time than her husband, Humala.¹⁸

Figure 1: First Lady Nadine Heredia arrives in Brazil for “asylum”¹⁹



¹⁸ See (C-305) Peru’s Ex- President and First lady sentenced to 15 years in prison.

¹⁹ See <https://www.reuters.com/world/americas/wife-former-peruvian-president-arrives-brazil-after-requesting-diplomatic-asylum-2025-04-16/> (last accessed December 22, 2025).

Figure 2: Peruvian President Ollanta Humala sentenced to jail²⁰

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Former Peruvian President Ollanta Humala sentenced to 15 years in jail

Wednesday, April 16th 2025 - 09:15 UTC Full article

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Humala's ex-wife, Nadine Heredia, sought asylum at Brazil's Embassy in Lima

Former Peruvian President Ollanta Humala and his ex-wife, Nadine Heredia, were sentenced to 15 years in prison for aggravated money laundering related to illicit funds used during the 2011 campaign. In both cases, their pretrial detention counts as time served. The couple denied all charges. Prosecutors had requested 20-year sentences.

While Humala was transferred to the Barbadillo prison to join fellow former Presidents Alejandro Toledo and Pedro Castillo Terrones, Heredia sought asylum at the Brazilian Embassy.

The court also sentenced Heredia's brother, Ilán, to 12 years, and others to lesser terms, dissolved the company Todoqraph, fined the Peruvian Nationalist Party, and ordered reparation payments to the State.

19. [REDACTED]

[REDACTED] This corruption scheme was not limited to any specific contract. GyM paid its bribes to get any contract it desired.

²⁰See <https://en.mercopress.com/2025/04/16/former-peruvian-president-ollanta-humala-sentenced-to-15-years-in-jail> (last accessed December 22, 2025).

20. [REDACTED]

[REDACTED]

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

i. [REDACTED]

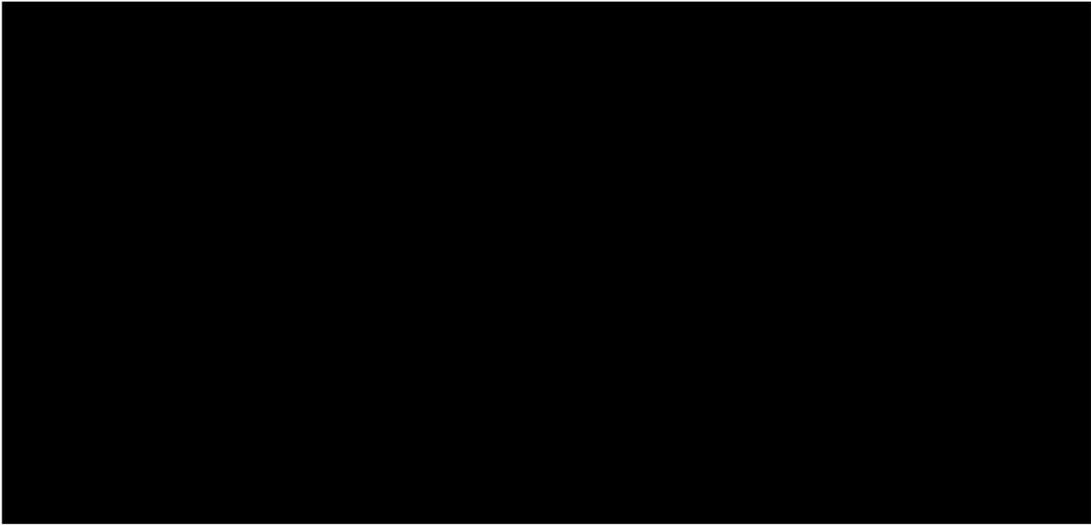
21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



ii. [redacted]

22. [redacted]

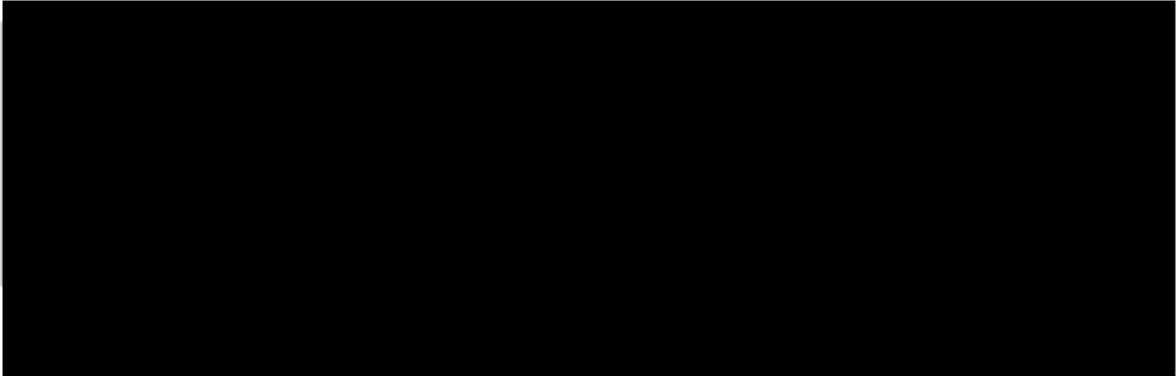
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



iii. [REDACTED]

23. [REDACTED]

[REDACTED]

[Redacted]:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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■ [REDACTED]

■ [REDACTED]

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[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]
■ [REDACTED]

31. As explained by Ms. Yaya [REDACTED]

[REDACTED]

32. “Therefore, from our point of view it is relevant—and thus surprising that it was not mentioned by Witness Tafur Marín— [REDACTED]

[REDACTED]

[REDACTED]”⁴²

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴² See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 122.
⁴³ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 123.
⁴⁴ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 124.



- [Redacted]

- [Redacted]

36. [REDACTED]

37. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For these same reasons, as Ms. Yaya, explains, “all the legal analysis developed by the Peruvian State in response to Baspetro’s claim is also insufficient.”⁴⁸

38. Under Peruvian President Alejandro Toledo Manrique’s administration (2001–2006), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. Under Peruvian President Alan García Pérez's administration (2006–2011), the development of the Lima Electric Train case is illustrated. [REDACTED]

[REDACTED]

40. Under President Ollanta Humala Tasso's administration (2011–2016), [REDACTED]

[REDACTED]

41. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵³

42. In summary, Ms. Heredia began to govern and enrich herself from the first day of her husband's administration in August 2011 with an executive power that allowed her to decide the award of public works and state contracts in exchange for bribes.

43. [REDACTED]

[REDACTED]

44. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45. [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

46. National highway construction projects in Peru are of lesser magnitude compared to the Talara oil contracts, such as those for Blocks III and IV valued for approximately US \$2.5 billion, and the very large New Talara Refinery project. These three contracts were awarded by Nadine Heredia to GyM in 2014.

47. The most profitable productive sector in Peru and of the highest value are oil contracts. In compliance with her collusive pact with GyM from 2011 and the bribes received from GyM to favor it with the award of public works, as she did with awarding the construction of highways, the first being Puquio–San Francisco in October 2011, Nadine Heredia awarded GyM the most profitable and sizeable state oil contracts valued in billions of dollars: Blocks III and IV in Talara. These oil contracts were the “big elephants” of public works and were the oil contracts available during the Humala–Heredia administration in terms of amounts and profitability/bribes received since 2011.

48. Here, Peru’s Statement of Defense attempts with bravado but fails in its efforts at addressing the corruption scheme.⁶² The Corruption Scheme that plagues Peru is not “in Amorrortu’s mind” as alleged.⁶³

■ [REDACTED]

[REDACTED]

50. Interestingly, Peru attempts to distinguish the construction projects from Amorrortu’s Blocks III and IV.⁶⁵ Peru, with the help of one of its experts [REDACTED]

[REDACTED]

⁶² See SoD, § II(D).

⁶³ See SoD, § II(D), ¶ 168.

■ [REDACTED]

⁶⁵ See SoD, ¶¶ 170-176.

54. In fact, PetroPeru also has a history of being used by Heads of State for their illegitimate means.⁶⁸ Under Fujimori, PetroPeru bailed on contractual obligations owed to Amorrortu's Propetsa. Furthermore, there's also the history of GyM with Odebrecht paying bribes to governments for favors; specifically, to Fujimori,⁶⁹ Garcia,⁷⁰ and Ollanta.⁷¹

55. Amorrortu's company, Baspetro, had the know-how, qualifications, and plans to provide a benefit of 5% in favor of the local communities in Peru through its Proposal to operate Blocks III and IV.⁷² By improperly "awarding" the Blocks to Graña y Montero, Amorrortu was deprived of his right, under Peruvian law, to participate in a Direct Negotiation Process to resume the operations in Blocks III and IV.

56. The fact that there is no record of any Direct Negotiation Process that had not culminated in the execution of a contract after the completion of the required phases, [REDACTED], showcases in no uncertain terms that Blocks III and IV, like projects: (list all corruption projects here), were also subject to corruption.⁷³

⁶⁸ See SoC, ¶ 43.

⁶⁹ See SoC ¶ 108; See Andina, *Former Odebrecht representative Barata confirms contributions to Garcia's 2006 campaign*, 23 April 2019 (C-109); see also, S. Tegel and A. Taylor, *Former Peruvian president dead; shot himself as police attempted to make arrest*, The Washington Post, 17 April 2019 (C-110). Former Peruvian President, Alan Garcia, shockingly killed himself on April 17, 2019, after officers had been dispatched to and arrived at his home to arrest him in connection with the allegations of taking bribes from Brazilian construction company, Odebrecht. See R. Mella and G. Gorriti, *A quién y con cuánto*, IDL Reporteros, 28 February 2018 (C-111). *Id.*; see also, N. Casey et. al, *Former Peru President Arrested in U.S. as Part of Vast Bribery Scandal*, The New York Times, 16 July 2019 (C-112). Former Peruvian President was arrested on July 14, 2019, by U.S. marshals after the Peruvian government requested his extradition. He was wanted in Peru on suspicion of taking USD \$20 Million American Dollars in bribes from Brazilian construction company, Odebrecht. See Mella and Gorriti, *A quién y con cuánto*.

See Andean Air Mail and Peruvian Times, *Top Graña y Montero Executives Resign to Save Company*, 28 February 2017 (C-113). See La República, *Odebrecht usó a socios en el Perú como intermediarios*, 23 January 2018 (C-114).

⁷⁰ *Id.*

⁷¹ See SoC, ¶ 108; (C-107); (C-108); CER-1 [Yaya], ¶ 54.

⁷² See (C-11); See SoC, ¶ 217.

■ [REDACTED] See SoC, ¶ 9.

57. The public bidding process initiated by PeruPetro as a ruse after discarding Amorrortu's Proposal, had all the elements of the decidedly corrupt bidding processes that entangled other major governmental projects occurring at the same time, namely: Gasoducto Sur Peruano, and IIRSA Sur- Campana del no la Revocatoria, IIRSA Norte, to name a few. Just like in all of these projects, Graña y Montero "won" the bid for Blocks III and IV.

58. [REDACTED]

[REDACTED]

[REDACTED]

59. As set forth in the Statement of Claim, the Corruption Scheme implemented by the Construction Cartel follows the same plan as the other projects — and as we will see below, the project for Blocks III and IV of the Talara Basin. The Construction Cartel scheme confirms that a critical component of the plan was to intervene at the inception of the project and arrange for a rigged public tender where the handpicked company would benefit from the *buena pro*.

60. Just like with the Lima Metro Project (phases 1 and 2),⁷⁵ the IIRSA South Project,⁷⁶ and the Southern Gas Pipeline,⁷⁷ the adjudication of Blocks III and IV was reconfigured as a public bidding project to avoid the perception of corruption.⁷⁸ The Southern Gas Pipeline project's pattern of corruption is key because it proves that often, the majority of the documented meetings were after the contract had been "awarded." In that case, the contract was awarded in June 2014, with GyM and Odebrecht delaying entrance into a Memorandum of Understanding for GyM to join as a minority shareholder until over a year later, in August and September of 2015.⁷⁹

⁷⁵ See SoC, ¶ 122; (CLA-49); (C-121); (C-119); (C-122); (C-123); (C-124); (C-125); (C-44); (C-45); (C-126).

⁷⁶ See (C-127); (C-128); (C-129); (C-130); (C-131); (C-132); (C-116); (C-133); (C-134).

⁷⁷ See (C-138); (C-161); (C-139); (C-140); (C-141); (C-142).

⁷⁸ [REDACTED]; SoC, ¶ 122; (R-21, 23); SoD.

⁷⁹ See SoC, ¶¶ 141-142; (C-142).

b. The GyM Proposal was unsatisfactory

61. Peru alleges that Amorrortu's argument that the modifications carried out by PeruPetro, in connection with Nadine Heredia and GyM, are insignificant.⁸⁰ Not so. As Ms. Yaya explains, "[a]ll of the changes, starting with the first on September 12, 2014, were aimed at improperly benefitting the Graña y Montero group, preemptively favoring Graña y Montero Petrolera S.A., an oil company whose shareholders (Dulanto Swayne Francisco Javier and Graña y Montero S.A.A.) decided that, during the Pre-Qualification stage and the evaluation of their bids, another company, Graña y Montero S.A.A., would participate, but that the concession contract would be executed with Graña y Montero Petrolera S.A.—an arbitrary decision, as it was contemplated neither in the terms nor in the law."⁸¹

62. This discriminatory favoritism in favor of Graña y Montero was noted by other companies as well. "Another company interested in participating in the exploitation of the lots (UPLAND OIL & GAS LLC), unrelated to this proceeding, also spoke out about the clear favoritism toward Graña y Montero, in a communication sent on December 9, 2014, in which it reveals that the changes to the Terms of the processes were aimed at favoring a particular bidder, expressly referring to the answer to Query No. 1 submitted by Graña y Montero S.A.A. regarding the measurement of hydrocarbon reserves, as well as the production levels, allowing the declaration of figures that cannot be verified at the wellhead."⁸²

63. In that communication, the representative of the oil company UPLAND OIL & GAS LLC literally stated the following:⁸³

⁸⁰ SoD, ¶ 105.

⁸¹ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 43.

⁸² See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 44.

⁸³ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 45.

- a. “Moreover, the aforementioned Form 1 has also been amended so that production levels are measured not only at the control/fiscalization point (as the current regulations provide) but also at the wellhead, which again allows a given bidder to artificially increase demonstrable production levels.”⁸⁴
- b. “We believe that a modification of the Terms such as has occurred taints this entire process because it artificially creates non-technical conditions that allow a bidder who would not have been able to qualify under the uniform rules always applied to now qualify and to show a certain level of production that all the market actors know it does not have.”⁸⁵
- c. “These acts of favoritism toward a specific bidder taint this process, because the technical indicator is no longer being measured in accordance with the norms and criteria universally accepted in the hydrocarbons industry.”⁸⁶
- d. “In that regard, the Entity you preside over must nullify that modification, and then revert the Tender to its prior state, so that production is calculated in a technical manner and with the standard that was always applied, such that only those companies that truly have real production meeting the minimum indicators established will qualify.”⁸⁷

64. As referenced *infra*, “the favoritism granted to both Graña y Montero Petrolera S.A. and Graña y Montero S.A.A. clearly occurred with the modification of the rules of participation carried out illegally between August 29 and September 23, 2014, specifically contravening

⁸⁴ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 46.

⁸⁵ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 47.

⁸⁶ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 48.

⁸⁷ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 49.

provision 1 of those Terms, under which the purpose of the call was to select the oil company that, after meeting the technical and legal requirements of the Terms, would execute the License contract; yet by arbitrary interpretation of Article 3 of the Regulations for the Qualification of Oil Companies approved by Supreme Decree No. 030-2024-EM, the Committee evaluated the requirements of one domestic company so that another domestic company would execute the contract.”⁸⁸

65. “That decision evidences a situation of privilege of the Graña y Montero group over the Committee in charge of the processes, derived from [Graña y Montero’s] political and economic power.”⁸⁹

i. PeruPetro awarded the contracts for the operation of the Blocks through controversial circumstances

66. As Mr. Amorrortu explained in his Statement of Claim, on March 20, 2014, PeruPetro approved a temporary operation contract in favor of InterOil for Blocks III and IV for an additional 12-month period under very controversial circumstances.⁹⁰ Less than two months later, on May 22, 2014, Ortigas agreed to meet with Mr. Amorrortu and instructed him to prepare a Proposal for Direct Negotiation for the operation of Blocks III and IV. Ortigas further explained to Amorrortu that the Baspetro Proposal would be subject to a legal-technical-economic analysis by PeruPetro’s Administration and that it would be discussed by PeruPetro’s Board, which is the process required by PeruPetro’s Rules and Procedures.⁹¹

67. Therefore, Peru invited Amorrortu to engage in a Direct Negotiation process.

⁸⁸ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 50.

⁸⁹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 51.

⁹⁰ See SoC, ¶ 71.

⁹¹ See SoC, ¶¶ 72-74.

68. Accordingly, Peru's reliance on the ICC arbitration action⁹² centered only around the expiration of the Interoil contracts is unavailing, given that Mr. Amorrortu was actively meeting with Peruvian officials and representatives on the very topic of the contracts to operate Blocks III and IV while that arbitration was ongoing.⁹³

69. Indeed, in her Witness Statement Ms. Tafur agrees that, on March 20, 2014, upon the ICC tribunal's issuance of an award in PeruPetro's favor, "PeruPetro could officially commence public bidding processes to secure long-term contracts for the Blocks."⁹⁴

70. Peru's arguments here are focused on PeruPetro no longer adjudicating contracts for operational blocks through direct negotiations, absent exceptional circumstances, and that Amorrortu, in 2013, had received, via Mr. Ortigas, notice that Block III was not available for adjudication by way of direct negotiation. This illustrates the weakness in Peru's argument. When convenient, Peru relies on Mr. Ortigas' representations to Amorrortu and, when inconvenient, Peru pretends that Mr. Ortigas did not represent Peru in his statements and did not have the authority to issue said statements.⁹⁵

71. And, while Peru and its experts claim there was a "policy" of PeruPetro not engaging in direct negotiations, this too is untrue.⁹⁶ Peru provides two witness statements, that of Mr. Guzman and that of Ms. Tafur, to support this claim concerning a "policy" that is unsubstantiated by documentary evidence (i.e. said policy appears to not be written anywhere, much less in an official document). Both Witness Statements are addressed in turn, but not without

⁹² See **(RLA-135) Interoil Peru S.A. v. Perupetro S.A.**, ICC Case No. 18783/CA/ASM, Final Award (20 March 2014).

⁹³ See, e.g., **(C-6, C-13, C-15, C-16, C-17, C-7, C-8, C-9, C-10, C-11)**.

⁹⁴ See SoD, ¶ 90; **RWS-02 [Tafur]** ¶ 27.

⁹⁵ See SoD, ¶¶ 94-96.

⁹⁶ See SoD, ¶ 48; **RWS-02 [Tafur]**, **RWS-03 [Vela]**. And in any event, Amorrortu relied on Luis Ortigas's instructions, making this new policy defense irrelevant. And in any event, Amorrortu relied on Luis Ortigas's instructions, making this new policy defense irrelevant.

first highlighting the inconsistency between these two Witness Statements and that of Peru's expert Mr. Vizquerra, who confirmed the opposite: that PeruPetro often contracts through Direct Negotiation.⁹⁷

“Of 43 current contracts, 35 come from direct negotiations; and reviewing the history of all the contracts PeruPetro has entered into, 83% of contracts entered into by PeruPetro originated in direct negotiations.”⁹⁸

72. Guzman Oliver's affirms that the general policy of PeruPetro has been to award long-term contracts via selection processes.⁹⁹ This is inaccurate. No document supports this claim, the link “Plans and Policies” on PeruPetro's website is silent on this matter, and the government has not defined such a rule for the sector either.¹⁰⁰

73. More specifically, Ms. Tafur states that PeruPetro only gives long-term contracts via direct negotiation if there is expected to be little interest in the project.¹⁰¹ With that said, no document supports this alleged “policy,” including PeruPetro's own websites.¹⁰² And, no law that PeruPetro would be governed by states such a policy.¹⁰³

74. Ms. Tafur further states that PeruPetro maintains public transparency. It details all information on all projects, including the contracting process for the same.¹⁰⁴ However, as explained by Ms. Yaya, this is not true. As set forth in detail *infra*, the Bidding Companies did not

⁹⁷See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 250; RER-2 [Vizquerra] Expert Report.

⁹⁸ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 252; RER-2 [Vizquerra] Expert Report, ¶ 46.

⁹⁹See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 178; RWS-1 [Guzman].

¹⁰⁰See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶¶ 179-186.

¹⁰¹ See CER-2 [Yaya], Monica Yaya's Second Expert Report; ¶ 146; RWS-02 [Tafur].

¹⁰²See CER-2 [Yaya], Monica Yaya's Second Expert Report; ¶ 147.

¹⁰³ See CER-2 [Yaya], Monica Yaya's Second Expert Report; ¶ 150.

¹⁰⁴ See CER-2 [Yaya], Monica Yaya's Second Expert Report; ¶ 154.

receive any documents relating to the requirements they had to meet to pass the first stage set out in in the Bid Terms for Blocks III and IV.¹⁰⁵

75. Moreover, “[i]t is important to underscore the existence of meetings of unknown dates that were not scheduled in the timeline published for all interested companies, at which modifications to the Bid Terms were discussed. Such unscheduled meetings are reflected, for example, in Technical-Legal Report No. CONT-128-2014 of Friday, October 17, 2014.”¹⁰⁶

76. Ms. Tafur also asserts that Amorrortu’s meeting with Ortigas was done after it was announced the Lots would be subject to public tender. The only procedure subject to public tender was the public call for bids in July of 2014.¹⁰⁷ Therefore, it is false that by mid-June 2014 there was public knowledge that the Lots would be awarded by tender.¹⁰⁸

77. Ms. Tafur also stated that she believed Amorrortu’s letters did not amount to a challenge, so she did not consider responding to them.¹⁰⁹ Nevertheless, as explained by Ms. Yaya, pursuant to Article 117.1 of the General Administrative Procedure Law, Law 27444, any person, individually or collectively, may submit in writing the initiation of an administrative procedure before all entities, exercising the right of petition recognized in Article 2(20) of the Political Constitution of the State.¹¹⁰ In accordance with Article 117.3 of said law, the right of petition implies the obligation to provide the interested party with a written response within the legal time limit.¹¹¹

¹⁰⁵ See CER-2 [Yaya], Monica Yaya’s Second Expert Report; ¶¶ 157, 159, 162, 163.

¹⁰⁶ See CER-2 [Yaya], Monica Yaya’s Second Expert Report; ¶ 163.

¹⁰⁷ See CER-2 [Yaya], Monica Yaya’s Second Expert Report; ¶¶ 165-166.

¹⁰⁸ See CER-2 [Yaya], Monica Yaya’s Second Expert Report; ¶¶ 165-167.

¹⁰⁹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report; ¶ 172.

¹¹⁰ See CER-2 [Yaya], Monica Yaya’s Second Expert Report; ¶ 174.

¹¹¹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report; ¶ 176.

78. On August 20, 2014, when Ms. Tafur first informed Amorrortu that “on July 14, 2014 PeruPetro **initiated** an International Public Tender process to grant license contracts for the exploitation of hydrocarbons in Blocks III and IV, in order for interested companies to participate in said Tenders,” and cordially invited him “to participate in these processes in line with the proposal you sent us.”¹¹² The Baspetro Proposal was then sent to Ms. Tafur who confirmed receipt.¹¹³

79. As referenced above, on October 31, 2014, Mr. Amorrortu submitted his bid to the International Public Tender Commission including: (i) his Letter of Interest to participate in the International Public Tender; (ii) Letter of Confidentiality Agreement and User License; and (iii) Statement of Commitment to Integrity.¹¹⁴

80. After this submission, PeruPetro continued to change the rules of the procedure.¹¹⁵

81. It was not until November 3, 2014, that the Coordinator of the International Public Tender Commission rejected the Baspetro Proposal for Blocks III and IV.¹¹⁶ Now, this letter differed a great deal from the treatment received by different companies in this process. For example, Perenco received a letter expressly allowing them to cure any deficiencies in their bid (an opportunity not afforded to Amorrortu notwithstanding the fact that when this letter was sent on November 3, 2014, the process remained open and ongoing).¹¹⁷

¹¹² See (C-13), Letter from PeruPetro, S.A. to Bacilio Amorrortu, August 20, 2014 (emphasis added).

¹¹³ See (C-10), Receipt of Baspetro Proposal stamped by PeruPetro, May 28, 2014.

¹¹⁴ See (C-14) Letter from Bacilio Amorrortu to the International Public Tender Commission No. PeruPetro-001-2014, October 31, 2014.

¹¹⁵ See (R-24, R-29, R-22, R-29, R-26, R-27, R-38, R-39); Yaya-30.

¹¹⁶ See (C-015) Letter from Roberto Guzman to Bacilio Amorrortu, November 3, 2014 (Claimant’s translation); SoC ¶ 87.

¹¹⁷ See (C-222); (C-229, p. 98); (C-232, pp. 29, 30).

82. Moreover, a quick review of the Meeting Notes from August 30 to December 10, 2014 reflects that a bidder raised technical concerns to PeruPetro challenging the transparency and fairness of the Bidding process.¹¹⁸

83. Also, there was an issue by which one of the bidders was unable to submit a required Deposit Bond and instead its Legal Representative handed a bank check for USD 100,000 to the Bid Administrator. More specifically, at the bid opening public ceremony on December 10, Omega Oil failed to submit a compulsory Deposit Bond due to delayed bank processing. The impasse was solved when the Omega representative handed in a bank check for USD 100,000 to the PERUPETRO administrator in lieu of the upcoming Deposit Bond.¹¹⁹

84. One of the concerns about the irregularity of the process is concerning the conversion of associated gas into Barrels of Oil Equivalent in order to artificially increase the reported production.¹²⁰ On October 2, 2014, GyM essentially asked PeruPetro why the oil production is not reported as the barrels of oil plus those equivalent to the associated gas.¹²¹

85. On December 9, 2014 Upland Oil and Gas lodged a Technical Complaint¹²² protesting for the decision by PeruPetro to change the original bid criteria in order to accommodate the GyM request.

86. Mr. Quiroga, Amorrortu's expert on Peruvian law and the Direct Negotiation and International Bid Process, similarly corroborates these irregularities. The irregularities can be further summarized as follows:

¹¹⁸ See (C-222).

¹¹⁹ See (C-230, p. 412). See also (C-255) (discussing another irregularity in the bidding process).

¹²⁰ See (C-219) Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-20 and (C-220) Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-21.

¹²¹ See SoD, ¶¶ 106-108; Yaya-30; (C-219); C-215-C-291.

¹²² See (C-220).

- a. There were multiple irregularities in the procedure of direct negotiation.¹²³
- b. Assent of the president of PeruPetro to the submission of the letter of interest to Amorrortu after meeting on May 22, 2014 despite the fact that a similar proposal had been denied on August 12, 2013.¹²⁴
- c. Failure to process the letter of interest regarding the initiation of direct negotiation for the granting of an exploitation license for lots III and IV had been established in Procedure GFCN-006 “Qualification of Oil Companies” and Procedure GFCN-008 “contracting by direct negotiation.”¹²⁵
- d. Irregularity of the call for international public tenders for the granting of licenses for the exploitation of Lots III and IV, made on July 14, 2014; since said lots were the subject of a direct negotiation procedure initiated on May 28, 2014, which had not yet concluded.¹²⁶
- e. Inducement of Amorrortu to participate in public tender despite knowing there was a direct negotiation for the lots.¹²⁷
 - ii. *The International Bidding Process did not comply with the applicable legal framework*

87. Peru asserts that the public tenders that resulted in the adjudication of Blocks III and IV to GyM were “diligently” carried out and “complied” with the applicable legal framework “in every respect.”¹²⁸ This is belied by Graña y Montero’s requests (and other competing

¹²³ See CER-2 [Quiroga] ¶ 2.3.

¹²⁴ See CER-2 [Quiroga] ¶ 2.3(i).

¹²⁵ See CER-2 [Quiroga] ¶ 2.3(ii).

¹²⁶ See CER-2 [Quiroga] ¶ 2.3 (iii).

¹²⁷ See CER-2 [Quiroga] ¶ 2.3 (iv).

¹²⁸ See SoD, ¶ 58.

companies) during the bidding process and PeruPetro's adoptions of the GyM requests as discussed *supra*.

88. Peru also asserts that “while Amorrortu argues that there is ‘no evidence that the interested companies received any document stating the requirements they needed to comply with in order to qualify as bidders,’” the opposite is true. The Bidding Rules—which were available to the public on PeruPetro’s website as Amorrortu had been informed would be the case since 2013—specifically set out what was required of an interested party in order to qualify, as well as when and how this information needed to be presented. PeruPetro’s online portal for the Bidding Processes even included a simulator to aid interested parties in making a preliminary determination of whether they met the Minimum Indicators, *i.e.*, the technical parameters that determined whether an interested party was eligible to participate in the Bidding Process and qualify to submit a bid.”¹²⁹

89. As Amorrortu’s expert, Ms. Monica Yaya explains, this is inaccurate because, *inter alia*: (i) the interested bidding companies did *not* receive a PeruPetro document indicating the Minimum Requirements needed to satisfy the first phase of the bidding process;¹³⁰ (ii) the Minimum Requirements and related values requires to satisfy the first phase of the bid were similarly missing from the other official documents dated June and October 2014;¹³¹ and (iii) while the General Conditions in the *Bases de Licitación* establish that the “Minimum Requirements are approved by Directorate Agreement No. 048-2010,” the Directorate Agreement in question also does not contain the Minimum Requirements to successfully satisfy the first phase in either of the

¹²⁹ See SoD, ¶ 514, Yaya-31.

¹³⁰ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 3; Bases de Licitación, ¶ 7.2(3).

¹³¹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 4 (citing R-22).

bidding processes (Licitación Pública Internacional N° PERUPETRO 001-2014 (Lot III), and Licitación Pública Internacional N° PERUPETRO 002-2014 (for Lot IV)).¹³²

90. In fact, the Directorate Agreement establishes that, with regard to exploitation contracts, the Minimum Requirements concerning the minimum production and proven reserves were to be identified at every phase for each lot, and they should have been so provided publicly and clearly.¹³³ As is clear here, this did not happen.

91. For example, this failure to follow the applicable legal framework is observed when on October 15, 2014, the senior coordinator for PeruPetro, Winston Wusel, received an electronic message from Maybelle Hermersen, CEO and President of an interested petroleum company, Nor Trade Group. In that message, Ms. Hermersen wrote: “we are confused with what is required to submit for the pre-qualification of Lots III and IV of PeruPetro. Please, would you be so kind as to send me the exact requirements to submit them by October 31 [of 2014].”¹³⁴ [REDACTED]

[REDACTED]

92. This is further exacerbated by yet another copped to illicit practice in bidding processes in Peru at the time. [REDACTED]

[REDACTED]

¹³² See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 5.

¹³³ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 6.

¹³⁴ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 6 (citing Yaya-Anexo 1).

[REDACTED]

96. To start,, the fact that there is no evidence that the interested companies for the International Public Bidding Process for Blocks III and IV *ever* received any documents with the requirements for qualification as bidders in the International Public Bidding Process is telling.¹⁴⁴ Additionally, the improper and suspect modifications to the Bidding Rules raise another red flag: (i) the change to the value of the Minimum Indicator of Proved Reserves requested by G&M on October 2, 2014;¹⁴⁵ and (ii) the fundamental change request to modify the Bidding Rules in Format I, corresponding to the Letter of Interest to Participate in the International Public Bidding No. PeruPetro-001-2014 (for Block III) (allowing for the application from the 2012-2013 period for the annual average production to be accredited with the filed production).¹⁴⁶ These changes are not minor qualifications; instead, they confirm the lack of compliance of GyM prior to these modifications taking effect.

97. PeruPetro knowingly disregarded the Rules and Procedures, as well as Article IV, subsection 1, numeral 1.5 and Article V, subsection 1, numeral 1.8, of the Law of General Administrative Procedure.¹⁴⁷ PeruPetro did this to favor G&M.

iii. Modification 1:

98. Peru also claims that Amorrortu is wrong in arguing that the first modification to the Bidding Process occurred on September 12, 2014.¹⁴⁸ Peru insists that this is inaccurate and, in doing so, attempts to draw a distinction between a modification to the Tender Requirements (*Bases de Licitación*, in Spanish) and a modification to the Minimum Indicators required to compete in the Bidding Process. Nevertheless, the bottom line is that a change, or “update” to use Peru’s

¹⁴⁴ See SoC, ¶ 159; CER – 1 [Yaya], ¶ 22.

¹⁴⁵ See SoC, ¶ 160; C-50; CER – 1 [Yaya], ¶¶ 188-189.

¹⁴⁶ See SoC, ¶ 161; C-36; CER – 1 [Yaya], ¶¶ 188-195; 231-235.

¹⁴⁷ See SoC, ¶¶ 162-163, 211-215; SoD, ¶ 102.

¹⁴⁸ See SoD, ¶ 102; SoC, ¶ 160.

terminology, to the Minimum Indicators is anything but insignificant. It's unnecessary to engage in an alphabet soup over the characterization of these changes. In sum, PeruPetro changed the requirements, whether by updating the Minimum Indicators at the eleventh hour of the Bidding Process, or by updating the Tender Requirements/Rules.

99. Before providing Amorrortu's refutation to Peru's defense concerning modifications, it's important to digest Peru's argument here, as it argues that "update" and "modification" mean different things. Surely, each term describes a change made to something that already exists, with the purpose and effect understood similarly across contexts. Indeed, any reading of "update" and "modification" presuppose an existing baseline to which changes are applied. The degree of any change cannot be said to alter this fundamental concept.¹⁴⁹

100. The key takeaway from both the updates and modifications are the intentionality behind them by PeruPetro, either to reflect current realities (update) or to alter terms/features (modification), with the effect being the same: altering the rules and requirements for participation in the Bidding Process.

101. More specifically, Peru argues that the mere updating of the proven reserves of hydrocarbons was a necessity to bring the requirement in line with an announcement previously made by MINEM on December 31, 2013.¹⁵⁰ Now, chronologically speaking, it is important to highlight that, while PeruPetro knew or should have known of this purportedly important update, it waited until the middle of the Bidding Process to make its announcement.¹⁵¹

¹⁴⁹ Oxford English Dictionary Online, s.v. "update," Oxford University Press, <https://www.oed.com/search/dictionary/?scope=Entries&q=update> (last accessed December 22, 2025); Oxford English Dictionary Online, s.v. "modification," Oxford University Press, <https://www.oed.com/search/dictionary/?scope=Entries&q=modification> (last accessed December 22, 2025).

¹⁵⁰ See SoD, ¶ 102 (citing to Memorandum No. CONT-0107-2014 (12 de septiembre de 2014) (C-50)).

¹⁵¹ See (R-37; R-29); (C-50).

attempt to make the process look “compliant,” all to benefit GyM, does not mean the process was compliant.

106. As explained by Peru’s expert, Mr. Roberto Carlos Guzmán Oliver:

- a. “The Minimum Indicators were values of production, wells, reserves, and economic capacity, which allowed a company to qualify for the bidding block. They were calculated in accordance with the document Procedure and Indicators for Qualification of Oil Companies, approved by Board of Directors Agreement No. 048-2010 of 15 April 2010.”¹⁵⁷
- b. “For purposes of the Bidding, the Minimum Indicators to be applied were communicated to the Commission by Memorandum No. CONT-083-2014 dated 14 July 2014 and were published on the PERUPETRO portal.¹⁵⁸ Regarding the indicator related to proven hydrocarbon reserves, for the Bidding, I understand that it had as source the information of the Annual Book of Hydrocarbon Reserves as of 31 December 2012, published by the General Directorate of Hydrocarbons of the Ministry of Energy and Mines (“MINEM”). The Ministry used to update this book of reserves every year, but I remember that it used to be published with a time lag.”¹⁵⁹
- c. “On 12 September 2014, the Contracting Management notified the Commission about the update of the level of proven reserves in Blocks III

¹⁵⁷ See **RWS-1 [Guzman]** ¶ 18 (citing to PeruPetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA-10**)).

¹⁵⁸ See **(R-25)** Memorandum No. CONT-083-2014 (14 July 2014).

¹⁵⁹ See **RWS-1 [Guzman]** ¶ 19.

and IV,⁸ so it was necessary to update the value of the reserves of the Minimum Bidding Indicators. Updating the value of the reserves of a block subject to bidding was necessary so that the interested parties could prepare their proposals based on correct and updated information and also so that PERUPETRO could correctly evaluate the companies, as established by Board Agreement No. 048-2010.”¹⁶⁰

- d. “On 23 September 2014, through Circular No. 02, the Commission informed the participating companies that the Minimum Indicators had been updated in accordance with MINEM’s Annual Book of Hydrocarbon Reserves as of 31 December 2013.”¹⁶¹
- e. “I do not recall that the Commission or PERUPETRO's Management received any complaints in this regard, much less that it was challenged as an unjustified modification to the Bidding Rules. Regarding the latter, it would have been unjustified in any case since the update notified through Newsletter No. 02 did not modify the Bidding Rules, but simply updated the information of the Minimum Indicators relating to Block III as the object of the Bidding Process.”¹⁶²

107. In short, then, Modification 1 sought to: update the level of proven reserves for Lots III and IV, resulting in an updated reserves amount for the Minimum Indicators.¹⁶³

¹⁶⁰ See RWS-1 [Guzman] ¶ 20.

¹⁶¹ See RWS-1 [Guzman] ¶ 21 (citing PeruPetro, *Circular No. 2 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (23 September 2014) (R-29).

¹⁶² See RWS-1 [Guzman] ¶ 22.

¹⁶³ See RWS-1 [Guzman] ¶¶ 16, 18, 19, 20; (R-27, R-29); (C-50).

108. That Mr. Guzman focuses on the nuances of whether this modification sought to edit the Bidding Rules or the Minimum Indicators is entirely irrelevant. For all practical purposes, changing the Minimum Indicators is a material change that, if legitimate, should have occurred at the outset.

109. As further corroborated by Ms. Yaya,¹⁶⁴ the Peruvian State cannot demonstrate that the bidding participants were equally aware of the minimum indicators indicated above. The indicators, together with certain conditions of the Terms and of the applicable regulations, were illegally amended on multiple occasions to favor the companies of the GyM group.

110. Relatedly, it is necessary to clarify that Graña y Montero Petrolera S.A. had a different shareholding composition from that of GyM.¹⁶⁵ In Graña y Montero Petrolera S.A., the shareholders from 1987 to the present are Graña y Montero S.A.A. with 95% of the shareholding and Francisco Javier Dulanto Swayne with 5% of the shareholding.¹⁶⁶

111. In the case of GyM (Graña y Montero S.A.A.), its shareholding composition does not include Francisco Dulanto Swayne, one of the main interested parties in obtaining the concession contract for the oil lots for Graña y Montero Petrolera S.A. **In fact, Francisco Dulanto Swayne is publicly recorded as having visited, in excess of two hours, the witness in this Arbitration, Isabel Tafur Marín, on October 23, 2013,[6] under the title “Work Meeting,” prior to the modification of the value of Proven Hydrocarbon Reserves in the Annual Hydrocarbon Reserves Book to which the Peruvian State refers, published in December 2013.**¹⁶⁷

¹⁶⁴ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶¶ 20-41.

¹⁶⁵ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 22.

¹⁶⁶ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 23.

¹⁶⁷ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 24.

112. Expert Ms. Yaya concludes that, under such circumstances, the first modification, whether it is called an update or whatever other name Peru wishes to assign to it, occurred on September 12, 2014, at a time when the Committee in charge of carrying out the International Public Tender to grant the License Contract for the Exploitation of Hydrocarbons of Lot III and Lot IV (the “Committee”) had not decided whether the evaluation of the Minimum Indicators would be applied to the information provided by Graña y Montero Petrolera S.A. or to the technical information of GyM, given that, if it were based on the technical information of Graña y Montero Petrolera S.A., *the chances of winning the tender would have been lower.*¹⁶⁸

113. As Ms. Yaya further explains, “from the content of item 1 of Minutes No. 07 of the Committee in charge of the Tender for Lot III, hereinafter the “Committee,” it can be noted that at least until September 19, 2014, it was unknown whether the qualification should fall on Graña y Montero Petrolera S.A. or Graña y Montero S.A.A., which is why it was necessary to minimize any indicator that was not favorable to Graña y Montero Petrolera S.A.”¹⁶⁹

114. “To understand the first modification, note that, as interpreted from provision 4.1 of Agreement 048-2010, the Block’s proven hydrocarbon reserves have a direct impact on determining the Indicator of Proven Hydrocarbon Reserves in Millions of Barrels of Oil Equivalent (MMBOE). The lower the value of proven hydrocarbon reserves, the lower the required indicator of Proven Hydrocarbon Reserves in MMBOE. This benefited the Graña y Montero group company with the lesser capacity to meet that indicator, namely, Graña y Montero Petrolera S.A.”¹⁷⁰

¹⁶⁸ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 25.

¹⁶⁹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 26.

¹⁷⁰ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 27.

115. “Therefore, the so-called “update” of September 12, 2014, of the value recorded in the Annual Hydrocarbon Reserves Book directly meant a modification of the indicia used by the Committee to evaluate each participant in the process.”¹⁷¹

116. Peru’s Witness Guzman boldly asserts that based on the review carried out by the Committee, the modification of the indicators did not affect the results of the letters of interest.¹⁷² However, this untrue. Again, Upland Oil & Gas LLC filed an appeal (later withdrawn) where it protested that the change to the form was to favor a particular bidder.¹⁷³

iv. Modification 2:

117. The second modification to the bidding rules also occurred while the process was ongoing, with the corrupt goal of having GyM qualify as a bidder (as Modification 1 alone was insufficient to do so).

118. As further explained by Mr. Guzman:

a. “In October 2014, by means of Board of Directors Agreement No. 108-2014, **certain modifications** to the Bidding Terms and Conditions were implemented.¹⁷⁴ The **modifications** were supported by the Technical Legal Report No. CONT-0128-2014 of the Commission in charge of reviewing the Bidding Terms.¹⁷⁵ Some of the changes corresponded to Form 1. Specifically, this change specified how to calculate the Technical Indicator related to the average annual production, which allowed considering natural

¹⁷¹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 28.

¹⁷² See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 191.

¹⁷³ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 192; CER-2 [Quiroga] ¶¶ 3.5, 3.7, and 3.10.

¹⁷⁴ See RWS-1 [Guzman] ¶ 24 (citing PeruPetro’s Board of Directors, *Agreement No. 108-2014, Approval of amendments to the Bidding Rules of the International Public Tender No. PERUPETRO-001-2014* (20 October 2014) (R-34)).

¹⁷⁵ See (YAYA-31) Technical-Legal Report No. CONT-0128-2014 (17 October 2014).

gas production, in addition to oil production, to prove compliance with the indicator.¹⁷⁶ This expanded the competitiveness of the Bidding.”¹⁷⁷

- b. “The Commission took cognizance of the modifications to the Bidding Terms and Conditions and agreed to issue a circular to inform participants about them on 3 November 2014,¹⁷⁸ i.e. before the deadline for submitting Letters of Interest which was 14 November 2014.”¹⁷⁹
- c. “Although this occurred before the deadline for the first step, from the review carried out by the Commission at the time, the modification did not affect the results of the evaluation of the Letters of Interest communicated by the Commission up to 3 November 2014. However, it was a relevant aspect for the second step given that the modification to Form 1 had an effect on the evaluation of the documentation (Annex 3) to accredit what was declared in Form 1.”¹⁸⁰
- d. “The Commission’s main objective was always to ensure the competitiveness and transparency of the Bidding Process, within the framework of the Bidding Rules and the applicable regulations, in order to award Block III to the best qualified bidder. In addition to the regulations

¹⁷⁶ PeruPetro’s Board of Directors, *Agreement No. 108-2014, Approval of amendments to the Bidding Rules of the International Public Tender No. PERUPETRO-001-2014* (20 October 2014) (**R-34**), p. 19 [PDF].

¹⁷⁷ See **RWS-1 [Guzman]** ¶ 24 (emphasis added).

¹⁷⁸ PeruPetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**); PeruPetro, *Circular No. 4 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-37**).

¹⁷⁹ See **RWS-1 [Guzman]** ¶ 25.

¹⁸⁰ See **RWS-1 [Guzman]** ¶ 26.

in force, this principle guided all our decisions, including those relating to the application of the Bidding Rules to the selection process.”¹⁸¹

119. As explained by Ms. Yaya: “[t]he second modification was made without observing the procedure for comments on the Terms established in provision 6.5.1 of those provisions published for both Lots in June 2014.¹⁸² The change, under a procedure not legally provided for, took place between August 29 and September 23 of 2014.¹⁸³

120. Indeed, as if the Committee represented the interests of the Graña y Montero group and without Graña y Montero S.A. taking the trouble to use provision 6.5.1 of the Terms, the Committee decided, on its own initiative, to consult the Legal Management of Perupetro as to whether a company incorporated in Peru (a domestic company), “and which forms part of a corporation whose parent is likewise incorporated in Peru,” could be qualified based on the indicators belonging to the supposed parent.¹⁸⁴ To that end, they used Article 3 of the Regulation on the Qualification of Oil Companies, applicable exclusively to foreign companies.¹⁸⁵ It is unknown which criteria was used by the Committee to conclude that Graña y Montero S.A. is the parent of Graña y Montero Petrolera S.A., since no documents produced by Peru or otherwise seem to prove these assertions.¹⁸⁶

121. Notwithstanding the issue of the GyM group used to “qualify” as a bidder, through Memorandum No. LEGL-0584-2014, dated September 18, 2014, mentioned in Minutes No. 07 of September 23, 2014, PeruPetro unconstitutionally amended the Terms and the Law by arbitrarily interpreting that Article 3 of the Regulation on the Qualification of Oil Companies—applicable

¹⁸¹ See RWS-1 [Guzman] ¶ 27.

¹⁸² See, e.g., (C-36).

¹⁸³ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 29. Also see CER-2 [Quiroga] 3.29.

¹⁸⁴ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 30.

¹⁸⁵ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 31.

¹⁸⁶ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 32.

exclusively to foreign parent corporations as non-domiciled entities—was also applicable to a domestic company such as Graña y Montero Petrolera S.A., even though it is neither foreign nor the parent of Graña y Montero Petrolera S.A. The illegal and arbitrary amendment of the Terms had a specific beneficiary: the favored company GyM, whose indicators were the most convenient to favor Graña y Montero Petrolera S.A.¹⁸⁷

v. *Modification 3*

122. PeruPetro then entertained a third modification, all while the bidding process was ongoing.

123. For the third change, Minutes No. 13 of the Committee, dated November 3, 2014, expressly states under item 1 that the modification of the Bidding Terms is a result of what was approved by Board Agreement No. 108-2014,¹⁸⁸ which in turn cites Legal-Technical Report No. 128-2014 of October 17, 2014, which approves, in the first agenda item, the modification of the Terms.¹⁸⁹

124. Ms. Yaya also finds this modification illegal in both form and substance.¹⁹⁰ “In form, because as stated in points 6.5.1 and 6.6 of the Terms for both lots, in their June and October 2014 versions, the oil companies’ observations regarding their evaluation had to be raised and addressed directly by the participants with the Committee and never with PeruPetro Management, as described in paragraph 1.3 of Legal-Technical Report No. 128-2014 of October 17, 2014... the Principle of Legality set forth in the Constitutional Court’s Judgment, Case No. 2939-2004-

¹⁸⁷ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 33.

¹⁸⁸ See R-34.

¹⁸⁹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 34.

¹⁹⁰ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 35.

AA/TC, prohibits public officials from performing any activity for which they are not expressly empowered.¹⁹¹

125. Moreover, as Ms. Yaya provides, it is illegal in substance because the modifications did in fact directly benefit Graña y Montero Petrolera S.A.¹⁹² “Proof of this is the change in the content of sections 7.5, 7.6, and 7.7 of the Terms,[15] insofar as, by modifying the original composition of Envelope 1, the new terms approved required inclusion of the Technical Offer in Envelope 2; that technical offer, due to this alteration, could only be known on the very date on which the award (Buena Pro) would be granted, which in practice meant eliminating the possibility of appeal, because as established in provision 6.5.2 of the same terms, any appealable aspect had to be stated in the same Minutes of the Award of the Contract (Buena Pro), a situation that made it difficult for dissenting bidders to evaluate, in such a short time, the proposal of the winning bidder (Graña y Montero S.A.).”¹⁹³

126. “Returning to the first modification, it should be noted that the so-called “update” of September 12, 2014, of the value recorded in the Annual Hydrocarbon Reserves Book, as well as the modifications made between September and November 2014 and those approved on November 17, 2014, occurred at a time when the partners and executives of Graña y Montero S.A. and Graña y Montero Petrolera S.A. were meeting with persons who turned out to be key in both tenders, representatives of the ministries that appoint PeruPetro’s directors, as well as with persons of the utmost confidence of former First Lady Nadine Heredia Alarcón, as detailed below:”¹⁹⁴

¹⁹¹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 36.

¹⁹² See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 37.

¹⁹³ *Id.* at ¶ 37.

¹⁹⁴ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 39.

a. “Meeting prior to the first modification of the Terms, on October 24, 2013. The minority shareholder of Graña y Montero Petrolera S.A., Francisco Dulanto Swayne, with the Ministry of Energy and Mines official, Isabel Tafur Marín, under the title “Work Meeting.” This meeting is not mentioned in Ms. Tafur’s Witness Statement of April 29, 2024.”¹⁹⁵

b. [REDACTED]

[REDACTED]

a. [REDACTED]

¹⁹⁵ See CER-2 [Yaya], Monica Yaya’s Second Expert Report ¶ 39.

¹⁹⁷ [REDACTED]

Terms (Minutes No. 13) and rejected BASPETROL S.A.C.'s Letter of Interest without giving it the possibility of completing the documentation, as it did with the company PERENCO, a differentiated treatment noted in Minutes No. 15 of November 12, 2014.”

b. [REDACTED]

128. Consequently, Ms. Yaya concludes that “it is proven that there were indeed modifications to the participation conditions even if they were not public, given the lack of knowledge of the minimum indices that the interested oil companies had to meet, and that there were also additional modifications to the Terms for the benefit of the Graña y Montero group [REDACTED]

[REDACTED]

129. Evidently, then, Amorrortu in due diligence, to prevent an argument of waiver, submitted the Baspetrol Proposal in the bidding process by October 2014. It is beyond dispute that this Proposal (i.e. the Letter of Interest) was received by the PeruPetro Commission on October 31, 2014.²⁰⁰ In other words, Baspetrol dutifully submitted his Proposal before PeruPetro finished arbitrarily modifying basic and key indicators of the International Bidding Process, and was not

[REDACTED]

²⁰⁰ See RWS-1 [Guzman] ¶ 28.

given a chance to cure any purported deficiencies. Indeed, even Peru's expert Mr. Guzman admits that there were *several modifications* (not a one off).²⁰¹

130. That Amorrortu wasn't treated equally is not a hard decision to reach. As referenced *infra*, Olympic Peru Inc, received a denial letter but had the opportunity to file an appeal which the State company addressed timely only 3 days later, and then again responded 5 days after that (December 1st appeal, December 4th initial response, and December 9th response).²⁰² This correspondence included a reasoning.²⁰³

131. Amorrortu was not given this courtesy, or any document response regarding disqualification for that matter, despite an ongoing direct negotiation.²⁰⁴ When PeruPetro finally wrote to Amorrortu to tell him he did not qualify (during a process that had not yet culminated), he was not offered specifics nor an opportunity to cure.²⁰⁵

132. In conclusion, (i) GyM was awarded the contract for Lot III despite not having the same proven hydrocarbon reserves and financial statements as Amorrortu; (ii) PERENCO S.A., despite having proven reserves and financial statements dissimilar to those of Amorrortu, was treated differently from the latter, as PERENCO was allowed to submit its proposal on October 2, 2014, and even on November 12, 2014 was granted time to submit supplemental information; and (iii) OMEGA ENERGY, despite having proven hydrocarbon reserve and financial statements dissimilar to Amorrortu's were treated better.²⁰⁶

²⁰¹ See RWS-1 [Guzman] ¶ 24.

²⁰² See CER-2 [Quiroga] 4.47.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ See (C-15) Letter from Roberto Guzman to Bacilio Amorrortu.

²⁰⁶ See CER-2 [Quiroga] ¶ 4.47.

vi. *Vela's Witness Statement is unavailing*

133. Vela's Witness Statement asks the Tribunal to think that life criminals can, under the right circumstances and with the right incentives, become honest people. Vela's Statement

[REDACTED]

134. With that said, Vela's Statement shows an egregious lack of honesty as well. For example, [REDACTED]

[REDACTED]

135. However, Vela does showcase his knowledge of the Peruvian constitution and the penal system. Despite such a wealth of knowledge, he fails to explain (or to attempt to explain) which constitutional article gave Nadine Heredia the power to adjudicate public contracts like Lots III and IV. Sometimes the simplest answer is the right one: Vela could not address this situation because doing so would further corroborate the corruption at issue.

136. Instead of addressing the issues at hand, [REDACTED]

137. To put it mildly, Vela's Statement lacks credibility. [REDACTED]

²⁰⁷ See RWS-03 [Vela] ¶ 24.

²⁰⁸ See RWS-03 [Vela] ¶ 24.

²¹⁰ See RWS-03 [Vela] ¶¶ 25-29.

²¹¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Surely, Lots III and IV did not have anything to do with *El Comercio*.

138. Another curious observation from Vela's Report? [REDACTED]

[REDACTED] and yet, part of Peru's defense seems to be predicated on them.

139. [REDACTED]

[REDACTED]

140. It's important to note that Vela had an indirect relationship with Peru. His brother Carlos Luis Vela Barba has worked since 1997 in the Central Hospital of the Air Force of Peru, having solicited a license in 2019 to work as a consultant for the Congress of the Republic.²¹⁴ With this role, he began working with the Executive Director of the Coordination Secretariat of the National Health Council of the Ministry of Health, under the Minister of Health Cesar Bazquez Villanueva.²¹⁵ The relationship between the Vela Barba brothers is extremely close. They even

²¹² See RWS-03 [Vela] ¶ 25.

²¹⁴ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 130.

²¹⁵ *Id.*

jointly bought immovable property without explanation of origin of the funds, as reported by the media.²¹⁶

141. In his Witness Statement, [REDACTED]

[REDACTED] These assertions are inaccurate. As explained by Ms. Yaya, the benefits of effective collaboration allow for groups to reach an agreement amongst themselves and selectively tell portions of the truth in order to jointly receive the benefit of a reduced criminal sanction, which happened when GyM colluded with Nadine Heredia, in which apparently all have claimed to be vetoed by the first lady without any other evidence than statements by GyM executives.²¹⁸

142. Yaya provides that the [REDACTED]

[REDACTED] The investigation should have encompassed the contracts from 2014 by GyM, and those still in force.²²⁰

143. Yaya confirms that “As a specialist in Government Procurement, I can attest that a large part of the bribes paid to public officials depends on the approvals those officials grant to the valuations submitted by contractor companies.”²²¹ With the example of the Electric Train project, valuations were finalized during Ollanta Humala’s administration, a fact that was not analyzed by the prosecutorial team, led by Rafael Vela Barba. It narrowly looked at the bribes in the Electric Train case and determined they were paid to obtain the contract award—an approach that,

²¹⁶ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 132. Both the Minister and Vela’s brother are members of the Alliance for Progress Party, party to which former President Boluarte and President Ore belong. *Id.* at ¶ 131.

²¹⁷ See RWS-03 [Vela], ¶ 16; CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 133.

²¹⁸ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 134.

²¹⁹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 137.

²²⁰ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 136.

²²¹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 136.

incidentally, betrays a lack of understanding of the corruption mechanisms employed by the Club de la Construcción.²²²

144. In sum, [REDACTED]

[REDACTED] For example, [REDACTED]

[REDACTED] He

should have considered the visit made by GyM shareholder Swayne to the Minister of Energy and Mines with Jose Graña a few days after awarding the contract but days before the President granted the contracts through decree.²²⁴ He should have considered Swayne’s visit to the Minister of Energy, Mayorga, in 2015 to gain favor for the authorization of the bid.

145. For the foregoing reasons, Vela’s Witness Statement is unavailing.

c. Nadine’s “veto” was a public façade, [REDACTED]
[REDACTED]

146. Though Peru claims the so-called veto by Nadine Heredia as a defense,²²⁵ the same was a farce.

147. It “...is important to highligh [REDACTED]

[REDACTED]
[REDACTED]

²²² See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 136.

²²³ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 137.

²²⁴ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶¶ 138-139.

²²⁵ See SoD, ¶ 201.

²²⁶ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 115.

[REDACTED]

[REDACTED]

148. “The meeting of April 28, 2014 between José Graña Miró Quesada and Nadine Heredia, prior to the approval of the Terms for both lots, is highly relevant.”²²⁸

149. “Even more compelling is the meeting of February 10, 2015, held at the request of Nadine Heredia to address the issue of PetroPeru’s Lots III and IV, after the award (*buena pro*) and before Ollanta Humala signed and published Supreme Decrees No. 004-2015-EM and 005-2015-EM, through which he granted the license for the signing of the contracts with Graña y Montero Petrolera S.A. This situation recalls another in which Mr. Martín Vizcarra Cornejo, President of Peru between 2018 and 2020, was sentenced to fourteen years in prison for the crime of Passive Bribery, among other reasons, for having requested from the company OBRAINSA,

[REDACTED]

²²⁸ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 116.

[REDACTED]

153. [REDACTED]

[REDACTED]

[REDACTED] Nevertheless, again, this alleged “veto” was for naught: instead, it was all about public appearances, not representative of an actual rift in Nadine Heredia’s strong, ongoing and corrupt relationship.

154. As explained by Ms. Yaya, “[i]t is necessary to underscore that, in order to conceal the preferential treatment enjoyed by the companies of the Graña y Montero group, [REDACTED]

[REDACTED]

[REDACTED] one detects the use of a strategy aimed at making people believe that former First Lady Nadine Heredia Alarcón had established a total and absolute veto over the executives and companies of the Graña y Montero group, which is not true. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²³² See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 120.

[REDACTED]

155. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]²³⁶

157. “Similarly, if such a veto had existed, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

158. Ms. Yaya further considered [REDACTED]

[REDACTED]

[REDACTED]. From our perspective, it was important for the Graña y Montero group’s criminal activities to act through different companies in order not to reveal the accumulation of economic advantages in just one of them.”²³⁸

159. “Note also that [REDACTED]

[REDACTED]

160. “The version of Nadine Heredia’s veto has only been used by the executives of Graña y Montero S.A.A. themselves and by its former partners, [REDACTED]

[REDACTED]

²³⁷ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 55.

²³⁸ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 56.

[REDACTED]

[REDACTED]

161. [REDACTED]

[REDACTED]

162. “Consequently, the entire strategy and the ensuing actions approved by the evaluation committee and PeruPetro’s Board to favor Graña y Montero Petrolera S.A. were the product of a strategy of capture of public officials using the power gained through the meetings held with former First Lady Nadine Heredia Alarcón.”²⁴²

163. “We consider it no coincidence—and it is surprising that the witness Isabel Tafur Marín did not disclose it—that on October 24, 2013, she was visited by the shareholder of Graña y Montero Petrolera S.A., Francisco Dulanto Swayne, while she was serving as Advisor to the Ministry of Energy and Mines, the entity that issued the Annual Hydrocarbon Reserves Book published two months after that visit.”²⁴³

164. [REDACTED]

[REDACTED]

²⁴⁰ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 58.

²⁴² See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 60.

²⁴³ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 61.

[REDACTED]

[REDACTED]²⁴⁴

165. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

166. And so, logic follows that, in reality, there was no poor relationship between Nadine Heredia and the Grañas. Indeed, as is clear *infra*, the former First Lady granted the Grañas (and others) a meeting on April 28, 2014, before the publication of the Bidding Terms for the public tenders for Blocks III and IV of PeruPetro, [REDACTED]

Moreover, [REDACTED]

[REDACTED]

[REDACTED]

²⁴⁴ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 62.

²⁴⁶ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 142; [REDACTED]

accept the allegations of fact as true and then assess whether those alleged facts, if proved, would lead to a violation of the relevant treaty. Once the claimant or party seeking to rely on certain facts has satisfied its burden, the burden is then shifted onto the other party to defend its arguments with its own evidence. In sum, there is a point when the claimant can be determined to have provided sufficient evidence to shift the burden to the respondent.²⁴⁹

172. As explained by the tribunal in *EDF (Services) Limited v Romania*:²⁵⁰ “[p]roving corruption is a challenging task in the absence of admission of liability by the accused person. It is therefore required that every effort be made by the party raising a charge of corruption to substantiate its claim. The party raising the charge has, indisputably, the burden of proof.”

173. The *Feldman v. Mexico* tribunal went on to hold that “[h]ere, the Claimant in our view has established a presumption and a prima facie case that the Claimant has been treated in a different and less favorable manner than several Mexican owned cigarette resellers, and the Respondent has failed to introduce any credible evidence into the record to rebut that presumption.”²⁵¹

174. Indeed, other tribunals have adopted a variation of the *Higgins* test by holding that claimants have the burden of proving their claims and the respondent state has the burden of proving their objections. In *Bernhard von Pezold and Others v. Republic of Zimbabwe*, the tribunal explained that:

“[T]he general rule is that the party asserting the claim bears the burden of establishing it by proof. Where claims and counterclaims go to the same factual issue, each party bears the burden of proof as to its own contentions. There is no general notion of shifting the burden of proof when jurisdictional objections are asserted. The [r]espondent in this case

²⁴⁹ See (CLA-121), Josefa Sicard-Mirabal and Yves Derains, Introduction to Investor-State Arbitration 198-199 (Kluwer Law International 2018).

²⁵⁰ See (CLA-120) *EDF (Services) Limited v Romania*, ICSID Case No. ARB/05/13 (Procedural Order No. 3), August 29, 2008, ¶ 28.

²⁵¹ See (CLA-168) *Marvin Feldman v. Mexico*, ICSID Case No. ARB(AF)/99/1, Award, December 15, 2002, ¶ 177.

therefore bears the burden of proving its objections. Conversely, the [c]laimants must prove any facts asserted in response to the [r]espondent's objections and bear the overall burden of establishing that jurisdiction exists."²⁵²

175. Accordingly, applying the *Higgins* test here, Peru has the burden of proving each and every one of their jurisdictional objections to refute Claimant's jurisdictional evidence as presented together with his Statement of Claim,²⁵³ and it has failed to do so.

176. Even under an application of the standard of proof for corruption claims, Peru has failed to meet its burden.

177. Indeed, most tribunals have agreed that direct evidence of corruption is only available in a few unique cases and that corruption may be proved by circumstantial evidence that establishes with "reasonable certainty" the alleged corruption. In *Metal Tech v. Uzbekistan*,²⁵⁴ the various forms of evidence which led the tribunal to find corruption were circumstantial in nature. There, to prove corruption, the parties disagreed on the burden and standard of proof applicable to allegations of corruption. While the claimant contended that the corruption alleged by Uzbekistan must be proved by "clear and convincing evidence," Uzbekistan posited that the corruption may be proved through "prima facie or circumstantial evidence."²⁵⁵ The tribunal disagreed holding that circumstantial evidence was sufficient:

"[T]he Tribunal will determine on the basis of the evidence before it whether corruption has been established with reasonable certainty. In this context, [the Tribunal] notes that corruption is by essence difficult to

²⁵² See (CLA-91), *Bernhard von Pezold and Others v Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, ¶ 174 (Julio 28, 2015).

²⁵³ See SoC on Jurisdiction.

²⁵⁴ See *Metal-Tech LTD. v. The Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, ¶ 243 (CLA-62); see also C. Lamm et. al, *Fraud and Corruption in International Arbitration* (Liber Amicorum Bernardo Cremades, 2010), pp. 702-703 (CLA-103). Indeed, "in a survey of twenty-five arbitral awards regarding bribery, only five tribunals ruled that 'clear and convincing' evidence was needed. . . to declare the agreement invalid because of corruption [...] Professor Crivellaro surveyed twenty-five arbitral awards involving bribery and corruption charges and concluded that arbitrators frequently rely on indirect evidence of corruption when credible allegations of corruption have been made."

²⁵⁵ *Id.* at ¶ 228.

*establish and that it is thus generally admitted that it can be shown through circumstantial evidence.*²⁵⁶

178. The *Metal Tech* tribunal provided additional helpful reasoning on the burden of corruption:

“While the debate about standards of proof and presumptions is an interesting one, the Tribunal finds that **it does not require the application of the rules on burden of proof or presumptions to resolve the present dispute.** In this case, facts emerged in the course of the arbitration. Because those facts raised suspicions of corruption, the Tribunal required explanations.”²⁵⁷

“The payment of such substantial sums having been admitted, the Tribunal considered it its duty to inquire about the reasons for such payment. First, at the January Hearing itself, the Tribunal observed that, given the disclosure of facts unknown until then, it needed more information from the Parties. In the exercise of its *ex officio* powers under Article 43 of the ICSID Convention, the Tribunal therefore invited the Parties in PO 7 to provide that information. In PO 10, the Tribunal once again exercised its *ex officio* powers to call for additional testimony and evidence.”²⁵⁸

A similar situation arose in *World Duty Free v. Kenya*. There, an ICSID arbitral tribunal was called on to decide a claim brought against Kenya for not fulfilling an agreement for the construction, maintenance and operation of duty free complexes at Nairobi and Mombasa airports. Kenya argued that the agreement had been procured by paying a bribe to the then President of Kenya, and, therefore, that the agreement was illegal and could not be enforced. The CEO of the Claimant himself admitted that he had handed over the equivalent of USD 2 million in cash to the President and others. The *World Duty Free* tribunal (as the Tribunal did here) invited the parties to present additional submissions and evidence on the issue of corruption. Faced with these circumstances, the *World Duty Free* tribunal noted that “this is not a case which turns on legal presumptions, statutory

²⁵⁶ See (CLA-62) *Metal-Tech LTD. v. The Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, ¶ 243.

²⁵⁷ See (CLA-62) *Metal-Tech LTD. v. The Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, ¶ 239.

²⁵⁸ See (CLA-62) *Metal-Tech LTD. v. The Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, ¶ 241.

deeming provisions or different standards of proof [...]. Indeed, the decisive evidential materials came from the [c]laimant itself.”²⁵⁹

“As in *World Duty Free*, the present **factual matrix does not require the Tribunal to resort to presumptions or rules of burden of proof** where the evidence of the payments came from the Claimant and the Tribunal itself sought further evidence of the nature and purpose of such payments. Instead, the Tribunal will determine on the basis of the evidence before it **whether corruption has been established with reasonable certainty**. In this context, it notes that corruption is by essence difficult to establish and that it is thus generally admitted that it can be shown through **circumstantial evidence**.”²⁶⁰

179. In *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, the tribunal explained:

The Tribunal accepts the Claimants’ submission. It is common in most legal systems for serious allegations such as fraud to be held to a high standard of proof. The same is the case in international proceedings, as can be seen in the cases cited by Claimants, among them the Award of the ICSID Tribunal in *Wena Hotels*. Egypt’s standard of “clear and convincing evidence,” that being somewhere between the traditional civil standard of “preponderance of the evidence” (otherwise known as the “balance of probabilities”), and the criminal standard of “beyond reasonable doubt.”²⁶¹

180. In *Getma International and others v. Republic of Guinea*, the tribunal concluded that:

“... there are no valid precedents for Claimants do, that the level of proof required be higher for contending, as the must corruption than for other deeds. Therefore, it shall verify below whether the evidence submitted by the Respondent is clear and convincing and if it can provide this Tribunal with a reasonable certainty that the Concession Agreement was obtained by the active corruption of Getma International.”²⁶²

²⁵⁹ See (CLA-62) *Metal-Tech LTD. v. The Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, ¶ 242 (internal citations omitted).

²⁶⁰ See (CLA-62) *Metal-Tech LTD. v. The Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, ¶ 243.

²⁶¹ See (CLA-171) *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award (1 June 2009), ¶ 326 (internal citations omitted).

²⁶² See (CLA-175) *Getma International and others v. Republic of Guinea*, ICSID Case No. ARB/11/29, Award (16 August 2016), ¶ 184.

181. In *Union Fenosa Gas, S.A. v. Arab Republic of Egypt*,²⁶³ the tribunal explained the standard of proof as follows:

“The first feature is the legal burden and standard of proof for these allegations of corruption against the Claimant. As the party making these allegations, the Respondent bears the legal burden of proof. As to the standard of proof, although these allegations amount to serious criminal misconduct, the Tribunal considers that the standard of proof remains “**the balance of probabilities**.” As has long been recognised, corruption is rarely proven by direct cogent evidence; but, rather, **it usually depends upon an accumulation of circumstantial evidence. Circumstantial evidence of corruption is as good as direct evidence in proving corruption. There is no reason in this arbitration, which is not a criminal proceeding, to impose a higher standard of proof: see the *Libananco* award (2011).**”

182. In *Libananco v. Turkey*, the tribunal established that, without more, allegations of fraud do not require a *per se* application of a heightened standard of proof:

“In relation to the Claimant’s contention that there should be a heightened standard of proof for allegations of “fraud or other serious wrongdoing”, the Tribunal accepts that fraud is a serious allegation, **but it does not consider that this (without more) requires it to apply a heightened standard of proof.** While agreeing with the general proposition that “*the graver the charge, the more confidence there must be in the evidence relied on*” (see paragraph 117(a) above), **this does not necessarily entail a higher standard of proof.** It may simply require more persuasive evidence, in the case of a fact that is inherently improbable, in order for the Tribunal to be satisfied that the burden of proof has been discharged.”²⁶⁴

²⁶³ See (CLA-170) *Union Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No ARB/14/04, Award (31 August 2018), ¶ 7.52.

²⁶⁴ See (CLA-169) *Libananco v. Turkey*, ICSID Case No. ARB/06/8, Award, 2 September 2011, ¶ 125.

183. In the alternative, this Tribunal can consider the red flags or connecting the dots approaches seen in *Spentex*²⁶⁵ and *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia*,²⁶⁶ respectively.²⁶⁷

184. “Parties involved in bribery and corruption in international commerce invariably hide their unlawful dealings under the cover of a seemingly legitimate contract such as an agency or consultancy agreement.”²⁶⁸ “Known as ‘red flags’, such circumstances relate, *inter alia*, to the identity of the parties (typically state or publicly-owned entities whose real owners are difficult to identify), the location of the parties' dealings (in a country or a sector prone to corruption), remuneration (timing, excessively high rates of commission, payments overseas), the services to be provided (ill-defined and intangible), the parties' business activity (no evidence of real or prior activity, lack of qualified personnel and actual offices).”²⁶⁹

185. “Despite continuing efforts at both national and international levels, corruption remains a serious problem in commerce worldwide. The number of contracts, especially in the public sector, that have been concluded by means of corruption - be it through bribery of the government officials responsible for awarding the contract, by awarding contracts to companies whose beneficial owners are those very government officials or members of their families, or some

²⁶⁵ See (CLA-176).

²⁶⁶ See (CLA-177) *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, August 27, 2019, ¶¶ 669, 670, 723.

²⁶⁷ See (CLA-173) Approaches of tribunals on the standard of proof are far less consistent. Although many tribunals applied the clear and convincing evidence standard, a significant number applied a lower standard of reasonable certainty or balance of probabilities. (Kryvoi, Yarik and Godhe, Aleksander, Enhancing Anti-Corruption via Investment Arbitration: From Red Flags to Due Diligence (October 27, 2024). *Journal of International Dispute Settlement*, 2024. Pag. 6).

²⁶⁸ See (CLA-115) Using Red Flags to Prevent Arbitration from Becoming a Safe Harbour for Contracts that Disguise Corruption, Special Supplement 2013: Tackling Corruption in Arbitration, ICC, p. 15.

²⁶⁹ See (CLA-115) Using Red Flags to Prevent Arbitration from Becoming a Safe Harbour for Contracts that Disguise Corruption, Special Supplement 2013: Tackling Corruption in Arbitration, ICC, p. 15.

other form of corruption - is considerable. Bribes paid to government officials in such situations sometimes amount to huge sums of money.”²⁷⁰

186. “If red flags are present too, the tribunal could make a procedural presumption that the contract is a cover-up for a bribe, until and unless the party relying on the agency contract proves that it is a legitimate transaction.”²⁷¹

187. In sum, in alleging corruption, Amorrortu “simply” needs to demonstrate to the tribunal that there are a sufficient number of red flags present in the case.”²⁷² “The burden of proof will then be transferred to the other party, which will be expected to demonstrate that the contract is legitimate. If the evidence it presents in support of legitimacy is insufficient, the tribunal may conclude that the agency contract is, in fact, a cover-up for bribery.”²⁷³

189. Now, Respondent raises five jurisdictional objections, which are addressed in turn: (i) that Amorrortu’s claim was time-barred when submitted; (ii) that Amorrortu is not entitled to the protection of the USPTPA because his Peruvian nationality was his dominant and effective nationality at the time of the breach; (iii) that Amorrortu did not have a protected investment; (iv) that the disputed measures are not attributable to Peru; and (v) that there is no connection between the Treaty breaches and Amorrortu’s damages.

²⁷⁰ See (CLA-115) Using Red Flags to Prevent Arbitration from Becoming a Safe Harbour for Contracts that Disguise Corruption, Special Supplement 2013: Tackling Corruption in Arbitration, ICC, p. 15.

²⁷¹ See (CLA-115) Using Red Flags to Prevent Arbitration from Becoming a Safe Harbour for Contracts that Disguise Corruption, Special Supplement 2013: Tackling Corruption in Arbitration, ICC, p. 24.

²⁷² See (CLA-115) Using Red Flags to Prevent Arbitration from Becoming a Safe Harbour for Contracts that Disguise Corruption, Special Supplement 2013: Tackling Corruption in Arbitration, ICC, p. 24.

²⁷³ *Id.*

190. For the foregoing reasons, with respect to each of these objections, Respondent has failed to carry its burden.

b. *Res Judicata* estops Peru from arguing that a Direct Negotiation Procedure was not commenced

191. Peru seeks to relitigate that the Baspetro's Proposal started direct negotiations, hoping for a different result. Nevertheless, at the threshold, Peru is estopped from making this argument in this Arbitration because the matter is *res judicata* pursuant to the Final Partial Award issued in *Amorrortu I*, a PCA case comprised of a renowned tribunal panel (Judge Ian Binnie, CC, QC, Presiding Arbitrator; Prof. Bernard Hanotiau; and Mr. Toby Landau, QC).²⁷⁵

192. Indeed, as a preliminary matter, Peru is estopped from arguing, as it does in its Statement of Defense, that “Baspetro’s alleged proposal did not start direct negotiations with PeruPetro.”²⁷⁶

193. As Peru well knows, the tribunal in *Amorrortu I* bifurcated that proceeding²⁷⁷ and decided on two of the objections raised by Peru there as preliminary questions.²⁷⁸ For purposes of this Arbitration, only one of those objections is relevant: Peru’s objection under Article 10.20.4 of the Treaty. Importantly here, and fatal to Peru’s claim that Amorrortu does not have a protected investment, is the fact that the tribunal in *Amorrortu I* dismissed as a matter of first impression the

²⁷⁵ See generally (CLA-117) *Amorrortu I*, Final Partial Award; (CLA-195) *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB_15_50, 20 March 2017; (CLA-196) *Apotex v. United States*, ICSID Case No. ARB(AF)_12_1, 25 August 2014; (CLA-197) *Victor Pey Casado, Coral Pey Grebe, “President Allende” Foundation v. Republic of Chile*, PCA Case No. 2017-30, 28 November 2019; (CLA-198) *Iberdrola Energía, S.A. v. Republic of Guatemala*, PCA Case No. 2017-41, 24 August 2020; (CLA-199) *Caratube International Oil Company LLP, Devincci Salah Hourani v. Republic of Kazakhstan*, ICSID Case No. ARB_13_13, 27 September 2017; (CLA-200) *Tembec Inc. et al. v. United States of America*, Wolters Kluwer UNCTAD ID UT-143, 14 August 2008.

²⁷⁶ See SoD, ¶ 260-267.

²⁷⁷ See (CLA-118) *Amorrortu I*, Decision on Bifurcation, January 21, 2021.

²⁷⁸ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022.

objection that raised the exact same argument that Peru offers to this Tribunal: that Amorrortu had not started Direct Negotiations with PeruPetro.²⁷⁹

194. Importantly, the *Amorrortu I* tribunal “[t]aking into consideration the[] allegations of fact, ... must determine whether, as contended by the Respondent, Mr. Amorrortu acquired no rights under either the Direct Negotiation Procedure or the International Public Tender procedure.”²⁸⁰

195. Noting that both legal experts for Amorrortu (Mr. Quiroga) and for Peru (Mr. Carlos Raul Jose Vizquerra Perez Albela, the same legal expert in this case) agreed that a Direct Negotiation is started with an applicant’s Letter of Interest, the tribunal in *Amorrortu I* found it “clear that Mr. Amorrortu’s letter of May 28, 2014 expressed ‘an interest in conducting exploration and exploitation activities’ within Blocks III and IV.”²⁸¹

196. More specifically, the *Amorrortu I* tribunal also found:

- a. “The [t]ribunal is obliged for present purposes to accept Mr. Amorrortu’s factual description of events as correct, and based on those facts, it would be open to the [t]ribunal 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. It would be open to the [t]ribunal to conclude, based on the facts stated by Mr.

²⁷⁹ See SoD, ¶¶ 260-271; (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶¶ 161, 162, 165, 166, 170, 171, 174.

²⁸⁰ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶ 140.

²⁸¹ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶ 149.

Amorrortu, that he stood in a different position *vis-à-vis* the Respondent than other oil companies contemplating application because of the express instruction of Mr. Ortigas to participate in the very process that failed him.”²⁸²

- b. “In the [t]ribunal’s view, the President had at least the ostensible authority to bind the company. He was the President, the corporation’s most senior officer, and Chairman of the Board of Directors. It would be open to the [t]ribunal to find that Mr. Ortigas was PeruPetro’s “directing mind” and, as such, in a position to bind the company. The Respondent argues that the alleged “instructions” were contrary to the regulatory requirements. At this stage, the [t]ribunal does not have the benefit of Mr. Ortigas’ recollection of what he said or why he said it. On the present record, Mr. Amorrortu was entitled to rely on “the instructions” and representations by the President of PeruPetro and did rely on them by submitting a proposal within seven days which Mr. Amorrortu says ‘complied with all the requirements as instructed by Ortigas.’”²⁸³
- c. “In the [t]ribunal’s 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.”²⁸⁴

²⁸² See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶ 155.

²⁸³ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶ 158.

²⁸⁴ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶ 170.

- d. “In the [t]ribunal’s view, it is unnecessary to address the alleged “corrupt scheme” on this preliminary objections application. It is sufficient to conclude that, according to the Direct Negotiation Procedure 8, for which Mr. Amorrortu says he was “instructed” by Mr. Ortigas to make application, a number of initial steps were required in response to the “letter of interest” (including the “legal-technical-economic” analysis referenced by both Mr. Ortigas and Mr. Vizquerra) and none of these steps was taken by PeruPetro.”²⁸⁵

197. Accordingly, the tribunal in *Amorrortu I* squarely dealt with the following arguments raised by Peru in that case, which are also raised by Peru in this matter, and should be discarded in their entirety:

- a. That Amorrortu did not comply with preconditions for the Direct Negotiation Procedure to commence.²⁸⁶
- b. That the Direct Negotiations Procedure never actually began.²⁸⁷
- c. Claimant’s right to a contract (free of corruption) with PeruPetro in relation to the Direct Negotiations process.²⁸⁸
- d. That PeruPetro’s President, Mr. Ortigas did not have the authority to give the instructions alleged by Amorrortu.²⁸⁹

198. It is fatal to Peru’s arguments concerning the commencement of the Direct Negotiation Procedure, and therefore, tied to Amorrortu’s protected investment that these key

²⁸⁵ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶ 154.

²⁸⁶ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶¶ 72-76.

²⁸⁷ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶¶ 77-83.

²⁸⁸ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022, ¶¶ 84-88.

²⁸⁹ See (CLA-117) *Amorrortu I*, Partial Award on Jurisdiction, August 5, 2022.

issues were fully briefed and argued at a public hearing on August 9, 2021,²⁹⁰ with the support of expert and witness testimony.

199. Leading up to the hearing, Claimant and Respondent engaged in extensive briefings, supported by expert reports. Claimant, on the one hand, submitted 3 reports by Peruvian attorney Mr. Quiroga.²⁹¹ This was in addition to Mr. Quiroga's report submitted with Amorrortu's Statement of Claim.²⁹²

200. Peru relied upon expert Mr. Vizquerra in its filings supporting its preliminary objection.²⁹³ Mr. Vizquerra's Report dated March 15, 2021, addressed three issues: (i) **did Amorrortu start a direct negotiation process with PeruPetro S.A. (PeruPetro), a state company** under private law in charge of promoting, negotiating, signing and supervising license agreements for the Exploration and Operation of Hydrocarbons in Peru?; (ii) **did Amorrortu obtain the qualification of PeruPetro as an oil company** and, by virtue of such qualification, acquire the right to be awarded a license agreement?; and (iii) if Amorrortu had started the process of direct negotiation for the license agreements for the Operation of Hydrocarbons in Blocks III and IV with PeruPetro, **would Amorrortu have the right to be awarded the license agreements?**²⁹⁴

²⁹⁰ See (CLA-122) *Amorrortu I*, Procedural Order No. 4 regarding Hearing on Preliminary Objections, dated July 20, 2021; (CLA-123) Article 6 of the UNCITRAL Transparency Rules.

²⁹¹ See (CLA-124) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Anibal Quiroga Leon dated September 9, 2020; (CLA-125) Respuesta a Informe de Experto de la Demandada Elaborada por Anibal Quiroga León, dated April 26, 2021; (CLA-126) Rejoinder to Defendant's Reply Report prepared by Anibal Quiroga Report Leon dated June 21, 2021.

²⁹² See (CLA-124) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Anibal Quiroga Leon dated September 9, 2020.

²⁹³ See (CLA-127) *Amorrortu I*, PCA Caso No. 2020-11, Respondent's Submission on Preliminary Objections; See (CLA-128) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Carlos Raul Jose Vizquerra Perez Albela dated March 15, 2021; See (CLA-129) *Amorrortu I*, PCA Caso No. 2020-11, Replica al Informe de Respuesta Elaborado por Anibal Quiroga Leon of Carlos Raul Jose Vizquerra Perez Albela dated May 24, 2021.

²⁹⁴ See (CLA-128) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Carlos Raul Jose Vizquerra Perez Albela dated March 15, 2021, ¶3.

201. As to the first issue in Mr. Vizquerra’s report, he concluded that “[r]egarding Amorrortu and PeruPetro, I am of the opinion that the direct negotiation process for the signing of the license agreements for the Operation of Hydrocarbons in Block III and in Block IV was not initiated since: (i) PeruPetro did not grant Baspetro the qualification as an oil company, a qualification that is a prior and *sine qua non* requisite for initiating direct negotiations and (ii) the areas for the license agreements for the Operation of Hydrocarbons in Block III and in the Block IV were not available for direct negotiation.”²⁹⁵ Mr. Vizquerra further explained that [i]ndeed, assuming that it was true that on May 28, 2014, Amorrortu submitted a request for qualification, specifically, this request did not meet the requirements to even be considered, in accordance with Article 9 of the Regulations for the Qualification of Petroleum Companies. PeruPetro was not then obliged to respond within 10 days, as Amorrortu alleges. The absence of a response from PeruPetro, 10 days after receipt of the proposal, does not imply, then, the approval of the qualification certificate which is a *sine qua non* requirement for such negotiation to take place.”²⁹⁶

202. On the second issue, Mr. Vizquerra argued that: [l]ikewise, assuming that it was true that on May 28, 2014, Amorrortu presented Baspetro’s proposal to begin direct negotiation for the license agreements for the Operation of Hydrocarbons in Block III and in Block IV, PeruPetro was prevented, according to its own procedures, from negotiating these contracts directly with Amorrortu because: (i) Baspetro was not qualified as a Peruvian oil company, which, as we have indicated, is an essential prerequisite for the start of the negotiation, and (ii) the areas requested by Amorrortu were not available to be considered in direct negotiations because the

²⁹⁵ See (CLA-128) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Carlos Raul Jose Vizquerra Perez Albela dated March 15, 2021, ¶ 6.

²⁹⁶ See (CLA-128) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Carlos Raul Jose Vizquerra Perez Albela dated March 15, 2021, ¶ 7.

PeruPetro Executive Board, in its capacity as a collegiate body duly empowered to do so, had already formally decided to carry out a selection process as the form contracting to choose the new contractor for those same blocks. PeruPetro's decision to carry out a selection process as a form of contracting to choose the new contractor for a license agreement excludes any and all possibility of conducting a direct negotiation process."²⁹⁷

203. As to the third question, Mr. Vizquerra concluded that: "[i]n any case, PeruPetro's granting of qualification as an oil company does not generate any right for the qualified company, other than being able to participate in a direct negotiation process or selection process for a requested contract area or open to competition, respectively."

204. In other words, qualification alone does not imply that the qualified oil company is already considered a contractor or that PeruPetro is obliged to sign a licensing agreement with said company. Therefore, even in the event that PeruPetro had awarded Baspetro qualification as an oil company, this did not mean the Amorrortu acquires any right to sign license agreements for the requested areas."²⁹⁸ Further, Mr. Vizquerra suggested that "[e]ven if the negotiating parties have reached an agreement regarding the terms and conditions of the license agreement projects in a direct negotiation process and have also obtained the respective approval for them from the PeruPetro Executive Board; such draft agreements are subject thereafter to review and approval (or rejection) by the Ministry of Energy and Mines and the Ministry of Economy and Finance. Consequently, the mere conclusion of the direct negotiation procedure at the level of the PeruPetro

²⁹⁷ See (CLA-128) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Carlos Raul Jose Vizquerra Perez Albela dated March 15, 2021, ¶ 8.

²⁹⁸ See (CLA-128) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Carlos Raul Jose Vizquerra Perez Albela dated March 15, 2021, ¶ 9.

negotiating committed and executive board does not guarantee the signing of the license agreement.”²⁹⁹

205. Of course, as the record reflects, the tribunal in *Amorrortu I* did not end up siding with Respondent and Mr. Vizquerra on these issues, making critical findings of fact and law on the very same issues being raised in this Arbitration by Peru.³⁰⁰ Now, based upon the *Amorrortu I* tribunal’s findings, Claimant’s arguments on these issues was found to be legitimate.

206. Mr. Quiroga’s reports at the jurisdictional phase expressly addressed the issues discussed in Peru’s expert report, Mr. Vizquerra, namely: (i) determine whether Amorrortu commenced the Direct Negotiation Procedure with PeruPetro; (ii) determine whether Amorrortu obtained the qualification by PeruPetro as a petroleum company, and whether, in light of said qualification, acquired the right to the contracts for Lots III and IV; determine whether Amorrortu, having initiated the process of Direct Negotiation for the contracts for the exploitation of Lots III and IV, had a right to be awarded the licensing contracts for said Lots.³⁰¹

207. Mr. Quiroga’s conclusions on these topics were as follows:

- i. “The joint application of Articles 9 and 14 of the Regulations for the Qualification of Oil Companies shows that the ten (10) day terms for the evaluation of the request and for the configuration of the obligation to grant the qualification of the oil company are calculated from the date of submission of the request for qualification by the interested party, as a

²⁹⁹ See (CLA-128) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Carlos Raul Jose Vizquerra Perez Albela dated March 15, 2021, ¶ 10.

³⁰⁰ See (CLA-117) *Amorrortu I*, ¶113- 155.

³⁰¹ See (CLA-128) *Amorrortu I*, PCA Caso No. 2020-11, Expert Report of Carlos Raul Jose Vizquerra Perez Albela dated March 15, 2021 ; (CLA-125) Respuesta a Informe de Experto de la Demandada Elaborada por Anibal Quiroga León, dated April 26, 2021 ¶1.

guarantee that they will not have to wait indefinitely for a ruling from the Administrative Authority.”³⁰²

- ii. “The Administrative Authority must evaluate the request for qualification and formulate the observations it deems pertinent within ten (10) days of the filing of the request; otherwise, the oil company will have the right to obtain the qualification and the authority will be under obligation to grant it. Thus, based on the application of Articles 9 and 14 of the Regulations for the Qualification of Oil Companies, the effects of the positive fictitious qualification, referred to in our Expert Report, and the obligation to grant the qualification, mentioned in the Response Report, are concluded, without there being any contradiction between the two.”³⁰³
- iii. “Notice of the International Bidding for Lots III and IV was given on July 14, 2014, i.e., after May 28, 2014, the date on which Amorrortu’s negotiation proposal was submitted; a situation expressly recognized by the statement of the General Manager of PERUPETRO S.A. herself, Mrs. Isabel Mercedes Tafur Marín, in Letter No. GGRL- CONT-GFCN-0125-2014, which is quoted in the Reply Report. Therefore, as of the date of submission of said proposal, there was no legal or factual impediment to requesting the initiation of a direct negotiation to obtain the exploitation license for said lots.”³⁰⁴

³⁰² See (CLA-126) Rejoinder to Defendant’s Reply Report prepared by Anibal Quiroga Report Leon dated June 21, 2021, ¶ 3.

³⁰³ See (CLA-126) ¶ 4.

³⁰⁴ See (CLA-126) ¶ 5.

- iv. “The Resolutions of the Board of Directors of PERUPETRO S.A. referred to in the Reply Report only express an intention to carry out selection processes on Lots III and IV. This cannot be considered a manifestation of a willingness to call for a specific international public bidding process, with the minimum publication requirements that this demands, and, therefore, does not represent a legal impediment for a company interested in obtaining the concession of a hydrocarbon exploitation license to request the initiation of a direct negotiation in good faith. This is the case in particular if one considers that these Board of Directors Resolutions are cited in the recitals of the Supreme Decrees mentioned above and not in the regulatory part itself.”³⁰⁵
- v. “The document submitted by Amorrortu on May 28, 2014, via email and in physical form, constitutes a proposal for direct negotiation that, in accordance with the requirements of the principle of due administrative procedure and contractual good faith, PERUPETRO S.A. should have heeded in strict compliance with the rules applicable to the concession of the license for the exploitation of hydrocarbons through direct negotiation, evaluating the meeting of the requirements demanded for this purpose as indicated after conversations held with the President himself, Mr. Luis Enrique Ortigas Cúneo, and continued also with the General Manager of PERUPETRO S.A., Mrs. Isabel Mercedes Tafur Marín.”³⁰⁶

³⁰⁵ See (CLA-126) ¶ 6.

³⁰⁶ See (CLA-126) ¶ 7.

- vi. “At no time did Amorrortu waive the direct negotiation procedure initiated with the filing of his request on May 28, 2014. On the contrary: he expressly opposed the continuation of the processes of International Public Bidding No. PERUPETRO-001-2014-LOT III and International Public Bidding No. PERUPETRO-001- 2014-LOT IV, obtaining no response whatsoever.”³⁰⁷
- vii. “There are solid normative and factual reasons to establish that the document submitted by Amorrortu on May 28, 2014, indisputably constituted a direct negotiation proposal that should have been processed by PERUPETRO S.A. in compliance with the rules of due administrative procedure and in application of the principle of good faith in contractual negotiation, resulting in full application of the provision contained in Article 1362 of the Peruvian Civil Code, which – together with Article 1361 of the same legal system – enshrines in law the *pacta sunt servanda* principle (*they are binding insofar as they have been expressed therein, and it must be presumed iuris tantum that what they state corresponds to the common will of the parties, and must be negotiated, entered into, and complied with in accordance with the rules of good faith and common intention of the parties*).”³⁰⁸

208. Now, Mr. Vizquerra’s Report dated April 29, 2024, in support of Peru’s Statement of Defense in this Arbitration raises the very issues that were previously briefed and adjudicated

³⁰⁷ See (CLA-126) ¶ 8; see also (C-72).

³⁰⁸ See (CLA-126) ¶ 8; see also (C-72).

upon, and introduces no new facts or law.³⁰⁹⁻³¹⁰ This new report is a quintessential second bite at the proverbial apple and for the reasons included *infra*, should be disallowed.

- In April of 2014, PeruPetro’s Board of Directors allegedly determined to conduct a selection process for Blocks III and IV. However, the selection process is not inconsistent with the Direct Negotiation Procedure and Process. After all, a direct negotiation process is one of the two selection processes authorized by law for contracts granting rights over Peru’s oil fields.³¹¹ Peru has failed to cite any authority suggesting that a mere declaration by the Board of Directors of PeruPetro of its intention to commence a selection process for Blocks III and IV renders these blocks unavailable for direct negotiation and divests Ortigas of his authority to request the submission of a direct negotiation proposal. The fact is that nothing in PeruPetro’s internal regulations prevented Ortigas from instructing Amorrortu to submit a direct negotiation proposal. Therefore, Ortigas’s instructions, statements, and implicit promises to Amorrortu were made within Ortigas's scope of authority and bind Peru.

209. As addressed by the tribunal in *Waste Management, Inc. v. United Mexican States* (“*Waste Management I*”),³¹² the first proceeding (*Waste Management I*)³¹³ had *res judicata* implications over the issues the first tribunal had considered. The tribunal explained that “a judicial

³⁰⁹ See **RER-02 [Vizquerra]** ¶¶ 4-106.

³¹⁰ See **(CLA-165)** *Bacilio Amorrortu v. The Republic of Peru, PCA Case No. 2020-11*, Claimants Post Hearing Brief; **(CLA-166)** *Bacilio Amorrortu v. The Republic of Peru, PCA Case No. 2020-11*, Respondents Post Hearing Brief on Peru’s Preliminary Objections; **(CLA-167)** *Bacilio Amorrortu v. The Republic of Peru, PCA Case No. 2020-11*, Hearing on Preliminary Objections; **(CLA-117)**.

³¹¹ See **(CLA-161)** Peru’s preliminary objections from *Amorrortu I*.

³¹² See **(CLA-028)** *Waste Management, Inc. v. United Mexican States* (“*Waste Management I*”), No. ARB(AF)/00/3.

³¹³ See **(CLA-130)** *Waste Management I*.

decision is only *res judicata* if it is between the same parties and concerns the same question as that previously decided.”³¹⁴⁻³¹⁵

210. *Res judicata* is a recognized principle of international law.³¹⁶ In *Amco v. Indonesia*, an award rendered under the auspices of ICSID, the tribunal acknowledged that:

The general principle announced in numerous cases is that a right, question or fact *distinctly put in issue and distinctly determined* by a court of competent jurisdiction as a ground of recovery, cannot be disputed.³¹⁷

211. The *res judicata principum* is widely respected. In the *Pious Fund* arbitration between the US and Mexico in 1902, the tribunal explained that:

[A]ll parts of the judgment or the decree concerning the points debated in the litigation enlighten and mutually supplement each other, and ... they all serve to render precise the meaning and the bearing of the dispositive (decisory part of the judgment) and to determine the points upon which there is *res judicata* and which thereafter can not be put in question.”³¹⁸

212. The approach enunciated by the *Amco* tribunal has been followed in numerous international arbitrations, including in *Postal Service in Danzig*,³¹⁹ *Chorzow Factory*,³²⁰ and the UK-French Continental Shelf case,³²¹ to name a few. Furthermore, the fact that the award in

³¹⁴ See (CLA-028) *Waste Management, Inc. v. United Mexican States* (“*Waste Management I*”), No. ARB(AF)/00/3 ¶15.

³¹⁵ Ultimately, because the Tribunal in *Waste Management I* dismissed the claim based on a lack of jurisdiction, rather than a decision on the merits, it did not “preclude a later claim before a tribunal which has jurisdiction.” *Waste Management, Inc. v. United Mexican States* (“*Waste Management I*”), No. ARB(AF)/00/3 at 16. The tribunal also noted that there may be instances where issues deal with jurisdiction and merit. In those cases, “a decision on a particular point constitutes *res judicata* as between the parties to that decision if it is a necessary part of the eventual determination and is dealt with as such by the tribunal.” *Id.* ¶ 18.

³¹⁶ See (CLA-131) *Amco v. Indonesia* (Resubmission: Jurisdiction).

³¹⁷ See (CLA-132) 89 International Law Reports 552 at 560; see (CLA-132), *Orinoco Steamship Company*, 168 Sup. Ct. Rep. 1.

³¹⁸ See (CLA-133) J.B. Scott, Hague Court Reports (1916), 1 at 5.

³¹⁹ See (CLA-134) PCJ Rep. Ser. B, No. XI, p. 30.

³²⁰ See (CLA-135) PCJJ Rep. Ser. A, p. 20.

³²¹ See (CLA-136) 54 ILR 139 at 170.

question is clearly a “determination by the [t]ribunal,” is satisfactory, and renders that a particular finding be executed unnecessary.³²²

213. Here, then, *res judicata* encompasses the points distinctly “addressed and determined” by the *Amorrortu I* tribunal.³²³

214. Accordingly, the tribunal’s ruling in *Amorrortu I* are binding regarding the issues analyzed and raised by Peru in those proceedings, which was an ISDS dispute against Amorrortu with the same claims raised and addressed in this section concerning Amorrortu’s protected investment under the Treaty. Peru cannot simply ignore the Partial Award in *Amorrortu I*, and Amorrortu should not have to prove the same set of facts because the same are *res judicata* in this Arbitration.

215. In *Iberdrola v. Guatemala (II)*, the tribunal held that to establish *res judicata* in tribunals, triple identity is required. PCA Case No. 2017-41, Final Award, ¶ 272 (Aug. 2020). This test requires identity of parties, identity of the object, and identity of the cause of action or legal grounds between the first and second proceedings. *Id.* The ILA adds a fourth requirement: the prior award must be final, binding, and capable of recognition in the country where the tribunal of the subsequent arbitration proceedings has its seat. *Id.* at ¶ 273.

216. The *Iberdrola* tribunal held that *res judicata* applies in decisions declining jurisdiction if the denial was due to an invalid arbitration agreement or the subject matter was not covered. PCA Case No. 2017-41, Final Award, ¶ 266 (Aug. 2020). However, some jurisdictional

³²² See (CLA-137) Cf., the Dissenting Opinion of Judge Koretsky in South West Africa (Second Phase) (ICJ 1966), 37 ILR 243 at 486, citing, inter alia, Corfu Channel ICJ Rep. 1949, at 35, and US Nationals in Morocco ICJ Rep. 1952 at 213.

³²³ See (CLA-131) *Amco v. Indonesia* (Resubmission: Jurisdiction); see (CLA-132) 89 International Law Reports 552 at 560.

flaws are simply cured with the consequence that an award is not preclusive, such as not complying with a cooling-off period, or waiver. *Id.* at ¶ 267.

217. Furthermore, applying *res judicata* in a preliminary objection context on bifurcation, the *Windstream Energy v. Canada (II)* tribunal determined that it could apply when not intertwined with the merits, dispositive to all claims of the second arbitration, or are central to the determination of the allegedly new claims. PCA Case No. 2021-26, Procedural Order No. 2 (Decision on Bifurcation), ¶¶ 60-64, (Sept. 2022).

i. In any event, Amorrortu, through the Baspetro Proposal, did commence a direct negotiation with PeruPetro

218. In complete disregard for the decision of the tribunal in *Amorrortu I*, Peru again asserts that “Baspetro’s alleged proposal did not start direct negotiations with PeruPetro.”³²⁴ Nevertheless, as the tribunal found in *Amorrortu I*, the Direct Negotiations Procedure began but the Direct Negotiations Process did not, and this is Amorrortu’s claim.³²⁵

219. To this effect, as explained by Peru’s expert Mr. Vizquerra in *Amorrortu I*:³²⁶

Mr. Amorrortu also asserts that his “investment” includes (independently of his investment in Baspetro) the bundle of procedural rights he says he acquired as a result of his application for direct negotiation for blocks iii and iv. the USPTPA, according to his memorial, protects “any rights acquired by Amorrortu under Peruvian law, to wit: the right ... explicitly enumerated in the USPTPA ... to expand his investment [in Baspetro] through the direct negotiation process for the license contract to operate, maintain, and exploit blocks iii and iv.”

His application for direct negotiation was, he says, “instructed” by Mr. Luis Enrique Ortigas Cuneo, the president and CEO of PeruPetro as of May 22, 2014 on the basis of these “instructions” from Mr. Ortigas, Mr. Amorrortu contends that he acquired statutory rights to a process of direct negotiation through Baspetro for blocks.

³²⁴ See SoD, ¶¶ 260-267.

³²⁵ See (CLA-118) *Amorrortu I*, Decision on Bifurcation, January 21, 2021, ¶¶ 161-162.

³²⁶ See (CLA-128) RER-1 [Vizquerra]; (CLA-129) RER-2 [Vizquerra].

220. Peru's expert Vizquerra claims in this Arbitration that there was no direct negotiation process between PeruPetro and Baspetro for Blocks III and Blocks IV.³²⁷ According to Vizquerra, this is so because Baspetro did not submit an expression of interest according to applicable regulations and procedures, the areas of license contracts for the exploitation of hydrocarbons in Blocks III and IV were not available for direct negotiation since PeruPetro said publicly that it would be part of a selection process, and PeruPetro did not grant Baspetro a qualification as an oil company, which was a prerequisite for initiating direct negotiation.³²⁸

221. Now, there is no doubt that PeruPetro is a public entity.³²⁹ This characterization is relevant because it requires a level of transparency as a result of its public ownership, and the transparency was not afforded.³³⁰ PeruPetro was obliged to notify Baspetro if it did not qualify within 30 days from the date of receipt of the notification.³³¹

222. As set forth below in more detail, Amorrortu, on behalf of Baspetro, requested the initiation of direct negotiations for the exploitation of Blocks III and IV, a request that PeruPetro's organization failed to process, contravening Articles 117 and 118 of the Consolidated Text of Law 27444.³³² And, the request to initiate direct negotiation did confer on Baspetro the right to have its request evaluated and to have the qualification procedure initiated, not by the General Management, but by the Contracting Management, while the designated Working Committee should have undertaken Activity 13 to grant qualification or request any documents it considered missing or requiring clarification.³³³

³²⁷ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 204; (CLA-128) ¶¶ 33-51.

³²⁸ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶ 204; (CLA-128) ¶49.

³²⁹ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶¶ 204-208.

³³⁰ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶¶ 204-208.

³³¹ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶¶ 224.

³³² See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶¶ 209-213.

³³³ See CER-2 [Yaya], Monica Yaya's Second Expert Report, ¶¶ 228, 249.

223. As Amorrortu set forth in his Statement of Claim, his investment in Peru is comprised of a bundle of rights that arise out of his investment in the Baspetro enterprise and the rights that Baspetro acquired, under Peruvian law, to recover through Direct Negotiation the right to operate Block III (and IV).³³⁴

224. As Mr. Quiroga confirms, the Direct Negotiation process was indeed commenced.³³⁵ “As can be seen, neither in the Republic of Peru’s Reply nor in Tafur’s witness statement nor in Vizquerra’s expert report are there sufficient elements to establish, beyond a reasonable doubt, that diligent action by Amorrortu, Chairman of the Board of BASPETROL [], would have allowed him to realize that Lots III and IV were not available for direct negotiation for the granting of hydrocarbon exploitation licenses.”³³⁶

225. In sum the lack of fair treatment afforded to Amorrortu in the Direct Negotiation process is a violation of the Treaty, due process, and international investment law.³³⁷ This conclusion is reached based on the fact that there were deadlines and procedural timelines that were not met by PeruPetro.³³⁸ Amorrortu never received any legally grounded responses to his request for direct negotiation relating to Lots III and IV.³³⁹³⁴⁰

- Direct negotiation and public bidding conducted by PeruPetro are governed by principles of administrative law in Peru. Para. 4.12.
 - Meaning that it must conform to a long list of standards: *legality, due process, ex officio impulse, reasonableness, impartiality, presumption of*

³³⁴ See SoC, ¶ 177, 185.

³³⁵ See CER-2 [Quiroga] ¶ 3.29.

³³⁶ See CER-2 [Quiroga] ¶ 4.5.

³³⁷ See CER-2 [Quiroga] 4.11.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ Mr. Quiroga confirms that direct negotiation and public bidding conducted by PeruPetro are governed by principles of administrative law in Peru. See CER-2 [Quiroga] ¶ 4.12. This means that such processes must conform to a long list of standards: *legality, due process, ex officio impulse, reasonableness, impartiality, presumption of truthfulness, procedural conduct, celerity, efficiency, material truth, participation, simplicity, uniformity, predictability, and the privilege of subsequent controls. Id.* (emphasis added).

truthfulness, procedural conduct, celerity, efficiency, material truth, *participation*, simplicity, *uniformity*, *predictability*, and the privilege of subsequent controls. *Id.* (emphasis added).

1. Amorrortu was, through Baspetro, ready, willing, and able to operate Blocks III and IV

226. It is asinine for Peru to assert that “when it was time for PeruPetro to evaluate Baspetro, it could only see that it was a newly formed company with no track record and no consortium to back it up.”³⁴¹ PeruPetro, as Peru acknowledges, was the broker entrusted with, *inter alia*, promoting investment in hydrocarbons activities in Peru; negotiating and entering into contracts for the exploration and production of oil and gas with companies operating in Peru’s upstream sector (like Amorrortu’s established Propetsa and Provisa);³⁴² and collecting the royalties owed under the relevant contracts.³⁴³ Surely, if PeruPetro is worth its weight in gold and is a good and efficient broker, it knew or should have known of the long and proven trajectory of Amorrortu in the very region and Lot for which the Proposal was being submitted. Thus, while Baspetro was a newly formed company, it is not the case that it had “no track record.” Peru and PeruPetro know better.

227. Amorrortu is a proven and known petroleum expert.³⁴⁴ Amorrortu has been involved in providing maintenance and well services to oil companies operating in the Talara Basin through various Peruvian corporations since the 1970s. In 1990, his company, Propetsa, was government-certified to undertake oil exploration and exploitation as well as maintenance activities.³⁴⁵

³⁴¹ See SoD, ¶ 36; Also see RER-01 [NERA], ¶¶ 4, 54, 57, 59.

³⁴² See SoD, ¶¶ 13-15, 19, 35.

³⁴³ See SoD, ¶¶ 13-15.

³⁴⁴ See CWS-2 [Amorrortu] ¶¶ 17-27; (C-189) Swiss Bank Corporation acquires the debt of Amorrortu and Propetsa in 1995.

³⁴⁵ See CWS-2 [Amorrortu].

228. The Baspetro Proposal guaranteed: (a) local participation, known today as “local content” in the international oil community; (b) the direct benefit of the local populations of Talara, Negritos, San Francisco, San Pedro, Caleta San Pablo, Miramar, Vichayal, San Luis, Fortaleza, and Mirador areas; (c) the continuity of having a sustained and growing production of hydrocarbons of the aforementioned lots with the participation of a well-known International Oil Company; (d) an efficient care for the environment, and (e) sending a clear signal of confidence to the international oil community to achieve attracting to Peru very large oil companies.³⁴⁶

229. The Baspetro Proposal submitted at the instruction of then-President of Peru Petro Luis Ortigas would have included a Business Plan as the second step in the Process.³⁴⁷ The “objective of the Business Plan was to outline how Baspetro intended to develop Blocks 3 and 4 in the Talara Onshore Field. It proposes plans to manage the surface and subsurface risks, presents the preferred development scenario and forecasts for oil production and estimated operating costs.”³⁴⁸ Mr. Jose Zamalloa, an engineer in oil and gas is Amorrortu’s expert in oil and gas.³⁴⁹ In his Expert Report, Mr. Zamalloa analyses the below technical requirements of the Baspetro Proposal’s Business Plan:³⁵⁰

- i. Determine compliance of the information provided in terms of quality, structure of proposal, and adherence to International Standards for similar Bidding Documents.³⁵¹
- ii. Determine if it is compelling in terms of well-supported and accurate forecasts, predictions and estimates.
- iii. Determine if it is complete i.e. exhibits the key factors and thresholds that influence a company’s strategy on how to develop a Brown Oil Field. Detailed and consistent sequence of the main Engineering/Operational Stages of Field Development.

³⁴⁶ See (C-011); (C-183) Baspetro Proposal to Operate the Oil & Gas Blocks III & IV in Talara, North West Peru.

³⁴⁷ See CWS-2 [Amorrortu] ¶45-55; CWS-1[Francia]; CWS-1[Chaves].

³⁴⁸ See CER-1 [Zamalloa] ¶ 2.2; (C-11), pg. 9.

³⁴⁹ See generally CER-1 [Zamalloa].

³⁵⁰ See CER-1 [Zamalloa], ¶ 2.4.

³⁵¹ See CER-1 [Zamalloa], ¶ 3.4.

- iv. Compare the hypothetical Key Performance Indicators (Metrics) projected by Baspetro's Business Plan against the actual results attained by GMP (UNNA Energy) during the operation of Blocks III and IV in the period 2015-2024, including evaluation of:
 1. Number of New Drills.
 2. Average Annual Daily production rate (BOPD).
 3. Cumulative annual Production MM Bbl.
 4. Recovery Rate MM Bbl. the cumulative production as a percentage of the initial Reserves provided by Perupetro.
 5. Actual price of WTI crude oil versus Baspetro's production.
 6. Average Field Development Efficiency or Output efficiency, BOPD/new drill.
- v. Estimate the Legacy field production as of December 2014
 1. Create and analyse Historical Field Decline Curves.
 2. Match with the figures provided by Mr Dellepiane on his Fair Market Evaluation report.
 3. Estimate the oil production contribution from the New Drills and compare both the Baspetro's proposal and the GMP's actual operation.
 4. Create Charts to compare proposals versus actual results and evaluate Baspetro's Business Plan for compelling and accurate predictions.

230. Mr. Zamalloa concludes that the Baspetro Proposal and Business Plan was sufficient and even introduced the concept of "Local Share" or "Community Fund" on his economic Analysis. This is an innovator concept in the history of the Contracts in the Talara Field and in Peru. It also sheds light on the Corporate Social Responsibility of Baspetro."³⁵²

231. Concerning the Baspetro Proposal and Business Plan's attributes of compliance,³⁵³ Mr. Zamalloa confirms that the Baspetro offerings:

³⁵² See CER-1 [Zamalloa], ¶ 7.7.

³⁵³ See CER-1 [Zamalloa], attributes of compliance ¶ 5.2.

- a. “Complies with requirements set by regulatory guidelines and international standards for similar documents lodged for public biddings in the petroleum industry.”
 - b. “Quality and quantity of information, the structure and sequence of the development stages supports the rationale behind the conceptual design of the entire process.”
 - c. “Consistent operational sequence supporting key performance indicators on the operation, economic, and budget sections.”
232. Amorrortu’s expertise further solidified the Baspetrol Proposal and offerings:
- a. “The comparison of metrics suggests that the Baspetrol Business Plan forecasted hypothetical higher production rates with less number of new drills than GyM’s actual field operation.”³⁵⁴
 - b. “I met Mr. Bacilio Amorrortu when we were students at the Faculty of Petroleum Engineering in the Universidad Nacional de Ingenieria in Lima Peru in 1971 [...] He specialized in drilling, workover and well services operations and he also founded his own services company.”³⁵⁵
 - c. “It is the Amorrortu’s novel and noble initiative to contribute with a 5% of the gross annual revenue of his company for a Social Fund intended to improve the living conditions of the communities in the sphere of influence of the Project. Compelling.”³⁵⁶

³⁵⁴See CER-1 [Zamalloa], ¶ 6.2.19.

³⁵⁵See CER-1 [Zamalloa], ¶ 1.4.

³⁵⁶ See CER-1 [Zamalloa], ¶ 5.5.23.1.

- d. “Amorrortu knows the needs of the local population and is a pioneer proposing this social fund in a demonstration of the Social Responsibility of his company and partners. Compelling.”³⁵⁷

233. Further, Zamalloa confirms that the Baspetro Proposal and Plan were complete, and included:³⁵⁸

- a. Identification of key performance indicator.³⁵⁹
- b. The proposal exhibits the key factors and thresholds that influence a corporate’s strategy towards a robust proposal.³⁶⁰
- c. It identifies not only the operational stages and metrics but also the intent and importance of each stage as part of the whole process.³⁶¹
- d. The estimated cash flow to execute the preferred development plan for Block III and IV includes all critical revenue and expense concepts.³⁶²
- e. It factors key performance indicators such as oil production forecast, estimated oil price, CAPEX and OPEX costs Royalties, Community Fund and Tax for Works over the project’s life.³⁶³

234. For context, “the Talara oil field, has been producing oil and gas since the mid-1800. Its geology and stratigraphy are deemed remarkably complex due to the presence of geological faults, rock heterogeneity and risks on reservoir geometry, fluid content and pressure distribution. This field has been the testing ground for emerging technologies and good oil field

³⁵⁷ See CER-1 [Zamalloa], ¶ 5.5.23.2.

³⁵⁸ See CER-1 [Zamalloa], ¶ 5.4, 5.3.

³⁵⁹ See CER-1 [Zamalloa], ¶ 5.4.2.

³⁶⁰ See CER-1 [Zamalloa], ¶ 5.4.5.

³⁶¹ See CER-1 [Zamalloa], ¶ 5.4.6.

³⁶² See CER-1 [Zamalloa], ¶ 5.4.7.

³⁶³ See CER-1 [Zamalloa], ¶ 5.4.8.

practices since the early 1900's. Among others we can mention cable tools drilling, cable tools production, multi stage perforating-fracking stimulation, dual strings for gas lifting and hydraulic pumping, multi stage selective water injection using 3-4 isolation packers, intermittent production of remote marginal wells using a 'swabbing and driving' set up and many other field practices recognized world-wide."³⁶⁴

235. "The Talara Field has been and still is the fascination of Earth Scientists because each well drilled brings up a new story and new lessons learned. As an example, the Mile VI Field in the Portachuelo Area (Block III) is a world class example of the perfect anticlinal reservoir. It has been under gas injection (for reservoir pressure maintenance) and well managed production policies for more than 50 years. The Mile VI conventional oil field has recovered 96% of its total recoverable reserves, with peak production in 2000. The typical ultimate primary recovery in solution gas drive reservoirs worldwide is 12-15%. The peak production was approximately 300 bpd of crude oil and condensate. Based on economic assumptions, production will continue until the field reaches its economic limit in 2025. The production history of Mile VI is an excellent text book example of gravity drainage depletion with effective pressure maintenance by gas injection."³⁶⁵

236. Presently most of these fields in the Talara area are categorized as "Brown Fields." A Brown Field is an oil or gas accumulation that has matured to a production plateau or even progressed to a stage of declining production. Operating companies seek to extend the economic producing life of the field using cost-effective, low-risk technologies. Stimulation, or re-fracking

³⁶⁴See CER-1 [Zamalloa] 3.2.1.

³⁶⁵ See CER-1 [Zamalloa]3.2.3.

operations, completing additional zones, and installing artificial lift equipment are a few technologies commonly applied in brownfields before any drilling options are attempted.³⁶⁶

237. “On top of the above, the skills and commitment of a motivated work force are extremely important in the successful operation of these marginal fields in order to maximize oil recovery. The role of experienced production crews, geologists, Petroleum Engineers with ample knowledge of the fields and reservoirs is therefore crucial.”³⁶⁷

238. Tafur and Guzman both explain that the “general policy” (but not the exclusive policy) of PeruPetro was to adjudicate long term petroleum contracts through a “selection process.”³⁶⁸ In fact, Tafur agrees that PeruPetro can adjudicate lots through two manners: (i) selection process; or (ii) direct negotiation.³⁶⁹ And, Tafur states that “generally, the politics of PeruPetro is to adjudicate long term contracts through direct negotiation when it is considered that there would be very few probabilities of interest of investment in the project.”³⁷⁰ None of these propositions serve to negate that Mr. Amorrortu engaged in a direct negotiation with PeruPetro on May 28, 2014.

239. Peru boldly and disingenuously argues that “nothing in the record supports the conclusion that a direct negotiation for Blocks III and IV ever started.”³⁷¹ However, Mr. Amorrortu has submitted both documentary evidence and expert evidence and testimony proving the opposite is true. As explained *infra*, Baspetro’s Proposal triggered a direct negotiation with PeruPetro.

³⁶⁶ See CER-1 [Zamalloa]3.2.4.

³⁶⁷ See CER-1 [Zamalloa]3.2.5.

³⁶⁸ See RWS-01 [Guzman Oliver] ¶ 8; and RWS-02 [Tafur] ¶ 19.

³⁶⁹ See RWS-02 [Tafur] ¶ 19.

³⁷⁰ See RWS-02 [Tafur] ¶ 19.

³⁷¹ See SoD, ¶ 60.

240. Even Ms. Isabel Mercedes Tafur Marin, one of Peru’s witnesses, concedes that direct negotiation was one of the options available through which PeruPetro awards contracts.³⁷² Ms. Tafur also concedes, importantly, that when Luis Ortigas told her around June 2014 that he had met with Claimant, no public bid had commenced (or been announced).³⁷³

241. Several inaccuracies in Ms. Tafur’s Witness Statement render her an unreliable witness. On the one hand, Ms. Tafur states that Mr. Ortigas, as the President of the Board, had no executive responsibilities and was merely the face of PeruPetro.³⁷⁴ On the other hand, Ms. Tafur confirms that it was the Management (Gerencias) that would engage in any sort of formal process between a private company and PeruPetro until the same would reach the Board for final approval.³⁷⁵ That is, Ms. Tafur’s statement aims at stripping Mr. Ortigas of all responsibility and she also shields herself by attempting to place all responsibilities on the Board. However, in doing so, she incredulously glosses over the fact that, as part of Management, more specifically as the Managing Director, her role was, in fact, tasked with being an integral part of the decision-making process. Worse still, is Ms. Tafur’s statement under oath that Mr. Ortigas “asked her to meet with Mr. Amorrortu as a courtesy” and to “listen to his ideas about the operations of the Blocks” because he was a very “insistent” person. The truth is that it was Ms. Tafur’s job to meet with Mr. Amorrortu. And, after stripping Mr. Ortigas of all real responsibilities and merely calling him the “face” of PeruPetro and the one to serve as a spokesperson before other governmental institutions, it doesn’t smell good that Ms. Tafur implies she met with Amorrortu as a favor to Ortigas, a man

³⁷² See RWS-02 [Tafur] ¶¶ 19, 20, 22, 24, 25, 26.

³⁷³ See RWS-02 [Tafur] ¶ 30.

³⁷⁴ See RWS-02 [Tafur], ¶¶ 11, 16, 17, 18.

³⁷⁵ See RWS-02 [Tafur] ¶¶ 16, 17, 18.

not in charge, when she knew or should have known that her role and title would imply seriousness to Amorrortu.

242. Tafur's meeting with Amorrortu on July 16, 2014 – Tafur para 32-33. Tafur says, at that time, she told Amorrortu about the public bid having opened for both Blocks. The truth of the matter is that by the time Tafur meet with Amorrortu, he had already submitted his Proposal for the operation of both blocks on May 27, 2014.³⁷⁶ Tafur's letter of August 20, 2014 whereby Tafur told Amorrortu that the Blocks were unavailable for direct negotiation and he should participate in public bid if interested. Tafur para 34.

243. Moreover, Ms. Tafur held the role of General Manager, or *Gerente General*, at PeruPetro from February 1, 2014, through March 25, 2015. Therefore, at the time that Ms. Tafur met with Mr. Amorrortu in July of 2014³⁷⁷ (and prior to that when the Director of PeruPetro, Mr. Ortigas, extended Mr. Amorrortu the invitation to submit his Proposal), Mr. Amorrortu was receiving instructions not just from anyone, but from the very management body of PeruPetro which, as conceded by Tafur, handles any "formal process" between a private company and PeruPetro until it gets to the Executive Board (Directorio) (i.e. Luis Ortigas) for final approval.³⁷⁸ Indeed, Ms. Tafur explains she had a good relationship with Mr. Ortigas at the time and that they were in "daily contact."³⁷⁹ Accordingly, it defies all logic that Mr. Ortigas asked Tafur to meet with Mr. Amorrortu as a "courtesy" because he was "insistent," without sharing the Proposal with her.³⁸⁰

³⁷⁶ See (C-11), (C-32).

³⁷⁷ See RWS-02 [Tafur] ¶ 32.

³⁷⁸ See RWS-02 [Tafur] ¶ 18.

³⁷⁹ See RWS-02 [Tafur] ¶ 17.

³⁸⁰ See RWS-02 [Tafur] ¶ 31.

244. One of the elephants in the room is why Mr. Ortigas, in his role as Director/President of PeruPetro, the office that makes final decisions on direct negotiation proposals, asked Mr. Amorrortu in May of 2014 to directly submit a Proposal.³⁸¹

245. As Mr. Amorrortu's expert on direct negotiations under Peruvian law, Mr. Quiroga explains:³⁸²

- a. Given the facts, mining exploitation contracts may be concluded, at PERUPETRO S.A.'s discretion, through direct negotiation or by public notice. Specifically, regarding direct negotiations, the interested company must first obtain a qualification from the aforementioned state-owned company.³⁸³
- b. By May 28, 2014, the date of the submission and tender of the Proposal of Baspetro to PeruPetro, the applicable juridical framework consisted of: (i) Reglamento de Calificación de Empresas Petroleras, aprobado por Decreto Supremo N.º 030-2004-EM,³⁸⁴ and (ii) Procedimiento e Indicadores para Calificación de Empresas Petroleras, aprobado por Acuerdo de Directorio N.º 048-2010, aprobado por el Directorio de PERUPETRO S.A. en sesión realizada el 15 de abril de 2010.³⁸⁵

246. PeruPetro's Direct Negotiation process bestowed rights upon Amorrortu and Baspetro because the Procedure had commenced.³⁸⁶

³⁸¹ See RWS-02 [Tafur] ¶ 32.

³⁸² See CER-2 [Quiroga] ¶¶ 5.19-5.21.

³⁸³ See CER-2 [Quiroga] ¶ 5.19.

³⁸⁴ See CER-2 [Quiroga] ¶ 5.20(i).

³⁸⁵ See CER-2 [Quiroga] ¶ 5.20(ii).

³⁸⁶ Though Peru attempts to draw in-existent corollaries between Amorrortu's Texas action against Peru, and his testimony before the US House of Representatives before the committee on Ways and Means on the Implementation of the USPTPA. Surely, there are no corollaries between issues subject to the Foreign Sovereign Immunities Act (a

247. In sum, Amorrortu’s due diligence and Proposal were, minimally, sufficient to be awarded Blocks III and IV, notwithstanding Peru’s assertions to the contrary.

c. *Res judicata* bars Peru from arguing Amorrortu’s investment is not protected

248. For the same reasons argued *infra*, Peru is barred from arguing that Amorrortu’s investment is not protected based upon the doctrine of *res judicata*.³⁸⁷

249. In sum, the *Amorrortu I* tribunal’s finding that Amorrortu did, in fact, commence a Direct Negotiation Procedure (through Baspetro and with PeruPetro) proves that Baspetro is a covered investment.

i. In any event, the Tribunal has jurisdiction racione materiae because Amorrortu had a protected investment

250. Claimant submitted to arbitration an “investment dispute” under Article 10.16 of the USPTA, contrary to Peru’s assertions that Amorrortu’s investment was merely comprised of “pre-investment contributions,”³⁸⁸ and negotiations.³⁸⁹ This is inaccurate as Amorrortu acquired a bundle of rights, all of which are protected investments.³⁹⁰

251. The USPTA includes an intentionally broadly defined in “covered investment.”³⁹¹ To that end, The USPTA’s definition of a covered investment includes an “attempt” through “concrete action to make” an investment in the territory of another Party.³⁹² Here, Amorrortu

federal statute designed to protect foreign sovereigns from being hailed into court in the US subject to limited exceptions), and Peru’s debt to Propetsa. See SoD, ¶¶ 22-29. Aside from unity of parties, the issues at stake were different and not related to this case. This case is about corruption.

³⁸⁷ See (CLA-117).

³⁸⁸ See SoD, ¶¶ 286-290.

³⁸⁹ See SoD, ¶¶ 282-285; (CLA-204) *CSOB v. Slovak Republic*, ICSID Case No. ARB/97/4, Decision of the Tribunal on Objections to Jurisdiction (May 1999) ¶ 64; (CLA-205) *Mitchell v. Democratic Republic of the Congo*, ICSID Case No. ARB/99/7, Final Award (Feb. 2004) ¶ 46.

³⁹⁰ See SOC, ¶ 226; (CLA-1); (CLA-6); CER-1 [Quiroga] ¶¶ 12, 153-214; (CLA-102).

³⁹¹ See (CLA-1); (CLA-52); (CLA-53); (CLA-54); (CLA-56); (CLA-57).

³⁹² See (CLA-1), Article 10.28.

attempted to make, and successfully made an investment in Peru: Baspetrol, an enterprise (which the Treaty similarly considers to be an investment).³⁹³

252. The Treaty's Article 1.3, Definitions of General Application:

covered investment means, with respect to a Party, an investment, as defined in Article 10.28 (Definitions), 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.³⁹⁴

253. More specifically, the Treaty defines "investment" expansively as follows:

every 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;^{12, 13}
- (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;^{14 15} and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

254. Among the listed examples are "intangible property" and "intellectual property rights"—categories under which know-how falls. The language is deliberately broad and non-exhaustive, inviting tribunals to adopt a flexible approach in evaluating what constitutes a protected investment.

³⁹³ See (CLA-1), Definition of investment and enterprise, pg. 24.

³⁹⁴ See (CLA-1), Article 1.3 Definitions of General Application.

255. In *Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. The Republic of Peru*, the tribunal’s reasoning provides important interpretive guidance on the scope of the term “investment” under Article 10.28 of the Treaty. The *Gramercy* tribunal emphasized that the definition of investment is framed as a *non-exhaustive list*,³⁹⁵ reinforcing that the Treaty adopts a broad, asset-based approach rather than a narrow or formalistic one.

256. Importantly, the *Gramercy* tribunal acknowledged that the USPTPA’s meaning of “investment” does not provide a definitive legal test.³⁹⁶ The *Gramercy* tribunal further noted that this open-text language was consistent with other modern treaties and investment jurisprudence.³⁹⁷

257. The *Gramercy* tribunal further explained that the concept of investment originates in the *economic and financial realm*, describing “the economic ‘process’ of converting money into assets in the expectation of income.”³⁹⁸ It further highlighted that the expectation of gain or profit does not require the investor to perform an entrepreneurial or operational economic activity. Instead, the standard is broader and more inclusive: it is sufficient that the investor seeks to derive profit *as a consequence of the investment itself*. For instance, the tribunal observed that even the passive acquisition of financial instruments, such as a portfolio of listed shares or bonds, may qualify if undertaken with a profit motive.³⁹⁹ Additionally, the tribunal emphasized that the assumption of risk remains a defining element of investment activity. Notably, it noted that the characteristics of an investment—contribution, expectation of gain or profit, and assumption of risk—are connected by the word “or,” underscoring that an asset need not meet all criteria to

³⁹⁵ See (CLA-138) *Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. The Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, ¶ 225 (6 December 2022).

³⁹⁶ *Id.*

³⁹⁷ See (CLA-138) *Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. The Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, ¶ 221 (6 December 2022).

³⁹⁸ *Id.*

³⁹⁹ See (CLA-138) *Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. The Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, ¶ 225 (6 December 2022).

qualify. Rather, the more of these characteristics that are present, the stronger the asset's character as a protected investment under the Treaty.⁴⁰⁰

258. The *Gramercy* Tribunal's reasoning and holdings support that Baspetrol is a protected investment because, in addition to Amorrortu's undisputed know-how of economic value, Baspetrol was structured as an asset with economic value, involving risk and an expectation of return.

259. Here, Mr. Amorrortu formed Baspetrol S.A.C. in 2012, a Peruvian company, to service the oil industry in Talara.⁴⁰¹ Claimant's investment in Baspetrol, falls under the broad definition of "investment" pursuant to the USPTPA, which explicitly includes an investment in "an enterprise."⁴⁰²

260. Importantly, the cases relied upon by Peru in arguing that Amorrortu's investment did not rise to the level of one protected by the Treaty are ICSID-based disputes and decisions. Therefore, at the threshold, these cases are inapposite and unpersuasive here because this case, a PCA arbitration, is not subject to the ICSID Convention where the *Salini* test,⁴⁰³ "a test developed in order to determine whether an 'investment' has been made for the purposes of the ICSID Convention"⁴⁰⁴ does not apply. This distinction is paramount.

261. Therefore, although Peru attempts to slyly introduce a higher standard than simply resolving whether there is an "investment" for purposes of the Treaty, such attempts are of no moment.⁴⁰⁵

⁴⁰⁰ *Id.*

⁴⁰¹ See SoC, ¶ 53.

⁴⁰² See SoC, ¶ 19; also see (CLA-1).

⁴⁰³ See (CLA-139) *Salini Construttori S.P.A v- Kingdom of Morocco*-ICSID Case-No-Arb-004.

⁴⁰⁴ See (CLA-140) *White Industries Australia v. the Republic of India*, Final Award, November 30, 2011, ¶ 7.4.8.

⁴⁰⁵ See (CLA-140) *White Industries Australia v. the Republic of India*, Final Award, para 7.4.9.

262. Even still, Claimant’s investment is protected because they were comprised of significant contributions, know-how, and operational risk, going far beyond “a preliminary stage.”⁴⁰⁶ Indeed, Claimant’s investment in Baspetro cannot be compared to the purported investment in *Hydro v. Peru*. There, the investor contributed costs related to “feasibility studies” and “the creation of a holding company.”⁴⁰⁷ The record shows that Claimant in this Arbitration did much more.

263. For example, here, Amorrortu: had significant experience operating Lot III; built a team of highly technical and distinguished professionals to join Baspetro; including expert geologists and petroleum engineers such as Mr. Francia and Mr. Chavez; and met with Mr. Ortigas on multiple occasions and corresponded with PeruPetro many times; and submitted the Proposal.⁴⁰⁸

264. Evidently, Amorrortu undertook real and irreversible commitment of resources, assumed genuine risk, and undertook economic activity, all of which are quintessential inherent economic activities tied to an investment.

265. In *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (January 14, 2010): the tribunal held that:

“Summing up the evidence, the [t]ribunal has no doubt that [the [c]laimant] actually made an investment in Ukraine . . . [r]espondent has not challenged that [c]laimant] is - at least since 2006 - indirect owner of 100% of the share capital of Gala. The evidence shows that [c]laimant] has made payments with his own moneys on behalf of Gala . . .” ¶ 54.

⁴⁰⁶ See SoD, ¶ 288; (RLA-189), ¶ 552.

⁴⁰⁷ See SoD, ¶ 288; *Amorrortu v. Peru*, 570 F. Supp. 2d 916 (S.D. Tex. 2008) (July 31, 2008), (RLA- 189), ¶¶ 529, 294.

⁴⁰⁸ See CWS-1 [Amorrortu]; CWS-2 [Amorrortu]; CWS-1[Francia]; CWS-1[Chaves].

266. Ultimately, that tribunal sided with claimant in determining that pre-investment activities may fall within the meaning of an investment.⁴⁰⁹ The tribunal determined that once the investor has made significant contributions towards an investment, and then was denied something protected under the BIT, those initial investments are protected under the BIT (i.e.: broadcasting licenses and frequencies).⁴¹⁰

267. In *White Industries Australia v. the Republic of India*, the tribunal explained that:

“It is also generally well established that rights arising from contracts may amount to investments for the purposes of many BITs.”⁴¹¹

268. The *White Industries* tribunal further explained that:

An example of such a conclusion is found in *SPP v. Egypt*, where the tribunal there explicitly rejected the distinction relied upon by India - namely that between rights *in rem* and rights *in personam*:

*"Clearly those rights and interests were of a contractual rather than in rem nature. However, there is considerable authority for the proposition that contract rights are entitled to the protection of international law and that the taking of such rights involves an obligation to make compensation therefore."*⁴¹²

“As to whether White's rights pursuant to the Contract qualify as an investment, it seems evident from the Contracting Parties' definition of "investment" that they intended that the BIT would capture investments in the broadest sense. The Contract also plainly conferred on White a "right to money" for the purposes of sub-paragraph (iii), as well conferring a right to "conduct economic activity" for the purposes of sub-paragraph (iv).”⁴¹³

269. It is beyond dispute that rights arising from contracts may amount to investments.⁴¹⁴

⁴⁰⁹ *Id.* at ¶¶ 88-89, 90-91.

⁴¹⁰ *Id.* at ¶ 89-91.

⁴¹¹ See (CLA-140) *White Industries Australia v. the Republic of India*, Final Award, November 30, 2011, ¶7.4.1.

⁴¹² See (CLA-140) *White Industries Australia v. the Republic of India*, Final Award, November 30, 2011, ¶7.4.2.

⁴¹³ See (CLA-140) *White Industries Australia v. the Republic of India*, Final Award, November 30, 2011, ¶ 7.4.5.

⁴¹⁴ See (CLA-140) *White Industries Australia v. the Republic of India*, Final Award, November 30, 2011, ¶ 7.4.7 (citing *Chevron Corporation and Texaco Petroleum Company v Republic of Ecuador* (UNCITRAL, PCA Case No. 34877, Interim Award, 1 December 2008); *Inmaris Perestroika Sailing Maritime Services GmbH v Ukraine* (ICSID Case No. ARB/08/08, Decision on Jurisdiction, 8 March 2010); *ATA Construction, Industrial and Trading Company v the Hashemite Kingdom of Jordan* (ICSID Case No. ARB/08/02, Award, 18 May 2010); *Southern Pacific Properties (Middle East) Limited v Arab Republic of Egypt* (ICSID Case No. ARB/84/3, Award, 20 May 1992; *Tokios Toke/es v Ukraine* (ICSID Case No. ARB/02/18, Decision on Jurisdiction, 29 April 2004); *Impregilo S.p.A. v Islamic Republic*

270. In *Luigiterzo Bosca v. Republic of Lithuania*,⁴¹⁵ the Lithuanian government started a bidding process to get the leading alcohol producer in the country after the government privatized the company. The claimant was one of the potential bidders until the government annulled the results of the tender and awarded the tender to the fourth-place bidder.⁴¹⁶

271. The Lithuanian local courts found corruption involving the bidding process cancellation and charged government officials for using his official capacity to remove the claimant from the bidding process.⁴¹⁷

272. Ultimately, the *Bosca* tribunal found that:

“In the Tribunal’s view, winning the tender in the Alita privatization and negotiating the SPA - the subject of the present dispute - was an associated activity, as described in Paragraph 1 of the Protocol, subject to the same protection as any investment falling within Article 1 of the Agreement.”⁴¹⁸

273. In *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award (October 8, 2009),⁴¹⁹ claimant's case was based on the alleged violation by Romania of the BIT. Claimant contended that it was invited by Romania to invest in the country, to build up from almost nothing a sale of goods business in several of its airports and also on-board airplanes. Once this business had been established at a high standard and become very profitable, it was taken by

of Pakistan (ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005); *Bayindir Insaat Turzim Ticaeret Ve Sanayi A.S. v Islamic Republic of Pakistan* (ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005), at [255]; *Eureka B.V. v Republic of Poland* (Ad Hoc Arbitration, Partial Award, 19 August 2005)).

⁴¹⁵ See (CLA-46) *Luigiterzo Bosca v. Republic of Lithuania*, PCA Case No. 2011-05, Award (May 17, 2013), ¶¶ 81-89.

⁴¹⁶ *Id.*

⁴¹⁷ See (CLA-46) *Luigiterzo Bosca v. Republic of Lithuania*, PCA Case No. 2011-05, Award (May 17, 2013), ¶¶ 96-99.

⁴¹⁸ See (CLA-46) *Luigiterzo Bosca v. Republic of Lithuania*, PCA Case No. 2011-05, Award (May 17, 2013), ¶ 166.

⁴¹⁹ See (CLA-4) *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award (October 8, 2009).

Romania for arbitrary reasons.⁴²⁰ On January 2002, the claimant remained as sole shareholder seeking to continue its operations in the Otopeni Airport. However, on September 5, 2002, the Romanian government passed an ordinance regulating duty-free businesses within airports—including the Otopeni Airport.⁴²¹

274. The *EDF* tribunal determined that “[claimant’s] investment in Romania consist[ing] of its participation in two joint venture companies with Romanian entities owned by the Romanian Government” to develop a sale of goods businesses in Romanian airports constituted an investment.⁴²²

275. In *Mason Capital v. Republic of Korea*,⁴²³ the tribunal found that the definition of investor, which includes “attempts to make, is making, or has made an investment” extends the temporal scope of the application to the preinvestment phase.

276. The *Mason Capital* tribunal further determined that an investor is already protected by the BIT if they are still in the process of making an investment.⁴²⁴ Importantly, the BIT in that case has a very similar definition in Article 10.28: “investor of a Party means a party or state enterprise thereof, or an action 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[.]” (emphasis added).

⁴²⁰ See (CLA-4) *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award (October 8, 2009), ¶ 66.

⁴²¹ See (CLA-4) *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award (October 8, 2009), ¶ 55-59.

⁴²² See (CLA-4) *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award (October 8, 2009), ¶ 46.

⁴²³ See (CLA-4) *Mason Capital v. Republic of Korea*, PCA Case No.2018-55, Decision on Respondent’s Preliminary Objections, ¶ 210 (Dec. 2019).

⁴²⁴ *Id.*

277. Applying the analysis of the *Mason Capital* tribunal, the “concrete action” term does not hold the weight of the definition Peru might want it to, given that the same temporal expansion occurs here as it did in the Korea-US BIT.

278. Furthermore, “concrete action” has been defined by the Free Trade Commission of the United States-Colombia TPA, interpreting a substantially similar document from a similar time, to include the “channel[ing of] resources or capital in order to set up a business, or applied for a permit or license.”⁴²⁵

279. It becomes abundantly clear then with this current interpretation of a contemporary document that is substantially similar in form and language to the Treaty that Amorrortu has taken “concrete action” to satisfy the definition of investment given that he has channeled resources and capital to set up a business.

280. In *Parkerings-Compagniet AS v. Republic of Lithuania*,⁴²⁶ “[f]ollowing Lithuania's gradual transition between 1991 and 1997 from a Soviet Republic to a candidate for EU membership and a market economy, the Municipality of the City of Vilnius decided to create a modern, integrated parking system for the City of Vilnius, in order to control traffic and protect the integrity of the City's historic Old Town.”⁴²⁷

281. In that case, on August 19, 1999, the Board of the City of Vilnius awarded the claimant’s bid for development of Vilnius city parking system.⁴²⁸ The subject agreement pertained

⁴²⁵ See (CLA-141) *Free Trade Commission of the United States-Colombia Trade Promotion Agreement - Interpretation of Standards of Investment Protection Under the United States-Colombia TPA*, Decision No. 9 of the Free Trade Commission of the United States-Colombia Trade Promotion Agreement, ¶ 8, 15 January 2025.

⁴²⁶ See (CLA-142) *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award (September 11, 2007).

⁴²⁷ See (CLA-142) *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award (September 11, 2007), ¶ 51.

⁴²⁸ See (CLA-142) *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award (September 11, 2007), ¶72.

to the creation, development, maintenance and enforcement of the public parking system in the City of Vilnius. More specifically, the agreement provided for an exclusive concession to operate the city's street parking and to operate ten MSCP.⁴²⁹

282. The *Parkerings-Compagniet* tribunal held that the investor's "direct 100 percent ownership interest in [the parking company] constituted an investment in Lithuania within the meaning of the Treaty" even though the parking lots never became operations.⁴³⁰

283. The tribunal in *Blusun v. Italy*⁴³¹ said the problem with preinvestment is the speculative character of investments at early stages. However, once this doubt is resolved by "substantial measures of implementation," it should be presumed the investment is genuine and treaty-protected.⁴³² These measures of implementation include assumption of financial risk.⁴³³ Amorrortu engaged in substantial measures of implementation through his incorporation of Baspetrol, and the hiring of a technical team of engineers and geologists that were ready to work, at great expense to him, thus satisfying the assumption of financial risk and moving this alleged "preinvestment" into the realm of early investment.

284. In *Jak Sukyas v. Romania*,⁴³⁴ an UNCITRAL tribunal determined that it is not necessary to engage in a debate concerning an investment requiring contribution by the investor of certain duration and assuming a level of risk because it is only of limited assistance, and it is better to just limit analysis of the terms of the BIT applicable to the case.⁴³⁵

⁴²⁹ See (CLA-142) *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award (September 11, 2007), ¶ 82.

⁴³⁰ See (CLA-142) *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award (September 11, 2007), ¶ 253.

⁴³¹ See (CLA-143) *Blusun v. Italy*, ICSID Case No. ARB/14/3, Award, ¶ 269 (Dec. 2016).

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ See (CLA-144) *Jak Sukyas v. Romania*, PCA Case No. 2020-53, Partial Award on Jurisdiction, ¶ 222-23 (Feb. 2020) (analyzing the US-Romania BIT).

⁴³⁵ See (CLA-144) *Jak Sukyas v. Romania*, ¶ 222-23 (Feb. 2020) (analyzing the US-Romania BIT).

285. In *Westwater Resources v. Türkiye*,⁴³⁶ know-how and expertise in conjunction with expenditures undertaken by the claimant for development constituted “money or assets” in determining the validity of an investment under the ICSID terminology.⁴³⁷

286. Here, Claimant has made financial contributions in the hiring and recruitment of engineers and geologists, as well as intangible contributions through his use of expertise in the field of oil engineering, and his experience successfully conducting operations on the plots of land he was seeking to gain from this contract.

287. The tribunal in *Mason Capital v. Republic of Korea* actively considers whether expertise could be included within the US-Korea as a “contribution in kind” of a general partner.⁴³⁸ Within the opinion, the tribunal considered the issue of “decision-making, management, and expertise” as an investment, and concluded that it is a commitment of “other resources” and thus qualifies as active contribution under the terms of the agreement.⁴³⁹

288. In *Malaysian Historical Salvors v. Malaysia*,⁴⁴⁰ the tribunal recognized that know-how, technical expertise, and industry are valid forms of contribution. The tribunal held that “[i]t is not in dispute that the [c]laimant has expended its own funds, whether in the form of equipment, know-how or personnel”⁴⁴¹ and explicitly considered know-how as part of a contribution in kind.⁴⁴²

⁴³⁶ See (CLA-145) *Westwater Resources v. Türkiye*, ICSID Case No. ARB/18/46, Award, ¶ 148 (Mar. 2023).

⁴³⁷ *Id.*

⁴³⁸ See (CLA-183) *Mason Capital v. Republic of Korea*, PCA Case No. 2018-55, Decision on Respondent’s Preliminary Objections, ¶¶ 206-07, 209 (Sept. 2018).

⁴³⁹ *Id.* at ¶ 207.

⁴⁴⁰ See (CLA-146) *Malaysian Historical Salvors, SDN, BHD v. Malaysia*, ICSID Case No. ARB/05/10, Award on Jurisdiction ¶ 109 (May 17, 2007).

⁴⁴¹ See (CLA-146) *Malaysian Historical Salvors, SDN, BHD v. Malaysia*, ICSID Case No. ARB/05/10, Award on Jurisdiction ¶ 109 (May 17, 2007).

⁴⁴² Although the claim ultimately failed on jurisdictional grounds due to insufficient economic development and duration, the decision remains useful for establishing that know-how is a relevant form of contribution. Additionally, that tribunal encouraged a holistic and flexible approach to the investment analysis, emphasizing that weak evidence on one hallmark may be offset by stronger evidence on others, allowing tribunals to find jurisdiction based on the

289. Similarly, in *Bayındır v. Pakistan*, the tribunal acknowledged that contributions in the form of “know-how, equipment and personnel” clearly fell within the definition of “every kind of asset” under the treaty,⁴⁴³ further supporting the notion that know-how of economic value, when bundled with other inputs, constitutes a qualifying investment.

290. In *Deutsche Bank v. Sri Lanka*, the tribunal affirmed that “a contribution can take any form... [including] know-how, equipment, personnel and services,” signaling a shift toward recognizing intangible and service-based inputs as investments, even where there is no physical asset or long-term local presence.⁴⁴⁴ This reasoning aligns with the open-text nature of the USPTPA’s investment definition, further bolstering the argument that know-how, particularly when delivered under a contractual framework involving risk and economic commitment, could be protected.

291. “The process which economists label ‘investment’ encompasses a wide variety of activities in which the investor contributes capital (and sometimes also know-how and other intangibles), hoping to earn a future return over a certain period. For economists the investment can result from an investor.”⁴⁴⁵

292. Here, Claimant’s investment was no mere “prospect” like the one in *Eyre v. Sri Lanka*, because the investment faced the requisite operational risk to qualify as an investment.

totality of circumstances,⁴⁴² an expansive interpretation that supports our position in the present case. See **(CLA-146)** *Malaysian Historical Salvors, SDN, BHD v. Malaysia*, ICSID Case No. ARB/05/10, Award on Jurisdiction ¶ 106(c) (May 17, 2007).

⁴⁴³ See **(CLA-27)** *Bayındır İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award ¶ 113 (Aug. 27, 2009).

⁴⁴⁴ See **(CLA-147)** *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award ¶ 297 (Oct. 31, 2012).

⁴⁴⁵ See **(CLA-148)** *Patel Eng’g Ltd. v. Republic of Mozambique*, PCA Case No. 2020-21, Final Award ¶ 300 (Feb. 7, 2024).

293. Claimant’s investment is further evidenced by:⁴⁴⁶
- a. Certificate of Incorporation of Baspetro S.A.C.⁴⁴⁷
 - b. Baspetro Operational Chart.⁴⁴⁸
 - c. Baspetro Proposal to Operate the Oil & Gas Blocks III & IV in Talara, North West Peru.⁴⁴⁹
 - d. Baspetro Start up Operations Report.⁴⁵⁰
 - e. Excel Sheet Detailed Business Plan Baspetro Blocks III & IV.⁴⁵¹
 - f. GMP Regalias Lotes III & IV.⁴⁵²
 - g. Real Oil Production Incomes Blocks III IV.⁴⁵³

294. Further, Amorrortu was willing to forego his claim for the expropriation of Propetsa as part of his offer to resume the operation of Blocks III and IV.⁴⁵⁴

295. In *Latam Hydro LLC and CH Mamcoha S.R.L. v. Republic of Peru*, as cited by Respondent, the tribunal determined that an investment cannot be comprised of “unilateral or internal characterizations” of expenditures in preparation of an investment.⁴⁵⁵ Peru uses this case to mischaracterize Amorrortu’s investment, as Claimant did not unilaterally characterize costs as

⁴⁴⁶ See (C-182) Baspetro Operational Chart; (C-183) Baspetro Proposal to Operate the Oil & Gas Blocks III & IV in Talara, North West Peru; (C-184) Baspetro Startup Operations Report; (C-185) Excel Sheet Detailed Business Plan Baspetro Blocks III & IV; (C-186) GMP Regalias Lotes III & IV; (C-187) Real Oil Production Incomes Blocks III IV; CWS-1[Francial]; CWS-1[Chaves]; CWS-2 [Amorrortu] ¶¶ 45-55.

⁴⁴⁷ See (C-24) Certificate of Incorporation of Baspetro S.A.C.

⁴⁴⁸ See (C-11); (C-182) Baspetro Operational Chart; (C-183) Baspetro Proposal to Operate the Oil & Gas Blocks III & IV in Talara, North West Peru; (C-184) Baspetro Startup Operations Report; (C-185) Excel Sheet Detailed Business Plan Baspetro Blocks III & IV; (C-186) GMP Regalias Lotes III & IV; (C-187) Real Oil Production Incomes Blocks III IV; CWS-1[Francial]; CWS-1[Chaves]; CWS-2 [Amorrortu] ¶¶ 45-55.

⁴⁴⁹ See (C-184).

⁴⁵⁰ See (C-185).

⁴⁵¹ (C-186).

⁴⁵² (C-187).

⁴⁵³ See CWS-1[Francial]; CWS-1[Chaves]; CWS-2 [Amorrortu] ¶¶ 45-55.

⁴⁵⁴ See CWS-2 [Amorrortu].

⁴⁵⁵ See SoD, ¶ 287; (RLA-189) ¶¶ 538-552.

preparation for an investment. The investment at issue was presented to the president of PeruPetro in the form of a Proposal, which was done at the behest of PeruPetro. Therefore, it is reasonable that an investor would (as Amorrortu did) undertake costs in preparation for such a Proposal and any actions to effectuate the planned investment.

296. The Tribunal in *Latham Hydro and Mamcoha S.R.L* went on to elaborate that the reason these proposals were not covered by the treaty at issue was because they did not include the “commitment of capital or other resources” or “the assumption of risk” as required by TPA Article 10.28. *Id.* Again, this situation is simply inapposite to Claimant’s case as Baspetro committed capital, sweat, and time beyond that considered by the tribunal in the cited portions of *Latham*.

297. Additionally, the case at issue is factually distinct from the *Latham Hydro* claimants. That tribunal analyzed a situation in which claimants did not engage in any activities, get any permits, or conduct any studies after executing a contract with the Ministry of Energy and Mines (RER Contract), while the claimants are arguing for the tribunal to “unify” their activities as one investment.⁴⁵⁶ In fact, these “Upstream Projects” that Peru would like the Tribunal in this instance to see as analogous to the Baspetro Proposal could not be more different. The Upstream Projects in *Latham Hydro* are defined as a “first phase feasibility report” concluding that upstream waterways could also power some power plants.⁴⁵⁷ As stated before, the Baspetro Proposal went beyond a mere feasibility study, and was a fleshed-out Business Plan submitted to PeruPetro as a serious contender, and so it cannot reasonably be conceived of as an analogue to the Upstream Projects issue in *Latham*.

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.* at ¶ 87.

298. Peru also cites to *Eyre v. Sri Lanka*, with Peru spending most of its time going through the positions of claimants and respondents, and not addressing the tribunals analysis until paragraph 236.⁴⁵⁸ The jurisdictional analysis within *Eyre* focuses heavily on the jurisdiction the tribunal has over claimant’s company; however, no such issue exists in the current case. While Baspetrol is a Peruvian company, like the *Eyre* tribunal rationalized, control of a company by an investor with a nationality other than the state respondent can justify the ability to arbitrate against the country. Furthermore, Baspetrol is not the claimant in this case, it is Bacilio Amorrortu. Therefore, the cited portions are irrelevant for the propositions for which they were relied upon.

299. Similarly, Peru’s reliance on the Texas litigation⁴⁵⁹ is misguided and provides little import here.

1. Amorrortu did not abandon any of his rights

300. Peru alleges that, even if Amorrortu commenced direct negotiations, he abandoned that process because, when PeruPetro published an invitation to participate in the public tenders on July 14, 2014, Amorrortu did not “formally allege before the competent authorities” that the invitation was invalid because of the ongoing direct negotiations over both Blocks.⁴⁶⁰

301. This argument is as preposterous as the rest. Amorrortu did not need to “formally allege” anything as Mr. Ortigas, then President of PeruPetro was the very person who had instructed Amorrortu to submit a proposal for both Blocks. It is similarly trivial to state that Amorrortu did not challenge the Bidding Process after “receiving notice that his Letter of Interest did not meet the Minimum Indicators to proceed to the next step of the Bidding Process,” when those Minimum Indicators were being edited that same day and beyond, all to favor GyM. In any

⁴⁵⁸ See SoD, ¶ 287; (RLA-174) ¶¶167, 174, 296, 302.

⁴⁵⁹ See SoD, ¶ 289; (RLA- 102) p. 923.

⁴⁶⁰ See SoD, ¶ 272.

event, Amorrortu did not waive any rights as he formally complained to PeruPetro officials about the bidding process' irregularities.⁴⁶¹

2. The rights were vested upon Baspetro and Claimant because he controls and is the beneficial owner of Baspetro

302. Peru argues that, even if the direct negotiations began (which the tribunal in *Amorrortu I* established they did), the “appurtenant rights” belonged to Baspetro and not to Claimant.⁴⁶² In making this argument, Peru relies on *Axos v. Kosovo*.⁴⁶³

303. Here, Respondent’s reliance on *Axos v. Kosovo* is misguided.

304. The Kosovo treaty at issue in *Axos* defines an investment, under several of the sections in article 1, as “shares of companies and similar forms of investment,” or claims to money via contract or other sources.⁴⁶⁴ The claimant in *Axos* could not avail itself to the definition because it did not have shares of a company or some money owed to it via contract, instead, the rights flowed to the “consortium” as a unit of companies given that it is a “position of joint creditors, two or more persons having the same right, proprietary rights” that they can only exercise jointly, not just the company claimant.⁴⁶⁵ No such situation exists here.

305. While the rights flowed to Baspetro, Amorrortu can still claim under the rights of Baspetro as investment under the USPTPA includes “every assets than an investor owns or controls, directly or indirectly” including “the commitment of capital or other resources, *the expectation of gain or profit, or the assumption of risk.*”⁴⁶⁶ Furthermore, the definition is expansive

⁴⁶¹ See (C-15), (C-16), (C-17).

⁴⁶² See SoD, ¶ 272.

⁴⁶³ See SoD, ¶ 272; and *ACP Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No. ARB/15/22, Award (3 May 2018) (RLA-158), ¶ 245.

⁴⁶⁴ See (CLA-178) *Axos v. Kosovo*, ICISD Case No. ARB/15/22, Award, ¶ 134.

⁴⁶⁵ See *id.* at 193.

⁴⁶⁶ USPTPA, Article 10.28.

saying it “may” include, meaning not limited to, “an enterprise,” “shares, stock, and other forms of equity participation,” and “other tangible or intangible [...] and related property rights.”⁴⁶⁷

306. Additionally, Peru relies upon later portions of the *Axos* Award for the contention that an investor cannot bring a case under the rights of the enterprise, which just as before, is not what *Axos* concerns itself with. The case does not stand for that proposition, and the facts prove that the conduct at issue is that of the parties after the negotiation used to prove the existence of a consortium contract.⁴⁶⁸ Other ISDS cases further demonstrate that Peru’s contention is simply inaccurate as investors can sue when wronged through the investment.

307. The tribunal in *Paushok v. Mongolia* held that “a BIT would be rendered practically without effect if it were right to argue that any action taken by a State against such local companies or their assets would not be subject to Treaty claims by a foreign investor because its investment is merely constituted of shares in that local company.” *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*.⁴⁶⁹ In fact, the lack of shareholder number stated in the treaty in *Paushok*’s case is enough to still qualify him as an investor covered by the treaty.⁴⁷⁰

308. In *Azurix v. Argentina*, the *ad hoc* committee concluded that although assets of a company would belong to it and not its corporate investor, the corporate investor nonetheless had, by virtue of its controlling shareholder status, “interests in the assets” and through that shareholding, indirectly controlled those assets, therefore they constitute an “investment” for

⁴⁶⁷ *Id.*

⁴⁶⁸ See (CLA-178) *Axos v. Kosovo*, ¶¶ 220-245.

⁴⁶⁹ See (CLA-179) *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, Award on Jurisdiction and Liability, ¶ 202 (Apr. 2011).

⁴⁷⁰ *Id.* at ¶ 205.

purposes of the treaty.⁴⁷¹ The crucial point, as highlighted in *Urbaser v. Argentina*, is that claimants are acting under their own rights as investors through shares acquired under the BIT, rights that are different from any rights attached to domestic law.⁴⁷²

309. In line with ISDS doctrine, Amorrortu, as the investor, the person exercising control over Baspetrol and the one with the beneficial ownership of the company, may bring this claim for his investment, Baspetrol, under the Treaty and the ICSID Convention.⁴⁷³⁻⁴⁷⁴

310. As corroborated by Amorrortu's sons, Claimant "has ultimately controlled and owned all the assets through his decision making and supervision despite not being named as the owner of all, or even a majority, of the shares."⁴⁷⁵

311. For starters, the Treaty extends protection to those who ultimately control an investment, even if they used a locally incorporated entity as a vehicle, such as Amorrortu did here. This stems from the Treaty's definitions, to wit:

- a. **claimant** means *an investor* of a Party that is a party to an investment dispute with another Party;
- b. **investment** means every 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

⁴⁷¹ See (CLA-180) *Azurix v. Argentina*, ICSID Case No. ARB/01/12, Decision on the Application for Annulment, ¶ 94 (Sept. 2009).

⁴⁷² See (CLA-181) *Urbaser v. Argentina*, ICSID Case No. ARB/07/26, Decision on Jurisdiction, ¶ 251 (Dec. 2012).

⁴⁷³ An "enterprise of a Party" is "an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there." USPTPA, Art. 10.28.

⁴⁷⁴ See CWS-1 [Amorrortu, Basilio Cesar], Basilio Cesar Amorrortu's First Witness Declaration; and CWS-1 [Amorrortu, Sebastian], Sebastian Amorrortu's First Witness Declaration.

⁴⁷⁵ See CWS-1 [Amorrortu, Basilio Cesar], Basilio Cesar Amorrortu's First Witness Declaration, ¶ 15; and CWS-1 [Amorrortu, Sebastian], Sebastian Amorrortu's First Witness Declaration, ¶ 15; (C-24).

expectation of gain or profit, or the assumption of risk. Forms that an investment may take include: (a) an enterprise....⁴⁷⁶

312. Similarly, the Treaty’s Article 10.16 expressly allows for the claimant to, in the “event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation, the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim....”⁴⁷⁷

313. Peru argues that Claimant “does not own or control Baspetro and thus cannot bring claims for [Amorrortu’s contributions to Baspetro].”⁴⁷⁸ In making this argument, Peru focuses on Claimant’s 40% ownership of Baspetro (and his sons remaining 60%).⁴⁷⁹ This analysis falls short.

314. Although Peru focuses on Amorrortu’s 40% ownership of Baspetro;⁴⁸⁰ said ownership does not, contrary to Peru’s allegations, upset Amorrortu’s standing to bring this Arbitration under the Treaty.⁴⁸¹

315. In arguing that Amorrortu does not own or control Baspetro, Peru relies on *Aguas del Tunari v. Bolivia*.⁴⁸² However, in that case, the tribunal ruled that it did have jurisdiction despite Bolivia’s objections. There, the tribunal rejected Bolivia’s arguments, finding that it had jurisdiction based on the Netherlands-Bolivia Bilateral Investment Treaty and that the claimant, Aguas del Tunari, met the nationality requirements through indirect control by Dutch nationals.⁴⁸³

316. Peru misleads the Tribunal in arguing, as it does, that:

⁴⁷⁶ See (CLA-1) Treaty, Art. 10.28 (emphasis added).

⁴⁷⁷ See (CLA-1) Treaty, Art. 10.16(1)(b).

⁴⁷⁸ See SoD, ¶ 291.

⁴⁷⁹ See SoD, ¶ 293; and (C-024) (reproduced at the production stage as AMORRORTU_PROD000019).

⁴⁸⁰ See SoD, ¶.

⁴⁸¹ See CER-2 [Quiroga] ¶¶4.42, 4.43, 4.44, 4.47(ii).

⁴⁸² See SoD, ¶ 292; (RLA-92) ¶ 231.

⁴⁸³ See (RLA-92) ¶ 231.

“In *Aguas del Tunari v. Bolivia*, the tribunal held that a “controlling interest [is] a greater-than- 50% ownership interest in an enterprise.”⁴⁸⁴

317. What the *Aguas del Tunari* tribunal actually holds is:

The [t]ribunal notes that Article 31(4) of the Vienna Convention indicates that a special meaning shall be given to a term if the parties so intended the special meaning. There is no indication in the record that any special meaning for the word “controlled” was intended by these contracting parties. The Tribunal observes, however, that the negotiators of the Netherlands - Bolivia BIT likely possessed a sophisticated knowledge of business and law. For such persons, the ordinary meaning of a word or phrase also includes the legal meanings given to such words or phrases. The [t]ribunal thus turns to consider the legal meaning of "control" and controlled.”⁴⁸⁵

The legal definition for the verb “control” provides several meanings for control. **The first definition for “control” is** "to exercise power or influence over." The second definition is "to regulate or govern." The final definition is "to have a controlling interest in." The first definition of control suggests the actual exercise of control with emphasis on the right to exercise control over an object but does not suggest ownership of the object. **The second definition** similarly points to a right to control but not ownership of that which is controlled. **The third definition of control** ties control to ownership interest providing that a “controlling interest” is understood as a “legal share in something... sufficient ownership of stock in a company to control policy and management; especially a greater-than-50% ownership interest in an enterprise.”⁴⁸⁶

The legal definitions of “controlled” are particularly instructive as they cut directly against the significance to the adjectival past participle usage suggested by Respondent. The phrase “controlled group (controlled corporate groups)” is defined as “two or more corporations whose stock is substantially held by five or fewer persons. “Controlled corporation (controlled company)” is defined as a "corporation in which the majority of the stock is held by one individual or firm" And "controlled foreign corporation" is defined as “a foreign corporation in which more than 50% of the stock is owned by U.S. citizens who each own 10% or more of the

⁴⁸⁴ See SoD, ¶ 292, citing to (RLA-92) ¶¶ 231-232.

⁴⁸⁵ See (RLA-92) ¶ 230.

⁴⁸⁶ See (RLA-92) ¶ 231.

voting stock.” **All three of these definitions refer solely to the power to control and not its actual exercise.**⁴⁸⁷

318. Evidently, Peru prefers the third definition of “control” from *Aguas del Tunari* and makes the leap in conveying to this Tribunal that this is a “holding”⁴⁸⁸ by the *Aguas del Tunari* tribunal. This representation is false and keeps with the theme in Peru’s Statement of Defense: a tall tale full of holes, misleading statements, and half-truths.

319. To keep with a truthful analysis of *Aguas del Tunari*, a case that, according to Peru, is highly persuasive on this issue, it bears highlighting the following additional passages from the same:

The [t]ribunal thus concludes that the word "controlled," like the word "control," is not determinative. The adjective "controlled" may indicate that "control" was actually exercised at some point in the past or it may mean that another possessed the capacity to control that company in the past (or indeed at the present moment). On the one hand, "controlled" may mean that an entity was subject to the actual control of another. On the other, "controlled" may mean that an entity was subject to the controlling capacity of another.⁴⁸⁹

The [t]ribunal observes that there is no indication from any of the dictionaries consulted that "control" necessarily entails a degree of active exercise of powers or direction. If the parties had intended this result, a better choice of word for the BIT would have been "managed" rather than "controlled." In addition, although the contracting states would have eliminated uncertainty by utilizing phrasing such as "under direct or indirect control of" or "subject to the direct or indirect control of," rather than "controlled directly or indirectly" by another company, the ambiguous meaning of "controlled" leads the Tribunal to find the difference in phrasing to be not determinative.⁴⁹⁰

Respondent argues that in light of the lack of a specific definition for "control" in the BIT, the Tribunal should look to the concept of "control" as

⁴⁸⁷ See (RLA-92) ¶ 232 (internal citations omitted) (emphasis added).

⁴⁸⁸ See SoD, ¶ 292.

⁴⁸⁹ See (RLA-92) ¶ 233 (internal citations omitted).

⁴⁹⁰ See (RLA-92) ¶ 234 (internal citations omitted).

it has been used in defining corporate nationality under international law. Bolivia states that there are four traditional tests for determining corporate nationality of an entity. Both the corporate seat test and the incorporating jurisdiction test "focus on objective factors for the purposes of simplicity, and ignore the possibility that the assigned nationality may not reflect the reality of the company's activities." The other two tests focus respectively on control and on predominant interest in the company and, Bolivia argues, states select the "control" test because it is "designed to focus on the reality behind the corporate personality... [and is] often used 'to avoid inequitable results.'" ⁴⁹¹ There is, however, no indication in the record that the contracting parties had such a particular special meaning for control in mind. Nor should such intent be assumed since the Tribunal finds the contexts of foreign investment protection and the regulation of corporate activity to be sufficiently distinct.⁴⁹¹

The word "controlled" is modified by the phrase "directly or indirectly." This phrase clearly indicates that one entity may control another entity in one of two ways. An entity that is *directly controlled* implies that there is no intermediary between the two entities, while an entity that is *indirectly controlled* implies that there is one or more intermediary entities between the two.⁴⁹²

As stated above, one prong of [r]espondent's interpretation is that the phrase "controlled directly or indirectly" points to the "ultimate controller." In juxtaposition to [r]espondent's interpretation, [c]laimant argues that "[p]ursuant to the BIT test, it is possible for more than one entity to be a controlling entity for the purposes of the BIT." The [t]ribunal agrees, with the [c]laimant's view. The phrase, "directly or indirectly," in modifying the term "controlled" creates the possibility of there simultaneously being a direct controller and one or more indirect controllers. The BIT does not limit the scope of eligible claimants to only the "ultimate controller."⁴⁹³

The [t]ribunal continues the task of interpretation by considering the other two core elements of the method of interpretation contained in the Vienna Convention: the context in which the phrase "controlled directly or indirectly" is found and the object and purpose of the BIT.⁴⁹⁴

⁴⁹¹ See (RLA-92) ¶ 235 (internal citations omitted).

⁴⁹² See (RLA-92) ¶ 236 (internal citations omitted).

⁴⁹³ See (RLA-92) ¶ 236 (internal citations omitted).

⁴⁹⁴ See (RLA-92) ¶ 236.

320. In sum, the tribunal in *Aguas del Tunari v. Bolivia*, held that ownership is established by majority ownership, but control is established by minority ownership plus voting rights. ICSID Case No. ARB/02/3, Decision on Respondent’s Objections, ¶ 299 (Nov. 2001).⁴⁹⁵

321. Under Article 10.16(1)(b) of the USPTPA, the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns, or controls directly or indirectly, may submit to arbitration under this section a claim that the respondent has breached and that the enterprise has incurred loss or damage as a result.

322. The *CMS v. Argentina* tribunal held that “It is well known incidentally that, depending on how shares are distributed, controlling shareholders can in fact own less than a majority of shares.” ICSID Case No. ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction, ¶ 51 (Jul. 2003).⁴⁹⁶

323. NAFTA tribunals in *International Thunderbird Gaming Corporation v. United Mexican States* found that an investor can bring a claim if they own or control the enterprise, and that can be satisfied by *de facto* control through the ability to exercise a significant influence on decision-making as a driving force through actions, resources, and expertise, regardless of share percentage. UNCITRAL Arbitral Award, ¶¶ 106-07. In fact, the tribunal acknowledges that this sort of control is very common, and how control can be achieved by the power to decide and implement key decisions through technology, access to supplies, access to markets, access to capital, know-how, and reputation. *Id.* at ¶ 108.⁴⁹⁷

⁴⁹⁵ See (RLA-92).

⁴⁹⁶ See (CLA-149) *CMS v. Argentina* ICSID Case No. ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction, ¶ 51 (Jul. 2003).

⁴⁹⁷ See (CLA-150) *International Thunderbird Gaming Corporation v. United Mexican States*, Arbitral Award, ¶¶ 106-07.

324. ICSID tribunals have similarly taken note that, a jurisdiction finding of indirect control requires Claimant to show either that “it had the legal capacity to control, i.e., de jure control, or that it exercised the actual power, de facto control, to do so.” *Odyssey Marine Exploration*, ICSID Case No. UNT/20/1, Final Award, ¶ 169 (Sept. 2024)

325. Indeed, as the below cases illustrate, a minority shareholder can be a controlling shareholder in the United States.

326. The 11th Circuit determined in *In re N & D Properties, Inc.*, that a shareholder has control when they determine corporate policy, whether by personally assuming management responsibility or by selecting management personnel, and that such control can be vested in a minority shareholder. 799 F.2d 726, 731-32 (11th Cir. 1986) (citing Berle, “Control” in *Corporate Law*, 58 Colum. L. Rev. 1212 (1958)).⁴⁹⁸

327. In *Sheldon v. Pinto Tech. Ventures, L.P.* the Delaware Supreme Court has held that “a stockholder could be found a controller under Delaware law: where the stockholder (1) owns more than 50% of the voting power of ac corporation or (2) owns less than 50% of the voting power of the corporation but ‘exercises control over the business affairs of the corporation.’” 220 A.3d 245, 251 (Del. 2019).⁴⁹⁹

328. In *Starr Int’l Co. v. United States*, a minority shareholder may have control through an exercise of direction over corporate conduct and business affairs. 856 F.3d 953, 968-69 (Fed. Cir. 2017) (citing *Gatz v. Ponsoldt*, 925 A.2d 165, 1280-81 (Del. 2007)).⁵⁰⁰

⁴⁹⁸ See (CLA-151) *In re N & D Properties, Inc* 799 F.2d 726, 731-32 (11th Cir. 1986) (citing Berle, “Control” in *Corporate Law*, 58 Colum. L. Rev. 1212 (1958)).

⁴⁹⁹ See (CLA-152) *Sheldon v. Pinto Tech. Ventures, L.P.*, 220 A. 3d 245, 251 (Del. 2019).

⁵⁰⁰ See (CLA-153) *Starr Int’l Co. v. United States*, 856 F.3d 953, 968-69 (Fed. Cir. 2017) (citing *Gatz v. Ponsoldt*, 925 A.2d 165, 1280-81 (Del. 2007)).

329. Here, Amorrortu has always been in control of Baspetro. Indeed, this is evidenced by, for example, his correspondences to PeruPetro, as he was the only shareholder of Baspetro to write to PeruPetro on behalf of Baspetro,⁵⁰¹ and by Amorrortu's December 15, 2014 correspondence to Ms. Tafur, General Manager of PeruPetro, where Amorrortu, in his capacity as Chairman of Baspetro, stated the reasons why he considered that his Proposal was a better option for the license agreement for the Operation of Hydrocarbons in Block III and indicated his hope that PeruPetro reconsider the award granted to Graña y Montero S.A.C., voiding the decision and summoning Baspetro to negotiate the respective contract to operate the license agreement for the Operation of Hydrocarbons in Block III [sic], in response to the price bid and technical bid presented by Amorrortu to PeruPetro on May 28, 2014.⁵⁰²

d. Amorrortu's claim was not time barred upon its submission

330. Just like it did in its Notice of Bifurcation⁵⁰³ and Request to Bifurcate,⁵⁰⁴ Peru claims that Amorrortu's claim was time barred upon its submission to arbitration on August 21, 2023.⁵⁰⁵ Peru bases its argument upon the three-year limitation period of the Treaty's Article 10.18.21 and claims that Amorrortu had a limitation period of August 21, 2020.⁵⁰⁶

331. This argument is flawed and unavailing as it entirely omits the elephant in the room: the corruption that plagued Amorrortu's interaction with PeruPetro and Peru in the operative facts that gave rise to this Arbitration.⁵⁰⁷ This line of argument follows the same logic as the Witness

⁵⁰¹ See, e.g., (C-6, C-7, C-8, C-9, C-11).

⁵⁰² See (C-11, C-16, C-17); (CLA-128) RER-1 [Vizquerra], ¶ 4.

⁵⁰³ See Notice of Bifurcation, p. 4-5, September 29, 2023.

⁵⁰⁴ See Request for Bifurcation, November 14, 2023.

⁵⁰⁵ See SoD, ¶ 216-235.

⁵⁰⁶ See SoD, ¶ 218.

⁵⁰⁷ See SoD, ¶ 217.

Statements in support of Peru’s SoD presented by Mr. Vela and Ms. Tafur submitted by Peru: it tellingly fails to tell the whole story.

332. Peru claims that it “demonstrated” at the bifurcation stage that Amorrortu’s claim was already time-barred.⁵⁰⁸ This too is untrue.

333. In aid of this argument, Peru relies on *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others), v. Republic of Costa Rica*.⁵⁰⁹ As shown below, a closer look at this case renders Peru’s argument null and void.

334. The *Berkowitz* tribunal explained that:⁵¹⁰

“As the language of Article 10.18.1 makes plain, the requirement of *knowledge* on the part of a claimant is a requirement of actual knowledge or of constructive knowledge. As the actual knowledge of a claimant will often be difficult to determine, tribunals are frequently called upon to consider what a claimant must be deemed to have known. The “should have first acquired knowledge” test in Article 10.18.1 is an objective standard; what a prudent claimant should have known or must reasonably be deemed to have known. In this regard, the Tribunal agrees with the analysis by the tribunal in *Grand River* on this issue, viz: “‘Constructive knowledge’ of a fact is imputed to a person if by exercise of reasonable care or diligence, the person would have known of that fact. Closely associated is the concept of ‘constructive notice.’ This entails notice that is imputed to a person, either from knowing something that ought to have put the person to further enquiry, or from wilfully abstaining from inquiry in order to avoid actual knowledge.

335. In a nutshell, Peru argues that Amorrortu knew or should have known of the alleged breach “years before the Critical Date, i.e. 21 August 2020.”⁵¹¹ According to Peru, Amorrortu

⁵⁰⁸ See SoD, ¶ 219.

⁵⁰⁹ See **(RLA-33)**, *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others), v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017), ¶ 209.

⁵¹⁰ See **(RLA-33)**, *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others), v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017), ¶ 209.

⁵¹¹ See SoD, ¶ 228.

knew as early as 2014 and 2015 of the breaches.⁵¹² Peru argues that Amorrortu’s allegation that he only discovered confirmation of corrupt or irregular act on August 21, 2020 does not change the fact that he was (or should have been) aware of the core of the alleged measures in 2014 and 2015.⁵¹³ In doing this, Peru draws a distinction between knowledge of “motivation” and the measures leading to the breach.⁵¹⁴ In sum, this analysis is inapposite to this Arbitration and misses the mark.

336. Peru’s argument on this objection fails to satisfy the objective test put forth by *Berkowitz*.⁵¹⁵ Indeed, Peru’s argument entirely omits a response to Amorrortu’s counter argument: that (i) the statute of limitations period here was tolled by the filing of *Amorrortu I*,⁵¹⁶ and (ii) in any event, Amorrortu did not gain actual (or constructive) knowledge of the corrupt *measure*, which are tied to Peru’s Treaty breach until August 31, 2020, the date upon which information became available reflecting the diaries showing that the First Lady Nadine Heredia met with Graña y Montero’s executives to discuss Lots III and IV before the Direct Negotiation process was aborted; before Graña y Montero was awarded the underlying contracts; and before the contracts were signed.⁵¹⁷ **The silence with which Peru treats the corruption allegations in Amorrortu’s Statement of Claim is deafening.**

⁵¹² *Id.*

⁵¹³ See SoD, ¶ 231.

⁵¹⁴ See SoD, ¶ 232.

⁵¹⁵ See (RLA-33), *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others), v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017), ¶ 209.

⁵¹⁶ See (CLA-154) *Amorrortu v. Republic of Peru*, PCA Case No. 2020-11 (I).

⁵¹⁷ See *Claimant’s Opposition to Bifurcation*, ¶ 48.

337. First, the limitations period was stayed by the filing of *Amorrortu I* on September 19, 2019.⁵¹⁸ *Amorrortu*'s argument is supported by *The Renco Group, Inc. v. Republic of Peru* (“*Renco II*”).⁵¹⁹

338. In *Renco II*,⁵²⁰ the respondent Peru presented a similar argument to the one it presents here concerning statute of limitations and claimed that under Article 10.18.1 of the USPTPA, claimant was precluded “from raising claims later than three years following ‘the date on which the claimant first acquired, or should have acquired, knowledge of the breach alleged’ and knowledge that the claimant ‘has incurred loss or damage.’”⁵²¹ Peru argued that this provision, coupled with *lex specialis*, makes it “clear that a notice of arbitration accompanied by a defective waiver as to local proceedings does not suspend the running” of the statute of limitations.⁵²² “Therefore, according to the [r]espondent, the prescription period continues running if a notice of arbitration is filed with an invalid waiver because, in such case, the claim was ‘never submitted to arbitration.’”⁵²³

339. Nevertheless, the *Renco II* tribunal disagreed and ruled that “the [c]laimant’s notice of arbitration and statement of claim in *Renco I*, suspended the prescription period of Article 10.18.1.”⁵²⁴ In making the determination of whether the statute of limitations was suspended during the pendency of *Renco I*, the tribunal separated its analysis into two steps.

340. As to the first step, the tribunal determined that the suspension of the limitations period during an arbitral proceeding was a general principle of law recognized under international

⁵¹⁸ See (CLA-155) *Amorrortu I*, Notice of Arbitration, September 19, 2019.

⁵¹⁹ See (CLA-156) *The Renco Group, Inc. v. Republic of Peru*, PCA Case No. 2019-46.

⁵²⁰ See (CLA-156) *Renco II* occurred three-years after a UNCITRAL tribunal dismissed *Renco I*, due to a defective waiver of domestic litigation filed by claimant.

⁵²¹ See (CLA-156) *Renco II*, at 20.

⁵²² See *Id.* at 64.

⁵²³ See *Id.* at 65.

⁵²⁴ See *Id.* at 73.

law.⁵²⁵ Because there is no clear treaty or customary international law obligation to suspend the prescription period during arbitration, nor a clear inference from the Treaty’s silence, the “‘rules generally accepted by municipal legal systems’ may be invoked in order that the ultimate result not ‘lose touch with reality.’”⁵²⁶ This is especially true, “where the international rule to be applied finds its origin in analogous national law”⁵²⁷ This gap-filling capacity is enumerated by Article 38(1)(C) of the ICJ Statute.⁵²⁸ The tribunal points to the laws of Peru, Argentina, France, Germany, Portugal, Spain, the United Kingdom, and the United States—among others—to support this claim.⁵²⁹

341. As to the second step, the tribunal determined that the Treaty’s implicit position is that the prescription period is suspended once the claim is “submitted to arbitration.”⁵³⁰ The tribunal rejected Peru’s interpretation that a notice of arbitration with a defective waiver (one that did not conform with Article 10.18.2), is not considered a claim that was “submitted to arbitration.”⁵³¹

342. In fact, the tribunal indicated that Article 10.16.4 of the Treaty “suggests the opposite: If a notice of arbitration and statement of claim is filed in accordance with Articles 3 and 20 of the UNCITRAL Rules, this is the point in time at which the claim ‘shall be deemed to be submitted to arbitration.’”⁵³² Therefore, “once a notice of arbitration and statement of claim conforming with the formal filing requirements of the UNCITRAL Rules is submitted, Article 10.16.4 requires the [t]ribunal to treat the claim as having been ‘submitted to arbitration’, with the

⁵²⁵ *See Id.* at 61.

⁵²⁶ *See Id.* at 61-62.

⁵²⁷ *See Id.*

⁵²⁸ *See Id.*

⁵²⁹ *See Id.* at 61-62.

⁵³⁰ *See Id.* at 65.

⁵³¹ *See Id.* 65.

⁵³² *See Id.*

necessary consequence that the prescription period under Article 10.18.1 ceases to run as of this point in time.”⁵³³ The tribunal emphasizes that to hold otherwise “would not only create perverse incentives for a respondent State to elicit grounds for setting aside, it would frustrate a claimant’s due process rights.”⁵³⁴ And, this goes against the object and purpose of the Treaty under Article 31(1) of the Vienna Convention on the Law of Treaties.

343. The findings of the tribunal in *Renco II* are supported by the Treaty’s objective to provide a predictable legal framework.⁵³⁵ “The existence and length of such suspension can be easily and clearly established by reference to the dates of the notice of arbitration and the final award (or termination order), thus not calling into question legal predictability.”⁵³⁶ “Furthermore, **if an arbitration is filed within the prescription period, this will prompt a diligent respondent State to find and secure evidence, such that sufficient evidence will be available to it even if a second arbitration is filed after the conclusion of the first one.**”⁵³⁷ This is especially true, where the “respondent State must reasonably expect, [...] after the conclusion of the first arbitration, that the same claim will be re-filed.”⁵³⁸

344. Peru advances in its SoD that if the Tribunal were to agree that *Amorrortu I* tolled the limitations period in this matter, then Amorrortu knew or should have known all relevant facts supporting his claims before September 11, 2017 (three years prior to September 11, 2020, the date on which the Statement of Claim was presented in *Amorrortu I*).⁵³⁹

345. Article 10. 18.1 of the Treaty provides that:⁵⁴⁰

⁵³³ *See Id.*

⁵³⁴ *See Id.* at 69.

⁵³⁵ *See Id.* at 66.

⁵³⁶ *See Id.* at 66.

⁵³⁷ *See Id.* at 66-67 (emphasis added).

⁵³⁸ *See Id.*

⁵³⁹ *See* SoD, FN 359.

⁵⁴⁰ *See* (CLA-1), USPTPA Investment Chapter, Art. 10. 18.1.

No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.

346. Again, however, Amorrortu did not gain actual knowledge of the corruption, which is tied to the Treaty breach Peru is guilty of, until August 31, 2020.⁵⁴¹

347. Peru argues that Amorrortu was “well-aware” of the alleged breaches before the August 21, 2020 critical date because he complained of irregularities, illegalities, and discrimination in 2014 and 2015.⁵⁴² Indeed, Peru goes on to argue that “Amorrortu’s allegation that he only discovered confirmation of corrupt or irregular acts on August 31, 2020 does not change the fact that he was aware, or should have been aware, of the core of the alleged measures in 2014 and 2015, as demonstrated by the evidence proffered by Amorrortu himself. Notably, the alleged new discoveries of corruption in no way change the underlying understanding of circumstances as they existed around the time GyM signed the contracts in 2015.”⁵⁴³ This analysis misses the mark.

348. Just like it did in its bifurcation papers, Peru disingenuously relies once more on the last sentence of paragraph 259 of Mr. Amorrortu’s Statement of Claim to suggest that Mr. Amorrortu alleges that he first acquired knowledge of the corruption in 2019. In so doing, Peru completely ignores Mr. Amorrortu’s Declaration. A review of the Statement of Claim’s paragraph 259 (beginning with the end of paragraph 258, for context) is consistent with Mr. Amorrortu’s Declaration and reads:

⁵⁴¹ See Claimant’s Opposition to Bifurcation, ¶ 48.

⁵⁴² See SoD, ¶ 228.

⁵⁴³ See SoD, ¶ 231.

“... although some of Peru’s unlawful conduct commenced more than three years before the September 19, 2019 NOI was sent, the fact that such conduct was in breach of the [Treaty] was unknown and unknowable to Amorrortu until June 2019 when Graña y Montero finally acknowledged its involvement in the Corruption Scheme undertaken together with Odebrecht in various megaprojects in Peru.”⁵⁴⁴

349. Only at that point, in 2019, could Amorrortu begin to suspect for the first time that corruption was at the heart of Peru’s failure to consider the Baspetro Proposal, of Peru’s purported rejection of the Baspetro Proposal, of the rigged International Public Bidding Process, and ultimately of the granting of the *buena pro* to Graña y Montero. Indeed, in 2017, Graña y Montero vehemently denied any wrongdoing. Critically, the evidence implicating Graña y Montero did not surface until 2018 when Odebrecht identified the company in its confession. In fact, Graña y Montero did not admit any wrongdoing until 2019. As a result, Amorrortu did not become aware of the fact that Peru’s prior conduct was unlawful under the [Treaty] until June 2019 and could not have learned such information earlier with any amount of due diligence.⁵⁴⁵

350. As paragraph 259 of the Statement of Claim indicates, Graña y Montero’s confession certainly took Mr. Amorrortu’s suspicions to a critical level and caused him to investigate. But there is a significant difference between **the date** when Mr. Amorrortu’s suspicions reached a critical level and he “launched his investigation” and **the date** when he “acquired knowledge” of that the corruption. Any confusion on this point is clarified by Mr. Amorrortu’s sworn Declaration.

351. Tellingly, while a suspicion that is partially corroborated by a developing investigation may be enough in a notice of arbitration filed upon information and belief, to establish that a claim is time-barred Peru needs to do much more.

⁵⁴⁴ See SoC, ¶ 258.

⁵⁴⁵ See SoC, ¶ 259.

352. Here, Peru has the burden to show, as a matter of fact, that Mr. Amorrortu “acquired or should have acquired actual knowledge” of the corruption that frustrated his investment three years before the commencement of this Arbitration. That is impossible to do because this information was not available to Mr. Amorrortu until the First Lady’s diaries became public on or around August 31, 2020.

353. Moreover, Peru ignores that *Amorrortu I* was subjected to a Petition to Vacate. Therefore, this Arbitration was commenced while *Amorrortu I* was still pending. Under *Peru v. Renco (II)*, *arguendo*, even if *Amorrortu II* was untimely filed, this Arbitration would relate back to the still pending *Amorrortu I* for purposes of the limitations period.⁵⁴⁶ Simply put, the limitations period ceased to run when *Amorrortu I* was submitted to arbitration and has not been resumed because *Amorrortu I* is still pending.

354. In sum, and as referenced *supra*, Amorrortu could not have acquired the knowledge of Peru’s corruption prior to August 31, 2020, because, prior to this date, there was **no publicly available information** that implicated (explicitly or otherwise) Lots III and IV in the corruption scheme.⁵⁴⁷

355. Further, contrary to Peru’s allegations, the timing of when Amorrortu learned about the actual corruption plaguing his case is not immaterial here as a mere “motive” or subjective intent of Peru—the corruption is the very measure that breached the Treaty and caused Amorrortu damages. Additionally, the corruption is an independent measure when compared to the other breaches Amorrortu complains about in this Arbitration.

⁵⁴⁶ See (CLA-156) *The Renco Group, Inc. v. The Republic of Peru*, PCA Case No. 2019-46, Decision on Expedited Preliminary Objections June 30, 2020.

⁵⁴⁷ See SoC, ¶ 11.

356. More egregious still is Peru's claim that "this change of circumstances only goes to the confirmation of what Amorrortu already suspected was the *motivation* behind the impugned measures, not the measures themselves."⁵⁴⁸ However, this reasoning is flawed because, *inter alia*, it omits that corruption is not permissible by the Treaty and is therefore a breach in itself.⁵⁴⁹ Therefore, the information that became public and knowable to Amorrortu in August 2020 is not merely about "motivation." Peru's corruption, in and of itself, is a Treaty breach.⁵⁵⁰

357. Peru cites a litany of cases for the proposition that its corruption motives and the timing during which Amorrortu learned of them have no bearing on the limitations period. This analysis shows a misunderstanding of the Treaty and Amorrortu's claims, as all Treaty breaches complained of by Amorrortu are due to Peru's wrongful conduct vis-à-vis its high government corruption. In other words, the act of corruption by itself is a Treaty breach, making the timing during which Amorrortu first acquired or should have acquired knowledge of the corruption material for this arbitration (and indeed related to the limitations arguments raised by Peru).⁵⁵¹

358. Simply stated, this information was not available in 2014, 2015, or 2019, the years that Peru claims Amorrortu knew or should have known of the rampant corruption scheme and how it affected his claims.

359. To the extent the Tribunal were to find any issues with the statute of limitations, the proverbial clock was restarted in August of 2020 when Amorrortu first acquired knowledge of Peru's corruption. Prior to August 21, 2020, Mr. Amorrortu's claims were based upon his suspicion which, at the time they were pled, was tangentially corroborated by an incrementally

⁵⁴⁸ See SoD, ¶ 232.

⁵⁴⁹ See (CLA-1).

⁵⁵⁰ See (CLA-2), (CLA-42).

⁵⁵¹ See (CLA-1).

developing investigation.⁵⁵² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e. Amorrortu is an American national

360. Peru alleges that Amorrortu is a dual national of the United States and Peru,⁵⁵³ and that his Peruvian nationality took precedence over his U.S. nationality when the alleged breach occurred.⁵⁵⁴ These allegations are belied by the evidence presented by Claimant to date, and indeed, by the record at the time Peru submitted its Statement of Defense.⁵⁵⁵

361. Amorrortu is an American national and citizen, and does qualify as a U.S. investor under the USPTA. Accordingly, he is protected as an investor under the Treaty and is therefore protected under Articles 10.16.1 and 10.28 of the Treaty.

362. Amorrortu is a U.S. citizen and has been one since 2010,⁵⁵⁶ **ten years before** Amorrortu filed his first arbitration against Peru in 2020.⁵⁵⁷ Indeed, Amorrortu became an American national many years before his dispute against Peru became foreseeable. As explained in detail in Amorrortu's Statement of Claim and his Declaration in support thereto, Amorrortu was forced to seek political asylum in the United States and filed this application in March of 2000.⁵⁵⁸

⁵⁵² See SoC, ¶ 11; also see Opposition to Bifurcation, ¶ 6.

⁵⁵³ See SoD.

⁵⁵⁴ See SoD, ¶ 248.

⁵⁵⁵ See CWS-1 [Amorrortu]; (C-25); (C-26), (C-1); (C-38).

⁵⁵⁶ See (C-190) Certificate of Naturalization of Bacilio Amorrortu; See (C-1); (C-26); (C-25); CWS-1 [Amorrortu] ¶¶ 5-11, 33.

⁵⁵⁷ See (CLA-155) and (CLA-154) Statement of Claim in *Amorrortu I*.

⁵⁵⁸ See SoC, ¶ 47; (C-30) Letter from Coane & Associates to US INS, 16 March 2000; CWS – 1 [Amorrortu], ¶ 14.

The application was approved on January 29, 2001.⁵⁵⁹ Along with Amorrortu's application, his wife at the time and two sons also sought and obtained asylum.⁵⁶⁰

363. Amorrortu then applied for permanent residence in the U.S. on July 23, 2001, the same year he sought political asylum. This application was granted on August 23, 2005.⁵⁶¹

364. Additionally, as referenced above, Amorrortu became a U.S. citizen in 2010 (and so have his two sons, and first wife).⁵⁶² Critically, this was **two years before forming Baspetro; three years before Amorrortu first contacted Ortigas**, then President of PeruPetro to express his interest in operating the lots; **four years before Amorrortu personally met with Ortigas and was instructed by Ortigas to prepare a proposal for direct negotiation** for operation for Blocks III and IV; and **ten whole years before** the filing of *Amorrortu I*. That Peru argues, spilling considerable ink in doing so, that Amorrortu attempted to change nationalities only after the instant dispute became foreseeable is preposterous and unavailing.⁵⁶³

365. The USPTPA's Annex 1.3(b), establishes that:⁵⁶⁴

For purposes of this Agreement, unless otherwise specified: natural person who has the nationality of a Party means:

(b) with respect to the United States, "national of the United States" as defined in the existing provisions of the Immigration and Nationality Act.

⁵⁵⁹ See SoC, ¶ 47.

⁵⁶⁰ See (C-1).

⁵⁶¹ See SoC, ¶ 48; CWS – 1 [Amorrortu] ¶ 28; see also (C-38) Department of Homeland Security, Application to Adjust to Permanent Resident Status, Approval Notice, 23 August 2005.

⁵⁶² See CWS – 2[Amorrortu], ¶ 29.

⁵⁶³ See SoD, ¶ 236.

⁵⁶⁴ USPTPA's Annex 1.3, Country-Specific Definitions.

366. The Immigration and Nationality Act (“INA”) defines a “national of the United States”⁵⁶⁵ as including all U.S. citizens, as well as those who, although not citizens, “owe permanent allegiance to the United States.”⁵⁶⁶

367. In addition, the INA defines “naturalization” as:⁵⁶⁷

the conferring of nationality of a state upon a person after birth, by any means whatsoever.

368. Because Amorrortu became a naturalized citizen in 2010, he is and has been since 2010 a national of the United States.

369. In addition to his naturalization and citizenship status as an American, Amorrortu has continuously paid taxes in the United States since his naturalization in 2010.⁵⁶⁸ Indeed, by the time the underlying dispute arose, Amorrortu had been paying U.S. taxes for at least a decade.⁵⁶⁹

370. Moreover, key documents reflect that Amorrortu traveled only with his United States passport since this time, and that he conveyed himself to French authorities as an American national for the period of time during which he temporarily lived in France.⁵⁷⁰

371. In fact, in 2014, the year of one of the breaches relevant to this Arbitration, French authorities had Amorrortu registered as an American national.⁵⁷¹⁻⁵⁷²

372. Furthermore, Amorrortu also votes in the United States, pays car insurance in the United States, attends to his doctor’s appointments in the United States, etc.⁵⁷³

⁵⁶⁵ See (CLA-157) Immigration and Nationality Act (“INA”).

⁵⁶⁶ This definition is established in Section 101(a)(22)(A)-(B) of the INA, which incorporates the definition of “national” from Section 101(a)(21) of the INA.

⁵⁶⁷ See (CLA-157).

⁵⁶⁸ See CWS – 2[Amorrortu], ¶ 37.

⁵⁶⁹ *Id.*

⁵⁷⁰ See (C-25); (C-26); (C-175); and (C-191), Receptisee de Demande de Carte de Sejour (Residence Card dated 2014).

⁵⁷¹ See (C-175); (C-191) Receptisee de Demande de Carte de Sejour (Residence Card) dated 2014.

⁵⁷² See (C-175) Receptisee de Demande de Carte de Sejour produced with bates AmorrortuProd009.

⁵⁷³ See (C-211) Statefarm Renewal Certificate; (C-212) Correspondence of Greg A. Linney D.D.S., Inc. Dentist of Bacilio Amorrortu; (C-213) Voter Registration Certificate of Bacilio Amorrortu (C-214) Voter Information Card of Bacilio Amorrortu; CWS – 2[Amorrortu], ¶ 28-39.

373. Now, Amorrortu does not consider himself a dual citizen during the relevant times in this Arbitration. In any event, Amorrortu’s effective and dominant nationality as an American is also analyzed here. Because Amorrortu did not check the box of renouncing his Peruvian nationality until 2019, his effective and dominant nationality as an American is also analyzed herein to address Amorrortu’s nationality at the time of his investment in Bassetrol and at the time of certain breaches. It is undisputed that Amorrortu had renounced his Peruvian nationality by the time he filed this dispute; and he only did so as a mere formality.⁵⁷⁴

374. As stated *supra*, Amorrortu was forced to flee Peru. He did not have the intention to return.⁵⁷⁵ With that said, for all the foregoing reasons, the end result under an effective and dominant nationality analysis is the same: Amorrortu was, at all times, an American citizen (effectively and dominantly).⁵⁷⁶ Thus, while Amorrortu is not disputing that he had not formally checked the renunciation box, this does not affect his nationality.⁵⁷⁷

375. The Treaty’s Article 10.28 defines an “investor of a Party” as:

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.**⁵⁷⁸

376. Amorrortu’s testimony submitted along with his Statement of Claim evidences his change of nationality from Peruvian to that of the United States.⁵⁷⁹

⁵⁷⁴ See SoD ¶¶249-258; (C-23); (R-54); CWS – 2[Amorrortu], ¶ 39.

⁵⁷⁵ See CWS – 2[Amorrortu], ¶¶ 29-30.

⁵⁷⁶ See SoC, ¶¶ 174-176; CWS – 1[Amorrortu]; CWS – 2[Amorrortu].

⁵⁷⁷ CWS – 2[Amorrortu], ¶ 39

⁵⁷⁸ See (CLA-1) Treaty, Article 10.28 (emphasis added).

⁵⁷⁹ See CWS-1-[Amorrortu] ¶ 14.

377. When Amorrortu resubmitted the Proposal to Tafur on October 31, 2014 he had previously been instructed to send to Ortigas by Ortigas, he sent original copies notarized by a Notary in Texas, United States, where Amorrortu was based at the time.⁵⁸⁰ Indeed, in this correspondence, Amorrortu says he is “oriundo,” or native of Peru.⁵⁸¹ This is, of course, not to be confused with the remaining context: Amorrortu fled Peru and became an exile in the United States, seeking refuge in a country that would agree to adopt him as a national and citizen.

378. Although Peru focuses on the official renunciation of Amorrortu of his Peruvian nationality in 2019, the bottom line is that Amorrortu has considered himself an American national for long before the dispute arose or became foreseeable.⁵⁸² Indeed, though Amorrortu spent time in France from 2014-2017, the documents reflect that his nationality was registered as American during that time as well.⁵⁸³

379. Notwithstanding all this evidence in favor of Amorrortu’s American nationality, Peru asserts in its Statement of Defense that Amorrortu “has provided no evidence substantiating”⁵⁸⁴ that the United States is his dominant and exclusive nationality. This is false. But, in any event, surely enough evidence has been established to date.

380. While Amorrortu officially renounced his Peruvian nationality in September of 2019 from Houston, Texas,⁵⁸⁵ renunciation of a nationality is not required under U.S. law to have become a U.S. national. Moreover, notwithstanding this official renouncement, Amorrortu had

⁵⁸⁰ See (C-222) Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-23, pg. 35.

⁵⁸¹ See (C-222) Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-23, pg. 35.

⁵⁸² See CWS – 2[Amorrortu], ¶¶ 28-39.

⁵⁸³ See (C-175); (C-191) Recepisee de Demande de Carte de Sejour (Residence Card) dated 2014.

⁵⁸⁴ See SoD ¶ 239.

⁵⁸⁵ See (R-54); SoD ¶ 249.

been living predominantly in the United States since applying there for asylum in the early 2000s. Even when he lived in France, Amorrortu maintained his U.S. nationality by, *inter alia*:⁵⁸⁶

- a. Paying taxes in the United States from 2010 through 2019 (including through the present time).⁵⁸⁷
- b. Paying car insurance in the United States.⁵⁸⁸
- c. Visiting the doctor's office in the United States.⁵⁸⁹
- d. Voting in the United States.⁵⁹⁰

381. Indeed, the official renunciation was not an attempt to “manufacture jurisdiction,” as Peru claims, as that was completely unnecessary because Amorrortu had considered himself a U.S. national since his petition for asylum was granted in the early 2000s, and certainly by the time he became a naturalized American in 2010.⁵⁹¹ Therefore, his dominant nationality was American.

382. Thus, Peru's claims that Amorrortu seeks to abuse the process by changing his nationality to enable him to bring the current Arbitration⁵⁹² shows a misunderstanding of the facts and evidence of this case. Indeed, these arguments entirely omit the pertinent background that caused Amorrortu to flee Peru, request asylum in the United States, and is simply bad math coupled with an erroneous understanding of the chronology of Amorrortu's pled facts.

⁵⁸⁶ See CWS – 2[Amorrortu].

⁵⁸⁷ See CWS – 2[Amorrortu], ¶ 37.

⁵⁸⁸ See (C-211).

⁵⁸⁹ See (C-212), and CWS – 2[Amorrortu], ¶ 38.

⁵⁹⁰ See (C-213).

⁵⁹¹ See CWS – 2[Amorrortu], ¶¶ 28-39.

⁵⁹² See SoD ¶ 256.

383. Relatedly, Peru’s reliance on *Mihaljevic v. Croatia*, *Mobil v. Venezuela*, *Heemsen v. Venezuela*, and *Ballantine v. Dominican Republic*,⁵⁹³ are equally misplaced. In arguing that Amorrortu’s dominant and effective nationality is Peruvian, Peru misguidedly relies on these cases which simply do not support its defense or objections.

384. Peru claims that Amorrortu is like the investor in *Mihaljevic v. Croatia*, where the tribunal found that investor’s relinquishment of citizenship was solely so that he could pursue an arbitration against the respondent.⁵⁹⁴ Not so. In *Mihaljevic*, the investor, unlike Amorrortu, did not have over 19 years of living abroad and applied for asylum in a different country by the time the proceeding arose. Accordingly, *Mihaljevic* is completely distinguishable from the case at issue due to the fact that the tribunal’s concern was rooted in claimant’s relinquishment of his citizenship had the arbitration as the “sole” reason as evidenced by a letter to the president that says he withdrew his request for arbitration, understanding that he potentially be deemed a dual national, only then did he renounce his citizenship.⁵⁹⁵ No such tension exists here as Amorrortu sought U.S. citizenship as a result of political persecution and renounced his Peruvian citizenship prior to the commencement of these proceedings.⁵⁹⁶

385. Next, Peru cites to *Mobil v. Venezuela*⁵⁹⁷ for the proposition that a corporate restructuring to assert jurisdiction over a dispute would constitute an abuse of process with a foreseeable claim on the horizon. However, no investment was restructured in this instance, nor was Amorrortu a dominantly Peruvian national who tried to manipulate the system with an eye

⁵⁹³ See **(CLA-158)** *Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award, September 3, 2019, ¶ 539.

⁵⁹⁴ See SoD, ¶ 253; **(RLA-187)** *Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award (May 19, 2023) ¶ 137.

⁵⁹⁵ See *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award (19 May 2023) **(RLA-187)**, ¶¶ 116, 137.

⁵⁹⁶ See **(C-023)** Bacilio Amorrortu’s Notice of Intent to Arbitrate Against Peru, 19 September 2019.

⁵⁹⁷ See **(CLA-176)**, *Mobil v. Venezuela*, ICSID Case No. ARB/07/27, Award of the Tribunal at ¶ 198.

toward his claim. When Baspetrol was created or any of the events at issue occurred, Amorrortu was an American citizen.⁵⁹⁸ He sought asylum from the U.S. in 2000, became a citizen in 2005, and predominantly lived in the state of Texas or Florida within the United States during the relevant time with his family. Peru's claims are merely an attempt to hide the ball and draw similarities that do not exist. Additionally, in *Mobil* the tribunal determined in a prior order that it had no grounds to discuss FET and minimum treatment standards, which are major parts of the argument put forth by Claimant.⁵⁹⁹

386. The *Heemsen* test, as presented by Peru, for effective nationality is reductive in this instance, focusing intensely on the act of constituting and operating investments within the borders of the respondent state, not filing with the nation of Venezuela as foreign investors, and with only one personal prong concerning descendants.⁶⁰⁰ In fact, even in the exact paragraph Peru cites, they elaborate that the test they are using is that of the ICJ in *Nottebohm*, not some new articulation.⁶⁰¹ In reality, the respondent's test is not as talismanic as they present it, and is much broader, considering family ties, center of interests, participation in public life, and so on. While Amorrortu invested in Peru and his children were born there, he has been living in the United States for 25 years, with his descendants who are also US citizens, paying taxes and going to the doctor there, and participating in American public life.⁶⁰² To claim that merely because he continues to invest in Peru as an American and his children were born there decades ago is enough to constitute

⁵⁹⁸ See CWS – 1[Amorrortu]; CWS – 2[Amorrortu].

⁵⁹⁹ *Id.* at ¶ 226.

⁶⁰⁰ *Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction (29 October 2019) (RLA-170), ¶ 441.

⁶⁰¹ “Different factors are taken into consideration, and their importance will vary from one case to the next: the habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.”

⁶⁰² See CWS – 1[Amorrortu]; CWS – 2[Amorrortu].

dominant Peruvian nationality ignores the case-by-case approach of *Nottebohm*, contradicts the very case cited by Respondents, and ignores the fact that someone’s life can result in other nations being called home.

387. Peru’s reliance on *Ballantine* only repeats prior points that have already been shown to be too attenuated from the current case.⁶⁰³ In *Ballantine* the investors outright state that they sought Dominican nationality for the purpose of getting their investment protected.⁶⁰⁴ Furthermore, Peru cites *Ballantine* for the proposition that a nationality is not “effective” if it has never been exercised, if they have not presented themselves as a national of that country, if they held no personal or professional connection to that nation, or if they have never complied with the obligations of that nation.⁶⁰⁵ Peru inaccurately states that Amorrortu fails this standard by saying he has exercised his Peruvian nationality, presented himself as Peruvian, has personal and professional connections to Peru, and exercised rights as a Peruvian national, all while ignoring his strong, effective and dominant ties to the United States.⁶⁰⁶

388. As held by *Pac Rim v. Costa Rica*, a case also relied upon by Peru, the distinction between abuse of process and a legitimate change of nationality depends on whether the change “was made in good faith before the occurrence of any event or measure giving rise to a later dispute.”⁶⁰⁷

⁶⁰³ *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award (3 September 2019) (RLA-169), ¶ 584.

⁶⁰⁴ *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award (3 September 2019) (RLA-169), ¶ 584.

⁶⁰⁵ *Id.* at ¶ 539.

⁶⁰⁶ SoD, ¶ 244. Notably, Peru does not mention whether Amorrortu satisfied obligations as a Peruvian national because they are fully aware that his obligations have been completed in the United States through participation in public life and in paying taxes within the US.

⁶⁰⁷ See (RLA-121) *Pac Rim v. Salvador*, ICSID Case no. ARB/09/12, Decision on the Respondent’s Jurisdictional Objections, June 1, 2012 ¶ 2.47; SoD ¶ 254.

389. The tribunal in *Phoenix Action v. Czech Republic*⁶⁰⁸ dealt with nationality in that it was dealing with the potential of the formal legal entity being used as a means of getting the proceeding into an international tribunal even though there was not a significant flow of capital, resources, or activity into the host's economy.⁶⁰⁹

390. No such problem exists in this instance. Claimant Amorrortu emigrated from Peru to the United States approximately 20 years before filing this Arbitration, becoming a citizen of the United States then.⁶¹⁰ There are no concerns relating toward him using his American nationality as grounds for bringing his dispute into international arbitration because these investments were made almost 10 years after the acquisition of his American nationality.⁶¹¹

391. On July 14, 2014, Peru arbitrarily opened the International Public Bidding Process for Blocks III and IV.

392. Dating back to 2010, including during any of the breaches pled by Amorrortu, and during the filing of this Arbitration (and of *Amorrortu I*, for that matter) Amorrortu was an American national.^{612 613 614}

393. Though Peru casts a wide net in painting Amorrortu as someone who willfully sought to obstruct justice in 2019 by renouncing his Peruvian nationality then, this renunciation had been in practical effect since the early 2000s and certainly by 2010.⁶¹⁵ Indeed, his renunciation

⁶⁰⁸ See (CLA-190), *Phoenix Action v. Czech Republic*, ICSID Case No. ARB/06/5, Award ¶¶ 94, 97 (Apr. 2009).

⁶⁰⁹ *Id.* at ¶¶ 94, 97 (Apr. 2009).

⁶¹⁰ See CWS – 1 [Amorrortu], CWS – 2 [Amorrortu].

⁶¹¹ As argued *infra*, there is also no issue relating to the timing of the investment itself, as the claims against Peru occurred after the costs were incurred and the bidding process completed. *Id.* at ¶ 68. The Tribunal should ignore Peru's arguments as to the *rationae temporis* as well given that Amorrortu could not have discovered the corruption on his own until much later, given as it was not public information and no individual could reasonably be assumed to be capable of uncovering an entire corrupt system without at minimum investigative journalism experience. *Id.* at ¶¶ 68-72.

⁶¹² See (CLA-13); (C-26), (C-25); CWS – 1 [Amorrortu] ¶¶ 5-11, 33; (C-1); (C-23); (C-190).

⁶¹³ See SoC, ¶ 6.

⁶¹⁴ See CWS – 1 [Amorrortu], ¶ 33; (C-25); (C-26).

⁶¹⁵ See SoD ¶¶ 249-258; CWS – 2 [Amorrortu], ¶¶ 28-39.

does not impact the fact that he had been a US citizen and national since 2010, and that, if found to be a dual citizen by the Tribunal, his effective and dominant nationality was that of the U.S. at the time of the breaches by Peru.⁶¹⁶

394. And, as further confirmed by Mr. Quiroga, Amorrortu created Baspetro as a foreign investor with the express goal of investing in the production and exploration of petroleum and gas in Peru.⁶¹⁷

395. At all relevant times then for the purpose of this dispute, Amorrortu has been exclusively and dominantly a citizen of the United States.

f. The Tribunal has jurisdiction *ratione voluntatis* because Amorrortu complied with the procedural requirements for submitting his claims to Arbitration

396. Contrary to Peru's allegations,⁶¹⁸ Amorrortu satisfied the requisite consultation and negotiation requirement before initiating this arbitration pursuant to Article 10.15 of the Treaty.

397. Specifically, Claimant submitted its Notice of Intent to commence arbitration under the Treaty **almost five years ago**.⁶¹⁹ The Special Commission that represents Peru in International Investment Disputes responded and acknowledged receipt of the NOI on 24 September 2019, by Oficio No. 096-2019-EF/CE.32 of 28 November 2019. Via this official correspondence, the Special Commission notified Claimant that the Commission was assessing "*the feasibility of achieving a friendly settlement during the current stage, if applicable, in accordance with the provisions of numeral 10.15 of the Trade Promotion Agreement between the Republic of*

⁶¹⁶ *Id.*

⁶¹⁷ See CER- 2 [Quiroga] ¶ 4.22.

⁶¹⁸ See SoD, ¶¶ 322-368; and (R-1) Amorrortu's response to Oficio number 463-2022-EF/32 thereto of August 26, 2022.

⁶¹⁹ See (C-023) Bacilio Amorrortu's Notice of Intent to Arbitrate Against Peru, 19 September 2019.

Peru and the United States of America.”⁶²⁰ In the same communication, Peru invited the Claimant’s representatives to meet in person on 11 December 2019 at 3:45 p.m. at the Ministry of Exterior in Lima, Peru.⁶²¹

398. This meeting occurred on December 12, 2019, at 10:30 a.m. in Lima, Peru.⁶²² Pursuant to Article 10.15 of the USPTPA cited by Peru in its Oficio 463, Representatives of the Claimant traveled to Lima exclusively to participate in the consultation and negotiation phase in good faith.⁶²³

399. Peru asserts that it is insufficient that Amorrortu complied with these requirements with regard to *Amorrortu I* and its relation to this arbitration. In doing so, it argues that, in explaining its interpretation of Articles 10.15 and 10.16 of the Treaty, “in providing that only if the dispute cannot be settled amicably may it be submitted to arbitration, Article 10.16 necessarily demands that the negotiation efforts contemplated by Article 10.15 have actually failed in relation to the arbitration claim to be submitted.”⁶²⁴ Evidently, the fact that Amorrortu many times engaged in the type of amicable negotiation envisioned by the Treaty in these articles for the very claims raised in this arbitration supports that this requirement was complied with. Stated differently, there were several “actual attempts at negotiation” between Amorrortu and Peru, which Peru dispensed with, for the exact claims at issue in this Arbitration.⁶²⁵

⁶²⁰ See (C-028) Letter from La Republica de Peru’s President Ricardo Ampuero Llerena to Akerman LLP representatives of Bacilio Amorrortu, 28 November 2019 (emphasis added) (free translation).

⁶²¹ See *Id.*

⁶²² See (C-030) Letter from the Republic of Peru to Akerman LLP representatives of Bacilio Amorrortu, 5 December 2019 (free translation).

⁶²³ See (C-031) Letter from Akerman LLP to the Republic of Peru, 6 December 2019.

⁶²⁴ See SoD, ¶ 331.

⁶²⁵ Indeed, legal representatives of Amorrortu in *Amorrortu I* traveled to Peru shortly after submitting the NOI to meet with government officials and negotiate in good faith the resolution of this dispute. However, despite their best efforts, the negotiations were ultimately unproductive, and Amorrortu was compelled to proceed with *Amorrortu I*.

400. However, the meeting was unsuccessful. By letter No. 096-2019-EF/CE.32 of December 24, 2019, the Special Commission informed the representatives of the Claimant “that a technically and legally viable alternative solution **has not been identified** at this stage in response to the claims raised by Amorrortu.”⁶²⁶ With this, Amorrortu effectively fulfilled the consultation and negotiation phase of the Treaty.

401. Incredulously, Peru asserts that “the landscape surrounding this case looks very different”⁶²⁷ as compared to when Amorrortu satisfied this requirement. It is not entirely clear if this is an implicit acknowledgement of the corruption web that has engulfed Peru, however, and has been stated many times, the claims themselves remain unchanged.

402. Amorrortu refiled the case *sub judice* with the very same claims that were submitted to a consultation and negotiation phase, that were recognized as viable claims by the Tribunal in *Amorrortu I*, and that were dismissed without prejudice by a majority vote for the purported failure to include a valid waiver. **Nothing** in the Treaty precludes Claimant from relying upon his September 2019 NOI in this new separate proceeding, especially when Claimant is refiling the **exact claims**.⁶²⁸

403. Peru’s argument would require that we read into the Treaty additional requirements that simply do not exist.

404. In short, Amorrortu has complied with the ninety-day period required under Article 10.16 of the USPTPA.

⁶²⁶ See (C-032) Letter from the Republic of Peru to Akerman LLP representatives of Bacilio Amorrortu, 24 December 2019 (emphasis added and free translation).

⁶²⁷ See SoD, ¶ 336.

⁶²⁸ See, e.g., (CLA-28) *Waste Management Inc. v. United Mexican States [II]*, ICSID Case No. ARB(AF)/00/3 (no consultation and negotiation phase or notice of intent were required per the applicable treaty and where the same exact claims were resubmitted in a different arbitral proceeding). *But see* (CLA-156) *The Renco Group Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46 (where two additional claims were submitted when the claimant refiled the claim).

405. As Peru is well aware, during *Amorrortu I*, Amorrortu approached Peru to negotiate a possible resolution of the underlying dispute, and Peru demonstrated its unwillingness to engage in any meaningful conciliation with respect to the same claims at issue in this arbitration.⁶²⁹

406. Peru argues that the consultation and negotiation required by Article 10.15 of the Treaty “in the event of **an investment dispute**” requires consultation and negotiation every time an arbitration action is commenced. Of course, there is nothing in the text of the Treaty requiring this outcome, particularly in this case in which Peru **left open** the consultation and negotiation process initiated before the commencement of *Amorrortu I*. Even more critical is the fact that Peru failed to disclose to the Tribunal that Mr. Amorrortu, in fact, has continued to consult and negotiate with Peru, even after the commencement of *Amorrortu I* and the filing of *Amorrortu II*. Therefore, the consultation and negotiation requirements of Article 10.15 began a process that (i) was left open by Peru before the commencement of *Amorrortu I*; and (ii) has continued through *Amorrortu I* and *Amorrortu II*. Indeed, as recent as June 28, 2023, Mr. Amorrortu met with the Minister of Energy and Mining of Peru in Lima, Peru and delivered a proposal for the resolution of this investment dispute. This meeting is another piece that is incredibly not mentioned in Peru’s Request for Bifurcation. Therefore, the argument that Article 10.15 requires consultation and

⁶²⁹ See, e.g., *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction, 21 December 2012 (**CL-038**), ¶ 126 (“Even if the Tribunal were to find that Claimants had not formed a “dispute” within the meaning of Article X(l) before June 11, 2008, and had not attempted to amicably settle the dispute by the time they filed the Request for Arbitration on December 11, 2008, the Claimants’ failure to comply with this obligation should be excused for reasons of futility. Claimants have asserted that further negotiations with Respondent would be futile, because they have attempted to settle this dispute...”); *Alps Finance and Trade AG v. The Slovak Republic*, Ad hoc Arbitration, Award, 5 March 2011, (**CL-039**) ¶ 201 (“The relevant case-law endorses a less formalistic view. For instance, the tribunal in *Ethyl v. Canada* dismissed the objection based on the six-month provision because, in the circumstances of the case, any further negotiation would have been pointless or ‘futile’.”).

negotiation every time an arbitration is commenced is completely meritless, and in any event, the alleged “requirement” has been met here.⁶³⁰

i. Amorrortu submitted a Notice of Intent as required under Article 10.16.2 of the Treaty

407. Amorrortu first served Peru with a notice of intent on September 19, 2019⁶³¹. to submit the controversy to arbitration pursuant to the Treaty (the “Notice of Intent”).⁶³² In the Notice of Intent, Mr. Amorrortu explained that he intended to submit to arbitration, pursuant to Article 10.16 of the Treaty, his claims that Peru violated the Treaty by, *inter alia*, conducting a bidding process for Lots III and IV that was plagued with irregularities and corruption in violation of the fair and equitable treatment and expropriation protections of the Treaty.⁶³³

408. As shown below, the Notice of Intent put Peru on notice of Mr. Amorrortu’s investment disputes and the claims he intended to submit to arbitration. This is the same investment dispute and the same claims submitted to arbitration in the Notice of Arbitration and Statement of Claim filed on February 13, 2020 and September 11, 2020 almost identical filings in *Amorrortu I* and *II*, respectively. In the Notice of Intent and in all the filings in *Amorrortu I* and *Amorrortu II*, **Mr. Amorrortu alleges the same claims:** Peru breached the Minimum Standard of Treatment (including Fair and Equitable Treatment) when, as a reward for political bribes paid to the President and the First Lady, Peru: (i) aborted the direct negotiation process through which Mr. Amorrortu’s company was going to resume the operation of Lot III and sign a contract to operate

⁶³⁰ See (CLA-162) Claimant’s Answer to Perus Submission Pursuant to the Article 10.20.2 of the Treaty and Submission on Waiver Objection under Article 23 of UNCITRAL Arbitration Rules.

⁶³¹ See Claimant Bacilio Amorrortu’s Opposition to Respondent Peru’s Request for Bifurcation December 19, 2023, ¶ 14; Procedural Order No. 2 Decision on Bifurcation, issued on March 18, 2023.

⁶³² See (CLA-155) *Bacilio Amorrortu v. The Republic of Peru, PCA Case No. 2020-11*, Notice of Intent.

⁶³³ *Id.*

Lot IV of the Talara Basin, and (ii) launched an international bidding process designed to anoint GyM.

409. “Any **claim** to arbitration” requires a notice of intent under the Treaty.⁶³⁴ Here, because the claims in Amorrortu I and in this Amorrortu are the same, this requirement was satisfied through the submission of the Notice of Intent in *Amorrortu I*.

410. In *Kappes v. Guatemala*, the tribunal analyzed the DR-CAFTA treaty, a very similar document to the Treaty in this Arbitration. The *Kappes* tribunal acknowledged that a strict reading could be understood if the context were ignored, as the rest of the treaty does talk about claim amendments, after an initial claim has been submitted to arbitration.⁶³⁵

411. The *Kappes* tribunal interpreted the surrounding text, specifically the reference to a “first time” after notice of arbitration contemplates future claims without a second notice of arbitration, meaning that “expressly allows for the possibility that an additional claim may be [...asserted] without requiring a repetition of the notice of intent and notice of arbitration process.”⁶³⁶

412. In *Westmoreland Coal v. Canada (II)*, claimant put forth that: “since the present dispute is the same dispute at issue in the First Notice of Intent, but simply cures the jurisdictional defect identified in the First Award, no new Notice of Intent is needed.”⁶³⁷ However, this issue was not reached in the final award because Westmoreland Coal submitted a second notice of intent just to be cautious.

⁶³⁴ See (CLA-1) Article 10.16(2).

⁶³⁵ See (CLA-184) *Kappes v. Guatemala*, ICSID Case No. ARB/18/43, Decision on Respondent’s Preliminary Objections, ¶ 194 (Mar. 2020).

⁶³⁶ *Id.* at ¶¶ 194-195.

⁶³⁷ See (CLA-185) *Westmoreland Coal v. Canada (II)*, ICSID Case No. UNCT/23/2, Claimant’s Notice of Arbitration, ¶ 118 (Oct. 2022).

413. Though not the same context, instead focusing on amendments to provisions and no new notice of intent when challenging the same provisions under NAFTA, the tribunal in *Pope & Talbot v. Canada* held that it was important to look to see what the purpose of NAFTA was to determine whether a new notice was required and the prejudice suffered by the parties.⁶³⁸ The purpose of this agreement is due process before an impartial tribunal for investment disputes.⁶³⁹ Ultimately, the tribunal found that the issue at hand was not a new claim, so no amendment of the claim would be required, and thus no new notice of intent, especially because no prejudice would come to Canada.⁶⁴⁰

414. In sum, here, because the Treaty's language references the submission of **any claim** to arbitration, the explicit language requires a notice of intent **for every claim**. But Peru wants this Tribunal to change the language to require a notice of intent **for every arbitration**. That is not what Article 10.16(2) requires. There is, evidently, a significant difference between a claim and an arbitration. That difference is reflected in the language of Article 10.16(2), and Peru cannot change the Treaty's language merely because it suits it in this arbitration.

ii. *Amorrortu did comply with Consultation and Negotiation Requirement*

415. For the same reasons indicated in the above section concerning Amorrortu's compliance with the Notice of Intent, Amorrortu also complied with the Consultation and Negotiation requirement.

416. The Treaty itself does not require consultation and negotiation in this context. Under Article 10.15, the treaty states that the claimant and respondent "should *initially* seek to

⁶³⁸ See (CLA-186) *Pope & Talbot v. Canada*, Award concerning the Motion by Government of Canada respecting the Claim Based Upon Imposition of the "Super Fee," ¶¶25-28 (Mar. 1999).

⁶³⁹ *Id.*

⁶⁴⁰ See *id.*

resolve the dispute through consultation and negotiation” (emphasis added). The provision’s reliance on the word “should” does not seem to make it a word of requirement like “shall”.⁶⁴¹ The treaty’s focus on “initially,” could also stand for the argument that in multiple filings of the same exact claims, no such consultation is needed. Additionally, under Article 10.16(1), the PTPA states that if a disputing party “considers that an investment dispute cannot be settled by consultation and negotiation[,]” the claimant may submit the claim of respondent’s breach under an investment agreement to an arbitral body. Therefore, the treaty itself does not seem to impose this mandate Peru argues for in its jurisdictional objection.

417. The tribunal in *Murphy v. Ecuador (II)* was convinced resubmission jurisprudence establishes that failure of a party to abide by the so-called “cooling-off period” is a curable procedural defect and not an absolute jurisdictional handle.”⁶⁴²

III. REQUEST FOR PUBLIC DOCUMENT TO BE OFFICIALLY RENDERED OUTSIDE SCOPE OF ALL RELEVANT CONFIDENTIALITY UNDERTAKINGS AND PROTOCOLS

418. Peru has fought hard to make certain matters confidential in this Arbitration, under a litany of reasons. While some of those reasons have not been disputed by Amorrortu,⁶⁴³ some of the purportedly confidential documents are in the public forum and should be stripped of their confidential designation.

419. Specifically, Amorrortu hereby requests that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁴¹ See (CLA-187) *LDA v. India*, PCA Case No. 2014-26, Decision on Jurisdiction, ¶ 78 (Dec. 2015).

⁶⁴² See (CLA-188) *Murphy v. Ecuador (II)*, PCA Case No. 2012-16, Partial Award on Jurisdiction, ¶ 195 (Sept. 2011).

⁶⁴³ See Procedural Order No. 8, issued on August 21, 2025; and see generally the Undertakings and Protocols in place in this Arbitration (Undertakings and Protocols in place in this Arbitration, Procedural Orders Nos. 6, 7, 8, 9, 10).

420. The Tribunal’s understanding of this document’s public nature at the time that Procedural Order No. 8 was issued supports this document be withdrawn as a “Confidential Document.” In PO 8, the Tribunal explained Respondent’s position on this document as follows:

“In the Respondent’s view, the Claimant’s request under the present heading constitutes a new RFP.⁶⁴⁴ In addition, the Respondent objects to this request on the basis that the version of [REDACTED] it produced (i) is “perfectly legible”; (ii) [REDACTED]

[REDACTED]
[REDACTED]”⁶⁴⁵

421. Accordingly, per PO 8, [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED] As Claimant pled in his Statement of Claim, **this document was published by *El Comercio***.⁶⁴⁶ Indeed, a document that has been previously made public through no action of Claimant’s, is not deserving of a confidentiality designation. Indeed, maintaining “confidential” a document in the public forum goes against the required transparency of the Treaty.

422. In addition, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; This document can be accessed here:

<https://www.facebook.com/PBOPeru/posts/en-exclusiva-por-pbo-conoce-el-acuerdo-de->

⁶⁴⁴ See PO 8, ¶ 34.

⁶⁴⁵ See PO 8, ¶ 34 (emphasis added); G. Castañeda Palomino, “*Gasoducto del Sur case: the prosecutor’s office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia,*” *El Comercio*, 31 August 2020 (C-29/C-34)).

⁶⁴⁶ See SoC ¶ 11, (C-34).

[REDACTED]

[REDACTED]

[REDACTED]

423. In short, the request to strip these two public documents from any confidential designation erroneously given is supported by the Protocol and Undertakings,⁶⁴⁸ which confirms that documents already in the public forum fall outside the scope of these agreements and confidentiality designations. These documents should never have been requested by Peru to be deemed “confidential” and doing so was an abuse of process.

IV. The Tribunal should draw adverse inferences concerning the missing information from Peru’s production of documents

424. [REDACTED]

[REDACTED]

[REDACTED] During the discovery phase, Claimant raised to the Tribunal that there were issues with certain documents produced not showing all of the requested information.⁶⁵¹ Notwithstanding, Peru was unable to produce completed versions of the documents maintaining that such documents were complete.⁶⁵²

425. In Article 9 of the IBA Rules on Taking Evidence in International Arbitration, the rules state that if a Party fails without satisfactory explanation to produce any document requested for production in a Request to Produce (that it has not objected to) the Tribunal may infer that such

⁶⁴⁷ See (C-306) Lee Aqui el Acuerdo de Colaboración Eficaz.

⁶⁴⁸ See Undertakings and Protocols in place in this Arbitration, Procedural Orders Nos. 6, 7, 8, 9, 10.

⁶⁵⁰ See (CLA-191), IBA Rules on Taking Evidence in International Arbitration, Art. 9.

⁶⁵² See PO 8, ¶ 34.

429. Peru also boldly asserts that Amorrortu attempts to confuse the Tribunal by attempting to attribute the conduct of the President, the Minister of Energy and Mines, and Nadine Heredia to Peru.⁶⁶⁰ Notwithstanding, as explained by Ms. Yaya, Peru’s assertions are unfounded.

430. “The violation of BASPETROL S.A.’s right to be treated on equal terms with other bidders resulted from the Direct Negotiations that its partners and executives held with the highest levels of the Ollanta Humala government, as well as with officials dependent on political power in the appointment to the trust positions they held—some of whom were later hired by private institutions in which Graña y Montero also wielded influence.”⁶⁶¹

431. Without a doubt, Amorrortu’s claims arise (variously) from the conduct of Peru’s executive branch and its administrative organs and PeruPetro.

432. As further explained by Ms. Yaya, “[t]o understand the influence of the meetings of the Graña y Montero group executives with the former President of the Republic, his wife, the former First Lady, Nadine Heredia Alarcón, and officials of the Executive Branch headed by her husband, President Ollanta Humala, it is necessary first to emphasize that, as previously noted, Article 12 of the Law Creating Perupetro, Law 26225, provides that the members of its Board are persons appointed by Ministerial Resolution, signed for three of them by the Minister of Energy and Mines and for two of them by the Minister of Economy and Finance.”⁶⁶²

433. “The Minister of Energy and Mines as well as the Minister of Economy and Finance are politically dependent on the President of the Republic. Worse still, in the case of the Chairman of Perupetro’s Board, Luis Enrique Ortigas Cuneo, he was appointed by Supreme Resolution No.

⁶⁶⁰ See SoD, ¶ 310.

⁶⁶¹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 110.

⁶⁶² See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 111.

115-2012-EM of December 21, 2012, signed by the President of the Republic himself, Ollanta Humala Tasso.”⁶⁶³

434. “As we have indicated and demonstrated in our first expert report, the appointment and tenure of the State ministers depended on Ms. Nadine Heredia Alarcón [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

435. As explained by Mr. Quiroga, Article 66 of the Political Constitution of the State, states that hydrocarbons are the goods that, constitutionally, form part of the Nation’s heritage, and so belong to Peru to regulate who can exploit them via contract/license.⁶⁶⁵

436. As he also explains, Article 11 of the Consolidated Text of Hydrocarbons Organic Law states that exploitation contracts can be executed at the discretion of PeruPetro after direct negotiation or public call.⁶⁶⁶

437. Moreover, it is well established that a State’s executive branch is part of the State (and a *de jure* organ). As for PeruPetro, this organization is legally and functionally part of the Ministry of Energy and Mines (“MINEM”) of Peru, and accordingly also forms part of the executive (a *de jure* State organ). PeruPetro’s conduct, like the Former First Lady’s, is therefore attributable to Peru.

438. PeruPetro is the state-owned company responsible for negotiating contracts, promoting investment, and overseeing hydrocarbon exploration and exploitation in the oil fields

⁶⁶³ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 112.

⁶⁶⁴ See CER-2 [Yaya], Monica Yaya’s Second Expert Report, ¶ 112.

⁶⁶⁵ See CER- [Quiroga], ¶ 3.11.

⁶⁶⁶ See CER- [Quiroga], ¶ 3.19.

and their subdivisions in Peru.⁶⁶⁷ PeruPetro was created by Law No. 26221, “Organic Hydrocarbons Law,” and published on August 24, 1993. Subsequently, by Supreme Decree N ° 048-93-EM, published in November 1993, the company’s Bylaws were approved.⁶⁶⁸

439. In *Amorrortu I*, as cited *supra*: “In the [t]ribunal’s view, **the President [of PeruPetro] had at least the ostensible authority to bind the company.** He was the President, the corporation’s most senior officer, and Chairman of the Board of Directors. It would be open to the [t]ribunal to find that Mr. Ortigas was PeruPetro’s “directing mind” and, as such, in a position to bind the company. The Respondent argues that the alleged “instructions” were contrary to the regulatory requirements. At this stage, the [t]ribunal does not have the benefit of Mr. Ortigas’ recollection of what he said or why he said it. On the present record, Mr. Amorrortu was entitled to rely on “the instructions” and representations by the President of PeruPetro and did rely on them by submitting a proposal within seven days which Mr. Amorrortu says ‘complied with all the requirements as instructed by Ortigas.’”⁶⁶⁹

440. As set forth below, Amorrortu will show in this section the conduct of PeruPetro is also attributable to Peru under the customary international law of State responsibility, as reflected in the ILC’s Articles on Responsibility of States for Internationally Wrongful Acts (“ARSIWA”) and their commentary:

⁶⁶⁷ See SoC, ¶ 192; CER-1 [Quiroga], ¶¶ 7, 101, 130, 156.

⁶⁶⁸ See (C-195) PeruPetro’s website, History, https://www.perupetro.com.pe/wps/portal/corporativo/PerupetroSite/perupetro%20s.a./historia!/ut/p/z1/jZBBC4JAEIV_jVdnMjHpJhSJAcgY2lxCY1sFdWV3y7-fVJegtuY0b_jeezBAUAIN1a3llW7FUHWzPpJ32jtbNwzdRbRLEx8zN99E-bwkMULxAPDLBAj0j98AkDm-ADJVZPHqB-B4L8BOEgHxTtTPfwRDvfQ5kGOXJpm0r3I-N1qPam2hhdM02Vw13jH7LHoLP1kaoTSU7ySM_aHENu0LXwV37AN7HA!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/ (last accessed on December 22, 202).

⁶⁶⁹ See (CLA-118) Amorrortu I, Decision on Bifurcation, January 21, 2021, ¶ 158.

- a. In **Section (a)**, Amorrortu will show that the conduct of PeruPetro is attributable to Peru under Article 4 of the ARSIWA on the basis that PeruPetro is a *de facto* organ of the State; and
- b. In **Section (b)**, Amorrortu will show that PeruPetro is a parastatal entity authorised to exercise governmental authority within the meaning of ARSIWA Article 5.

a. PeruPetro is a de facto State Organ under ARSIWA Article 4

441. Article 4 provides that:

“(1) The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

(2) An organ includes any person or entity which has that status in accordance with the internal law of the State.”⁶⁷⁰

442. It follows from Article 4 that an entity may be classified as an organ of the State *de jure* (i.e. because it has that status under domestic law), or *de facto* because despite not being classified as such under domestic law, it exercises State functions.

443. As the commentary to Article 4 confirms:

“In some systems the status and functions of various entities are determined not only by law but also by practice, and reference exclusively to internal law would be misleading. The internal law of a State may not classify, exhaustively or at all, which entities have the status of “organs”. In such cases, while the powers of an entity and its relation to other bodies under internal law will be relevant to its classification as an “organ”, internal law will not itself perform the task of classification.”

⁶⁷⁰ See (CLA-67) ARSIWA Article 4.

444. As mentioned in expert Yaya’s Report, the internal law frequently makes reference to PeruPetro and its role in doling out the licenses needed to extract and exploit hydrocarbons.⁶⁷¹ Additionally, Peru is wrong to say that companies cannot be considered government organs under the ILC. As summarized in *Venezuela US v. Venezuela*, the tribunal made clear that in many cases, when restrictions are applied on the decision-making processes of the state-owned company by the state, for example, if all their board decisions or contracts required government ratification, that is sufficient to find it as a state organ.⁶⁷² Even if not acceptable to analyze a company’s actions as attributable under Article 4, PCA tribunals, like that in *CC/Devas v. India (I)*, determined that “the action of such company may still engage the international responsibility of the state . . . [when examined on a case-by-case basis] in light of ILC Articles 5 and 8, to determine whether they constitute a breach of international law that may be attributed to the State.”⁶⁷³

445. Additionally, PeruPetro is certainly a *de facto* organ of the State as it performs essential governmental functions and lacks operational autonomy.⁶⁷⁴ First off, the Peruvian Constitution defines oil as national patrimony owned by the nation, and the hydrocarbon law allows for control by PeruPetro as the state-owned company.⁶⁷⁵ Therefore, there is a direct line between government property, clearly essential enough to occupy space in the constitution, and PeruPetro through its administration. Second, it lacks operational autonomy due to its subservience to First Lady Nadine Heredia and her husband then-president Ollanta Humala through bribery.

⁶⁷¹ See CER-2 [Yaya], Monica Yaya’s Second Expert Report.

⁶⁷² See (CLA-192), *Venezuela US v. Venezuela*, PCA Case No. 2013-34, Partial Award (Jurisdiction and Liability), ¶ 193.

⁶⁷³ See (CLA-193), *CC/Devas v. India (I)*, PCA Case No. 2013-09, Award on Jurisdiction and Merits, ¶ 270.

⁶⁷⁴ See (CLA-172), *Lupaka Gold Corp. v. Peru*, ICSID Case No. Arb/20/46, Award (Jun. 30, 2025).

⁶⁷⁵ See Quiroga-58.

446. Here, having regard to the conditions set out in the cases, PeruPetro is a *de facto* state organ in that it is controlled by, and dependent on, the State and it performs sovereign and public functions.⁶⁷⁶

b. PeruPetro’s conduct is attributable to Peru under ARSIWA Article 5

447. PeruPetro’s and Nadine Heredia’s conduct are, without a doubt, attributable to Peru.

448. ARSIWA’s Article 5 deals with attribution to the State of conduct by persons or entities exercising elements of government authority, and states that:

“The conduct of a person or entity which is not an organ of the State under article 4, but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the state under international law, provided the person or entity is acting in that capacity in that particular instance.” ASR Art. 5 (2001).⁶⁷⁷

449. It follows that for an act to be attributed to a State under Article 5: (i) the relevant act must be performed by an entity empowered to exercise elements of governmental authority; and (ii) the act itself must be performed in the exercise of governmental authority.

450. The ARSIWA Commentary identifies four factors as being relevant in the assessment of whether a person or entity is exercising elements of governmental authority: (i) whether the content of the relevant conduct concerns governmental activity, and not other private or commercial activity;⁶⁷⁸ (ii) the manner in which the relevant powers are conferred on an

⁶⁷⁶ The most relevant comparator is the Ecuadorian *Instituto Ecuatoriano de Electrificación* which the *MCI v. Ecuador* tribunal found to be a *de facto* State organ “in light of its institutional structure and composition as well as its functions.” (See (CLA-159) *M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/03/6, Award dated 31 July 2007, ¶ 29).

⁶⁷⁷ Additionally, Article 7 states that even conduct that is done in the contravention of instructions or exceeding the authority granted to that person or entity who has been empowered by government authority shall be considered an act of the state. ASR Art. 7 (2001).

⁶⁷⁸ See (CLA-67), ARSIWA Commentary, Article 5(5).

entity;⁶⁷⁹ (iii) the purposes for which the powers are exercised;⁶⁸⁰ and (iv) extent to which the entity is accountable to the State for their exercise of those powers.⁶⁸¹

451. Judge Crawford, (previously the ILC's Special Rapporteur on State Responsibility, and the organiser of the ARSIWA) summarised the test as whether “*a private person can perform the function without the government's permission.*”⁶⁸²

452. That the test is satisfied in this case is not open to (sensible) debate. The acts of PeruPetro and the First Lady in participating in high level meetings concerning Lots III and IV and being active in the granting of the bid to G&M is governmental in nature.

453. Here, Mr. Ortigas's instruction to prepare a proposal is attributable to Peru because “he was exercising the discretion and governmental authority vested in him as president of PeruPetro.”⁶⁸³ Amorrortu's reliance on Mr. Ortigas, and his resulting expectations, were reasonable because Mr. Ortigas was the highest authority of PeruPetro and the International Public Tender had not been determined, let alone announced.

454. It follows that Peru violated the USPTPA's FET obligations it owed to Amorrortu when it exercised its discretion to further a corrupt scheme,⁶⁸⁴ irrespective of whether the Direct Negotiation process was ever commenced (which it had), and irrespective of whether a contract to operate and service Blocks III and IV was guaranteed.

⁶⁷⁹ See (CLA-67) ARSIWA Commentary, Article 5(6).

⁶⁸⁰ See (CLA-67) ARSIWA Commentary, Article 5(6).

⁶⁸¹ See (CLA-67) ARSIWA Commentary, Article 5(6).

⁶⁸² See (CLA-161) J Crawford, State Responsibility: The General Part (CUP 2013) 130.

⁶⁸³ See (CLA-160), *Windstream Energy LLC v. Government of Canada*, PCA Case No. 2013-22, Award, September 27, 2016, para. 233.

⁶⁸⁴ See (CLA-4), *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, October 8, 2009, para. 221.

455. These articles are relied upon in *MCI v. Ecuador*,⁶⁸⁵ in which the tribunal stated that a company, in light of its institutional structure and composition as well as its functions should be considered an organ of the Ecuadorian state.

456. In *Glencore Finance v. Bolivia*, the tribunal held that the opinion of a head of state or a high-ranking government official should “carry some weight” when making determinations regarding national action. PCA Case No. 2016-39, Award, ¶ 207 (Sept. 2023). Additionally, they elaborated on Article 5 of the Articles on the Responsibility of States for Internationally Wrongful Acts, stating that it encompasses “nationalizations, expropriations, and measures with equivalent effect[.]” *Id.*

457. The tribunal of *OIEG v. Venezuela* noted that “it is well established under public international law that statements of high-ranking governmental officials, especially a Head of State, are legally binding.” ICSID Case No. ARB/11/25, Decision on Stay of Enforcement of the Award, ¶ 104 (Sept. 2011).

458. Article 5 has been used against companies that exercised the government’s rights in state-owned companies, prepared them for privatization, and sold the shares of said companies where the government appointed the companies’ board members as seen in *Noble Ventures, Inc. v. Romania*. ICSID Case No. ARB/01/11, Award, ¶¶ 68-77 (Oct. 2005).

459. In defending this clear attribution to the State, Peru focuses on exact words instead of the intent behind them in an overly formalistic exercise to obscure the truth of attribution under Article 5 of the ILC. Here, PeruPetro *did* exercise public or regulatory functions, functions that were bestowed upon them by law, which gave them the sole right to decide licenses of exploitation

⁶⁸⁵ See (CLA-159), *MCI v. Ecuador*, ICSID Case No. ARB/03/06, Award, ¶ 225 (Jul. 2007).

of hydrocarbons, which are the sole property of the government under the constitution of Peru. Therefore, it is exercising the government's authority to transfer leaseholds and licenses on national property. While it is governed by private law, it is not merely conducting the business activities of the state.

460. Indeed, Article 5 considers multiple factors, many of which PeruPetro satisfies. These factors include, but are not limited to, government participation in the creation of the entity, whether the entity operates in a regulated field, whether the entity was created in part to carry out a government functions, whether the entity is subject to the policy considerations of the state, and whether the entity's funds are considered public money.⁶⁸⁶ With this in mind, there is little doubt that PeruPetro's acts can be attributed to the government. It was created by the government, its corporate purpose stated in law to carry out the State's business for property it exclusively owned (as conceded by Peru), and it is subject to policy considerations of the state.

461. In short, PeruPetro's actions are in breach of domestic law. This is confirmed by ARSIWA Article 7:

“The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.”⁶⁸⁷

462. As the Commentary to that Article explains:

“The State cannot take refuge behind the notion that, according to the provisions of its internal law or to instructions which may have been given to its organs or agents, their actions or omissions ought not to have occurred or ought to have taken a different form. This is so even where the organ or entity in question has overtly committed unlawful acts under the cover of its official status or has manifestly exceeded its competence. It is so even if

⁶⁸⁶ See (CLA-194), *Chevron v. Bangladesh*, ICSID Case No. ARB/06/10, Award (extract) ¶¶ 144-146.

⁶⁸⁷ See, (CLA-67) ARSIWA Article 7.

other organs of the State have disowned the conduct in question. Any other rule would contradict the basic principle stated in article 3, since otherwise a State could rely on its internal law in order to argue that conduct, in fact carried out by its organs, was not attributable to it.”⁶⁸⁸

463. Indeed, the challenged measures were governmental as Nadine Heredia and Ollanta Humala were the Heads of State at the time of the complained conduct, as set forth in detail *infra*.

464. It is not under dispute, not could it be, that Ollanta Humala and Nadine Heredia were the Heads of the Peruvian State at all relevant times to the set of facts giving rise to this Arbitration.

465. And, Peru’s attempts are weak in arguing that reference to Article 8 alone is not enough to reasonably lead the Tribunal that there has been conduct done by PeruPetro at the behest or instruction of the government because in doing so, Peru ignores the entirety of the Statement of Claim, which clearly describes how PeruPetro was subservient to the government’s wills through actors like Nadine Heredia and her husband.⁶⁸⁹ Peru claims “there is *no* evidence that the State instructed Perupetro to conduct any of the measures challenged by Claimant;”⁶⁹⁰ however this could not be further from the truth, as there are multiple documents that show how PeruPetro was controlled by Nadine Heredia to narrow the bidding processes and cancel the direct negotiations with Baspetro to favor GyM.⁶⁹¹ There are more than just newspapers at this point, and Peru cannot mislead the Tribunal further.

⁶⁸⁸ See, (CLA-67) ARSIWA Commentary Article 7(2).

⁶⁸⁹ See, SoC, ¶¶ 282-305.

⁶⁹⁰ See SoD.

⁶⁹¹ See, (██████); (C-70).

c. The connection between the Treaty Breaches and the Damages suffered by Amorrortu is palpable and quantifiable

466. Peru alleges there is no connection between the Treaty Breaches and the damages suffered by Amorrortu.⁶⁹² This is inaccurate.

467. In *Merrill v. Canada*, the tribunal determined that comparisons must be made within the appropriate category, and the treatment the Investor was accorded in that context was said to have been accorded treatment “identical to that accorded to domestic investors in the same category.”⁶⁹³ However, in Amorrortu’s instance this is not the case. He was not treated in the same way as domestic investors in the same category. GyM, as a domestic investor within the same industry sub-group of upstream oil production was given advantages over Baspetro, even having the bidding procedures tailored to ensure its victory over opponents.

468. Regarding expropriation the *Merrill* tribunal held that the right to an intangible investment must come from a contract the investor might enter into with its foreign customer.⁶⁹⁴ While it could be argued that this is inapplicable simply because the state’s conduct in this instance is one in which it is directly corrupting the contracting process so as to deny the ability to engage in contracting, the true distinction is much easier than that. The expropriation at issue in this case is one of lost opportunity or chance, not direct expropriation of a contract right as the *Merrill* tribunal dealt with. To rely on this case is to rely on a completely distinct legal standard and factual situation. The *Merrill* tribunal, not analyzing in this lost opportunity framework determined that proceeds from future sales would be only a potential benefit and thus cannot be subject of a taking

⁶⁹² See SoD ¶¶ 296-312.

⁶⁹³ See (CLA-189) *Merrill v. Canada*, ICSID Case No. UNCT/07/1, Award ¶ 93.

⁶⁹⁴ *Id.* at ¶¶ 1401-141.

due to the lack of contractual entitlement as a result of there being no reasonable representation that the investor could rely on.⁶⁹⁵

469. Here, Claimant had affirmation from the president of PeruPetro to submit his proposal and relied upon that promise.

VI. AMORRORTU'S CLAIMS ARE MERITORIOUS

a. Amorrortu suffered Treaty Breaches

470. It is of no moment that the *Lava Jato* Special Team has not individually (at this moment) adjudicated corruption regarding the Blocks or the Bidding Process.

471. Contrary to Peru's allegations, there is no misconstruction of standards here, and Peru breached its obligations under Article 10.5 of the Treaty.⁶⁹⁶

472. Peru focuses on this notion that the Treaty is concerned with merely setting a "floor" or "absolute bottom," and believes that quoting the entirety of Article 10.5 will magically remove any accountability the State has in securing fair treatment to Amorrortu.

473. Peru then uses this "floor" to justify a litany of violations of international law in the hopes of misleading the Tribunal that the very things they claim *have* crystallized into international law are not merely restatements of the claims asserted by Claimant.

474. More specifically, Peru claims that an act needs to be "sufficiently egregious and shocking — a *gross* denial of justice, *manifest* arbitrariness, *blatant* unfairness, a *complete* lack of due process, *evident* discrimination, or a *manifest* lack of reasons."⁶⁹⁷ Such a claim would need to

⁶⁹⁵ *Id.* at ¶¶ 148-150.

⁶⁹⁶ See SoD, ¶¶ 401-409, 410-412; (CLA-202) *Bear Creek Mining v. Peru*, ICSID Case No. ARB/14/21, Award, (Nov. 2017) ¶ 523.; (CLA-203) *Niko Resources v. Petrobangla and Bapex*, ICSID Case No. ARB/10/18, Final Award ¶¶ 1438-1448.

⁶⁹⁷ See SoD, ¶ 409.

include willful neglect of duty, insufficiency of action under international standards, or even subjective bad faith.⁶⁹⁸

475. Even entertaining that Peru's perspective that there are only these minimal rights under international law, which is not accurate, Peru is still wrong. Peru's conduct through the state-owned enterprise of PeruPetro and former First Lady Nadine Heredia pass the test with flying colors. **It is indeed shocking that** [REDACTED]

[REDACTED]

476. In fact, [REDACTED]

[REDACTED]

477. However, Peru would rather have the Tribunal believe that it is perfectly normal, acceptable, and even legal under the relevant treaties and international standards for corruption to exist.

478. To continue running down the checklist provided by Peru, **it is a gross denial of justice to continuously benefit GyM through back-room dealing and bribery, there was a complete lack of due process and manifest lack of reasons in Peru's conduct through its neglect of duty to reply to Amorrortu and never detail why any of his filings were deficient to him, a fact admitted to by Tafur**, instead opting to go straight to public bidding after the filing of his documents in direct negotiation.

479. As previously stated by Claimant, *Lemire* has provided a definition of "arbitrary" that had been accepted in *EDF* as well, and it acts almost as its own summary of the acts undertaken

⁶⁹⁸ *Id.*

by Peru in this instance.⁶⁹⁹ They adopted measures that did not serve any apparent legitimate purpose, were not based on law but discretion and personal preference, it was taken as a result of backroom dealings (not stated rationale), and it was done with a willful disregard of due process and the stated procedure.

480. Regarding reasonable expectations, Respondent relies on the notion that PeruPetro's conduct must be assessed against the "background of information" Amorrortu knew and should have reasonably known at the time of the investment and conduct of PeruPetro.⁷⁰⁰ This contention is simply not justified in the context of the case. Amorrortu had a reasonable expectation that the State would engage with the negotiation process in good faith and do so in a manner consistent with international law. To deny corruption claims on the grounds that an individual could not figure out the level of corruption truly at play, one that would result in a prosecution in Peru against former First Lady Heredia and her husband, **would be a denial of justice.**⁷⁰¹

481. Additionally, Amorrortu certainly acquired the rights to direct negotiation, despite Peru's claims.⁷⁰² Amorrortu, on behalf of Baspetro, submitted a Letter of Interest via his proposal, which was solicited by the Mr. Ortigas as president of PeruPetro.⁷⁰³ As a result, it warranted action by PeruPetro based on this status.

482. Baspetro's Proposal during Direct Negotiations was never deemed deficient by PeruPetro, and if such deficiency was ever noticed by PeruPetro it was never reported to Amorrortu, which, again, PeruPetro was required to do.⁷⁰⁴

⁶⁹⁹ See (CLA-4), *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, ¶ 303.

⁷⁰⁰ See SoD ¶ 413.

⁷⁰¹ See (CLA-201) *Rumeli Telekom A.S. v. Kazakhstan v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16 (Jul. 2005).

⁷⁰² *Id.* at ¶¶ 421-424.

⁷⁰³ See (C-011).

⁷⁰⁴ See CER-2 [Quiroga], Anibal Quiroga's Second Expert Report; CER-2 [Yaya], Monica Yaya's Second Expert Report.

483. Peru claims that it had no such duty to report its decisions regarding Baspetrol's Proposal due to the Blocks not being available for direct negotiations at the time due to the publication of them being subject to public bidding, but this is inaccurate. The Blocks were available for direct negotiation when Amorrortu submitted the Proposal, as the public bidding process did not open until July of 2014.⁷⁰⁵

484. Furthermore, Peru claims that the obligation is “merely one of publicity” is inaccurate, as they themselves admit that the FET standard includes acts of arbitrariness, lack of reasons, unfairness, and discrimination.⁷⁰⁶ Tribunals have also identified that a complete lack of transparency in administrative processes are violations of fair and equitable treatment.⁷⁰⁷

485. Peru attempts to justify its lack of transparency, which would similarly fail its stated “merely one of publicity” right given no reasons would have been provided and no lawyer in Peru would have understood the reason for denial, by falsely stating that PeruPetro was under no duty to formally respond, which expert Ms. Yaya has explained in her report.⁷⁰⁸

486. Peru even goes as far as to deny that transparency is a protected right under the USPTPA a few paragraphs later, despite the fact that it acknowledges that there are clearly aspects of rights to transparency in a FET standard under customary international law, even if they inaccurately reduce it to a right of publicity or some high bar focused on egregious arbitrariness, lack of reasons, unfairness, discrimination, and so on.⁷⁰⁹ Additionally, the USPTPA directly states that it seeks to promote transparency and combat corruption.⁷¹⁰

⁷⁰⁵ See CER-2 [Quiroga], Anibal Quiroga's Second Expert Report, ¶¶ 4.7, 4.8.

⁷⁰⁶ *Id.* at ¶¶ 409, 414.

⁷⁰⁷ See (CLA-28) *Waste Management, Inc. v. The United Mexican States*, ¶ 480.

⁷⁰⁸ See CER-2 [Yaya], Monica Yaya's Second Expert Report.

⁷⁰⁹ *Id.* at ¶ 455.

⁷¹⁰ See (CLA-2) USPTPA Preamble.

487. Respondent then attempts a hail Mary of a defense that is untenable: that the Treaty does not outwardly state that corruption will not be committed in the territory or prohibit it, but only that domestic measures be implemented to tackle corruption.⁷¹¹ This defense is a clear attempt by Respondent to bend the language of Article 19 of the USPTPA to serve its corrupt deeds. Peru insists that its mere maintenance of institutions that oppose corruption is sufficient to meet the requirements set forth by this treaty, but that simply cannot be true. USPTPA Article 19.9(2)-(4) make clear that it shall not only adopt and maintain these institutions, but that these institutions should “enforce” the criminal measures it maintains, effectuate “effective, proportionate, and dissuasive non-criminal sanctions” against enterprises that violate anti-corruption measures, and each signing party to the agreement “shall endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of corruption, *including bribery*[.]”⁷¹²

488. It becomes clear that the intent behind these words is to maintain an effective anti-corruption regime so as to maintain the integrity of the treaty’s goals and foster cross-border investment. As described by Peru though, two highly sophisticated nation-states have merely voiced aspirations to end corruption and thus it holds no *actual* weight. Taken to its logical conclusion, Peru would simply say that a treaty cannot bar corruption unless it explicitly says “and no nation should tolerate any act of corruption on their soil, and if it does, then it is a *per se* violation of the FET,” despite the fact that such a contention would undermine most free-trade agreements by allowing signatories to run corrupt governments and then shield themselves behind the relevant treaty.

⁷¹¹ See SoD, ¶¶ 457-459.

⁷¹² See (CLA-142) USPTPA Article 19.9(2)-(4) (emphasis added).

489. The OCI of Comptroller General and the *Lava Jato* do not serve as “effective” measures against corruption if they rubberstamp the acts of government officials or are blind to any corruption that occurs. Therefore, the mere existence of these institutions does not satisfy the treaty requirements.

490. As the *Amorrortu I* tribunal held: “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 [Fair and Equitable Treatment] in the application of Direct Negotiation Procedure 8 as promised by the President himself, thereby justifying an award in Mr. Amorrortu’s favor.”^[4]

491. On the face of the evidence,⁷¹³ it is clear that Respondent frustrated Amorrortu’s legitimate expectations to obtain a contract to perform oil drilling and extraction operations in oil Blocks III and IV of the Talara Basin, in the Province of Talara, Piura Region, Peru. Peru ignored the Direct Negotiation rights Amorrortu acquired directly to negotiate the contracts for Blocks III and IV, and instead initiated a rigged public bidding process to favor Graña y Montero S.A.A. At the heart of Peru’s actions (and inactions) is corruption. Indeed, through this conduct, the Respondent violated its fair and equitable treatment obligations under the USPTPA.

492. Surely, “one of the major components of the [FET] standard is the parties’ legitimate and reasonable expectations with respect to the investment they have made,” which include the expectation to negotiate an agreement free of corruption.⁷¹⁴ In *EDF v. Romania* the tribunal determined that corruption “is a violation of the [FET] obligation owed to the [c]laimant

■ (C-215- C-291) Numerous proposals for the Public Bid regarding Lots III & IV.

⁷¹⁴ See (CLA-4) *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, October 8, 2009, ¶ 216. See also SoC.

pursuant to the BIT, as well as a violation of international public policy.”⁷¹⁵ This is particularly relevant under the USPTPA, which devotes an entire chapter to anti-corruption practices and lists the elimination of corruption as one of its goals.⁷¹⁶

493. It is established that expectations are protected when (i) there is a promise or assurance attributable to a competent organ or representative of the State, either explicit or implicit; (ii) the investor relied on that promise or assurance as a matter of fact; and (iii) such reliance was reasonable.⁷¹⁷

494. In sum, contrary to Peru’s allegations:

- a. Amorrortu has proven that Peru breached its FET duty.⁷¹⁸ As set forth in detail *supra*, Amorrortu acquired rights to a direct negotiation.⁷¹⁹ Baspetro’s Proposal should have been characterized as a Letter of Interest and warranted action by PeruPetro.⁷²⁰
- b. Blocks III and IV were available for Direct Negotiation.⁷²¹
- c. Baspetro should have been awarded the requisite qualification to continue with the Direct Negotiation.⁷²²

⁷¹⁵ See (CLA-4), *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, October 8, 2009, ¶ 221.

⁷¹⁶ See (CLA-42), USPTPA Chapter Nineteen; (CLA-2), USPTPA Preamble.

⁷¹⁷ See (CLA-75), *Ioan Micula et al. v. Romania*, ICSID Case No. ARB/05/20, Award, December 11, 2013 ¶ 668.

⁷¹⁸ See SoD ¶ 413-417; CER-1 [Quiroga] CER-2 [Quiroga]; CWS-1 [Amorrortu] CWS-2 [Amorrortu]; (CLA-117).

⁷¹⁹ See SoD ¶ 418-420; CER-1 [Quiroga] CER-2 [Quiroga]; CWS-1 [Amorrortu] CWS-2 [Amorrortu]; (CLA-117).

⁷²⁰ See SoD ¶ 421-424; CER-1 [Quiroga] CER-2 [Quiroga]; CWS-1 [Amorrortu] CWS-2 [Amorrortu]; (CLA-117).

⁷²¹ See SoD ¶ 425-439; CER-1 [Quiroga] CER-2 [Quiroga]; CWS-1 [Amorrortu] CWS-2 [Amorrortu]; (CLA-117).

⁷²² See SoD ¶ 434-439; CER-1 [Quiroga] CER-2 [Quiroga]; CWS-1 [Amorrortu] CWS-2 [Amorrortu]; (CLA-117).

- d. The bidding process was not conducted in accordance with the governing legal framework.⁷²³
- e. Amorrortu was arbitrarily left out of bidding process due to PeruPetro and Nadine Heredia's corruption scheme with GyM.⁷²⁴

VII. DAMAGES

495. The objective of damages is simple: compensation must rectify all consequences of unlawful conduct affected by the state.

496. Amorrortu has instructed Santiago Dellepiane A. of the Economics & Damages division Berkely Research Group, LLC ("BRG") to value the damages he has suffered as a result of Peru's unlawful actions that resulted in an expropriation.

497. In this claim, the evidence both parties provided confirms that the essential information to model the losses suffered was available through databases, similarly situated competitors, and companies that operated the very same lots at issue either in the relevant time frame or prior to that time. This information is presented in the first expert report of Santiago Dellepiane A. at BRG and in the second expert damages report filed with this Reply.

a. There is a causal link between Amorrortu's damages and Peru's measures.

498. Peru cannot deny that its violation of the Treaty was the cause of Amorrortu's damages.⁷²⁵

⁷²³ See SoD ¶ 440-445; CER-1 [Quiroga] CER-2 [Quiroga]; CWS-1 [Amorrortu] CWS-2 [Amorrortu]; (CLA-117). CER-1-[Yaya] CER-2 [Yaya].

⁷²⁴ See SoD ¶ 446-449; CER-1 [Quiroga] CER-2 [Quiroga]; CWS-1 [Amorrortu] CWS-2 [Amorrortu]; (CLA-117). CER-1-[Yaya] CER-2 [Yaya].

⁷²⁵ See (CLA-206) *Stati v. Kazakhstan (I)*, SCC Case No. 116/2010, Award (Dec. 2019); (CLA-207) *Camargo Corrêa S.A. v. Globe Specialty Metals Inc.*, ICC Case No. 125260/JRF, Final Award (June 2011).

499. In its Statement of Defense, Peru argues that there is no causal link between the corruption in the adjudication process of Blocks III and IV and Amorrrotu's damages because Baspetrol would never have been awarded the contracts for Blocks III and IV. This argument is devoid of any factual support. Peru simply chooses to conveniently ignore that Amorrrotu – through another company – had successfully operated the lots and that Amorrrotu's experience and support for the local communities made Baspetrol the leading candidate in any transparent adjudicatory process.

500. First, Peru ignores that Amorrrotu had been granted the contract to operate Block III through his prior company Propetsa and operated these lots successfully.⁷²⁶

501. Specifically, Amorrrotu explains that Propetsa's successful track record together with the experience that Amorrrotu had had operating oil blocks in Talara for decades, and the overwhelming support of the local communities make Amorrrotu and Baspetrol the most likely candidate to have received the contracts but for the abominable corruption orchestrated from the highest spheres of power in Peru.⁷²⁷

502. Therefore, Peru cannot seriously deny the causal link between the rampant corruption and the damages suffered by Baspetrol. Importantly, this causal link is not limited to the direct negotiation process. But it extends to the corruption that permeated – and indeed which was the driving force behind - the fake public bidding process that crowned Graña y Montero. In the absence of corruption, Baspetrol would have received the contracts to operate Blocks III and IV either by completing the direct negotiation process or in a transparent, corruption free bidding process.

⁷²⁶ See CWS-2 [Amorrrotu], ¶ 11.

⁷²⁷ See CWS-2 [Amorrrotu].

503. As the tribunal explained in *Lemire*, while it may be difficult to establish the winner of a public tender process free of corruption, “[i]f it can be proven that in the normal cause of events a certain cause will produce a certain effect, it can be safely assumed that a (rebuttable) presumption of causality between both events exists, and that the first is the proximate cause of the other.”⁷²⁸

504. If the Tribunal were to focus on the international bidding process, the Tribunal would have to apply the loss opportunity or loss of chance doctrines. But as Amorrortu explained in his Statement of Defense, the result would be the same, as no other company had the ability, experience, and local support that Baspetrol had.

505. As Professor in Bryan Schwartz explained in his concurring opinion in *Bilcon v. Canada*,⁷²⁹ the UNIDROIT Principles of International Commercial Contracts recognize that compensation may be due for the loss of a chance in proportion to the probability of its occurrence.

506. Specifically, Article 7.4.3(2) of the UNIDROIT Principles of International Commercial Contracts provides that:

- (1) Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty.
- (2) *Compensation may be due for the loss of a chance in proportion to the probability of its occurrence.*
- (3) Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court’. (emphasis added)

507. As Professor Schwartz explained in his concurring opinion, the deprivation of an opportunity of a making a profit is in itself an asset: “where a tribunal cannot accept a claim for lost profits as not sufficiently certain, it may choose to award, instead, a compensation for the loss of business

⁷²⁸ See (CL 26) *Lemire* ¶ 169.

⁷²⁹ See (CLA-114) *William Richard Clayton, Douglas Clayton, Daniel Clayton, and Bilcon of Delaware, Inc. v. the Government of Canada*, PCA Case No. 2009-04, Award on Damages (Schwartz concurrence in *Bilcon v. Canada*) ¶ 12.

(commercial) opportunity, or for the loss of a chance. This head of damage appears to be a sub-species of lost profits, which is resorted to when the available data does not allow making a more precise calculation of lost profits. ... It is suggested that a chance of making a profit is an asset with a value of its own, and that compensation for the loss of a chance is an alternative to the award of lost profits proper in cases where the claimant has failed to prove the amount of the alleged loss of profit with the required degree of certainty, but where the tribunal was satisfied that the loss in fact occurred. Loss of a chance can thus be used as a tool allowing the injured party to receive some form of compensation for the loss of a chance to make a profit. In theory, the loss of a chance is assessed by reference to the degree of probability of the chance turning out in the plaintiff's favour, although in practice the amount awarded on this account is often discretionary.”⁷³⁰

508. The loss of chance theory was recognized by the Tribunal in *Lemire*, where the tribunal explained that “compensation for a lost chance is admissible, and is normally calculated as the hypothetical maximum loss, multiplied by the probability of the chance coming to fruition.”⁷³¹

509. Under the loss of opportunity doctrine, damages are based on multiplying two estimates: first, the probability of obtaining the outcome sought by claimant based on the evidence of legal experts, and second, the likely future profits in the event of regulatory approval based on the evidence of the experts on business projections.⁷³²

510. Here, if the Tribunal were to ignore the Direct Negotiation Process that Baspetro had commenced and determines that a public bidding process was necessary, the outcome would be no different. None of the companies that could try to compete in a corruption free process had the level of experience in the Talara Basin and in operating the oil Blocks that Amorrrotu had with his more than two decades of

⁷³⁰ See (CLA-114) *Bilcon v. Canada*, ¶ 12.

⁷³¹ See (CL 26) *Lemire*, ¶ 251 see also (CLA-84) *Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. and Talsud S.A. v. The United Mexican States*, ICSID Case Nos. ARB(AF)/04/3 and ARB(AF)/04/4 Award (June 16, 2010), IIC 488 (2010); (CLA- 182) *Sapphire v. National Iranian Oil Company*, [March 15, 1963], 35ILR136 (1967).

⁷³² See (CLA-114) *Bilcon v. Canada*, ¶ 12.

experience in the area and years operating Block III under Propetsa. Further, no other company presented as part of its proposal the release of a multimillion-dollar debt, which Amorrortu offered.⁷³³

511. Amorrortu would have been awarded the contract if not for the corruption present in the awarding of contracts in Peru at the hands of Nadine Heredia and her ties with GyM.

512. The second BRG report and Baspetro Proposal make clear that Baspetro was able and willing to provide the same services as GyM, at the same rates if not better, with similar operating costs.

513. Nadine Heredia influenced the processes by which contracts were awarded by exerting influence over the president of PeruPetro, tailoring the requirements for the bidding process so as to favor GyM, and even explicitly mentioning the awarding of Block III and IV throughout multiple meetings and communications with GyM and other affiliated parties like those at PeruPetro.

514. But for Heredia's interference, Baspetro would have been awarded the blocks due to its compliance with standards for the proposal, the completeness of its proposal, and the innovation within its terms that benefited the local community to a greater extent than GyM or any other competitor.

515. As a result, Baspetro suffered a loss of profits from 2014 until the termination of the lease, resulting in millions of US dollars in damages.

b. The income and market approaches used by the BRG reports provide clear and sufficient grounds for the value of damages

516. The Reply expert damages report responds to the critiques set forth by Mr. Kurt G. Strunk of NERA Economic Consulting ("NERA"). The critiques while numerous, center on only

⁷³³ See CWS-2 [Amorrortu] ¶¶17-27; (C-189) Swiss Bank Corporation acquires the debt of Amorrortu and Propetsa in 1995.

a few key points: disagreement over the use of an income approach (including the use of discounted cash flow or DCF to determine such an amount) and disputing the alternatives value indicators, which include but are not limited to the ownership of the blocks, the date of valuation, crude oil production, crude oil prices, operating expenses, taxes, and discount rates.

517. The income approach values an asset based on its capacity to generate incomes, which involves projecting the asset's future cash flow, and discounting that from the present value.⁷³⁴ Discounted cash flow (DCF) is used to reach the result by determining the value of the business/asset by discounting the projected cash flow at a rate consistent with the risk associated with realizing them.⁷³⁵

518. DCF is often used to assess the economic and financial viability of a venture. *Id.*

519. The value used by the BRG report is based on a 30-year projected lease, and calculated based off annual revenues for each Block as the product of projected crude oil production and prices.⁷³⁶ Baspetro's cash flows were based on market information from the valuation date, including those of the blocks' prior operator InterOil and information from the proposal Baspetro submitted to PeruPetrol.⁷³⁷ The second damages expert report relied on various verified and reliable sources in order to accurately assess the value of Baspetro for every single relevant factor for the calculation: revenues, projected crude oil production, projected crude oil prices, operating expenses, taxes and royalties, capital expenditures, working capital, and discount rate.⁷³⁸

⁷³⁴ See BRG Second Report ¶ 20.

⁷³⁵ *Id.* at ¶ 21.

⁷³⁶ *Id.* at ¶ 22.

⁷³⁷ *Id.* at ¶ 23.

⁷³⁸ *Id.*

520. As a way to confirm the values put forth under the income approach and DCF, BRG used a market approach. Such an approach estimates the value of an asset based on the observable market prices of comparator properties.⁷³⁹ In this instance, BRG relied on 184 market-based transactions from HIS Markit's upstream oil and gas database in order to fairly calculate the value of comparator assets.⁷⁴⁰

521. Next, when dealing with the market approach, the expert calculated two multiples: the 1P reserve multiple, which calculated the transaction value divided by total proved reserved of the asset (thus reflecting the most economically viable reservoirs), and the reserve equivalent multiple, which is based on the value divided by the total proved, probable, and possible reserves (adjusted to reflect the real economic value of those reserves).⁷⁴¹ A median is then extracted from these multiples and is multiplied by the outstanding reserves in each block as of the valuation date to derive the fair market value (FMV) or each block.⁷⁴²

522. The graph below, labeled Figure 2 in the second damages expert report, compares the fair market value of the blocks through income and market approach, based on the Second Report Valuation Model (Ex. BRG-69).⁷⁴³

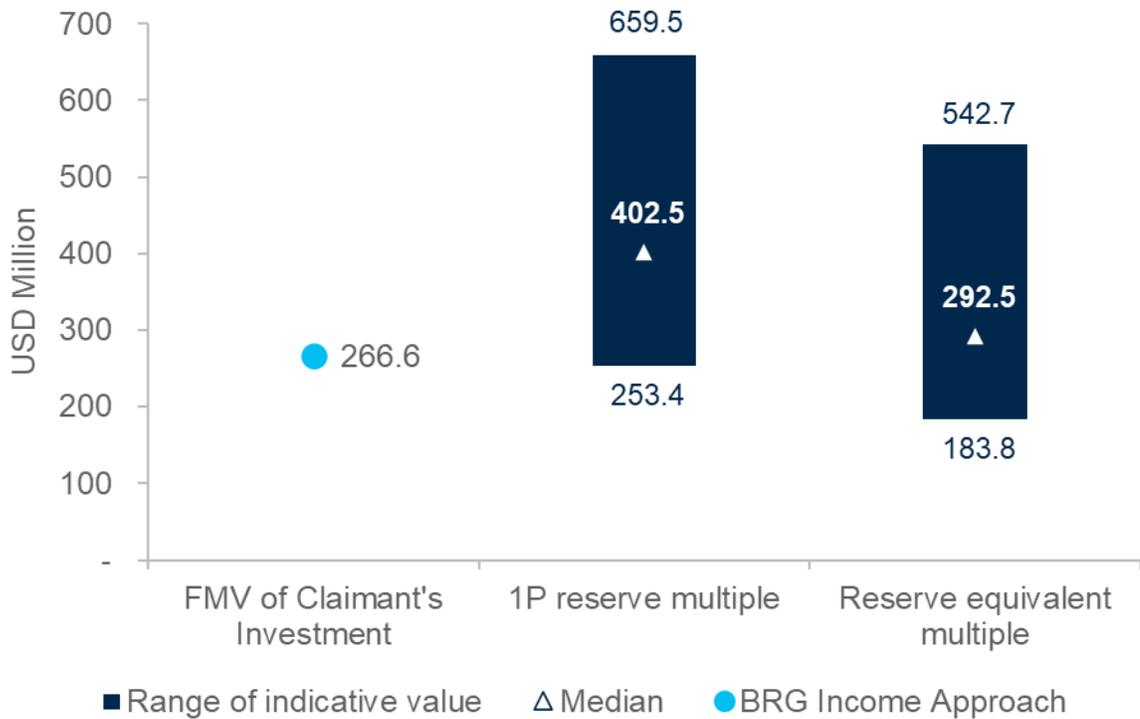
⁷³⁹ *Id.* at ¶ 27.

⁷⁴⁰ *Id.* at ¶ 28.

⁷⁴¹ *Id.*

⁷⁴² *Id.* at ¶ 29.

⁷⁴³ *Id.* at ¶ 30; BRG-69.



523. The consistency of BRG’s valuation is proven not only by the graph, but by further confirmation methods carefully employed by BRG.

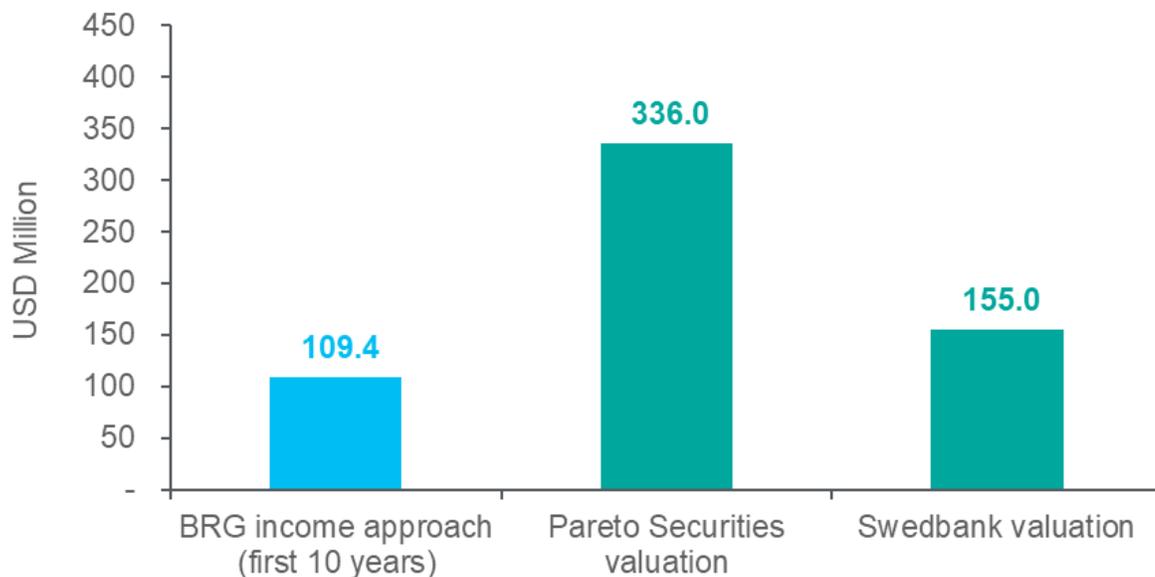
524. The next in BRG’s valuation was to turn to investment bank reports to corroborate their figures. This validation was sought by looking at the fair market value InterOil prior to the valuation date.⁷⁴⁴ Pareto Securities identified in a report of 2010 that the 10-year extension that was being negotiated at the time would increase the value of InterOil by \$336,000,000 US dollars. *Id.* In a much more conservative estimate, Swedbank First Securities determined that the extension would increase the value by \$155,000,000 US dollars.⁷⁴⁵

525. BRG’s report for the first 10 years of cash flow, which would mimic the conditions that Pareto and Swedbank were observing for InterOil, comes in significantly below other

⁷⁴⁴ *Id.* at ¶ 31.

⁷⁴⁵ *Id.*

estimates, proving its reasonableness. The values are represented via Figure 3 in the Second Report, which is reproduced below.⁷⁴⁶



526. Additionally, BRG investigated the DCF put forth by GyM, as it was mandated to disclose as a company (at the time) trading on the New York Stock Exchange.⁷⁴⁷

527. The DCF put forth by GyM at the time was focused on the termination of licenses, crude oil prices, crude oil production, operating expenses and capital expenditures, taxes, and a standardized discount rate.⁷⁴⁸ At the time, they determined their presented value based on the projected cash flows from Blocks I, III, IV, and V was \$223,300,000 US dollars. *Id.* at ¶ 36. However, the valuation was not separated into each block's value. The BRG report then estimated the value of Blocks III and IV in isolation based on the changes in valuation between 2014 and 2015, the former being prior to their acquisition of the rights for Blocks III and IV, and the latter

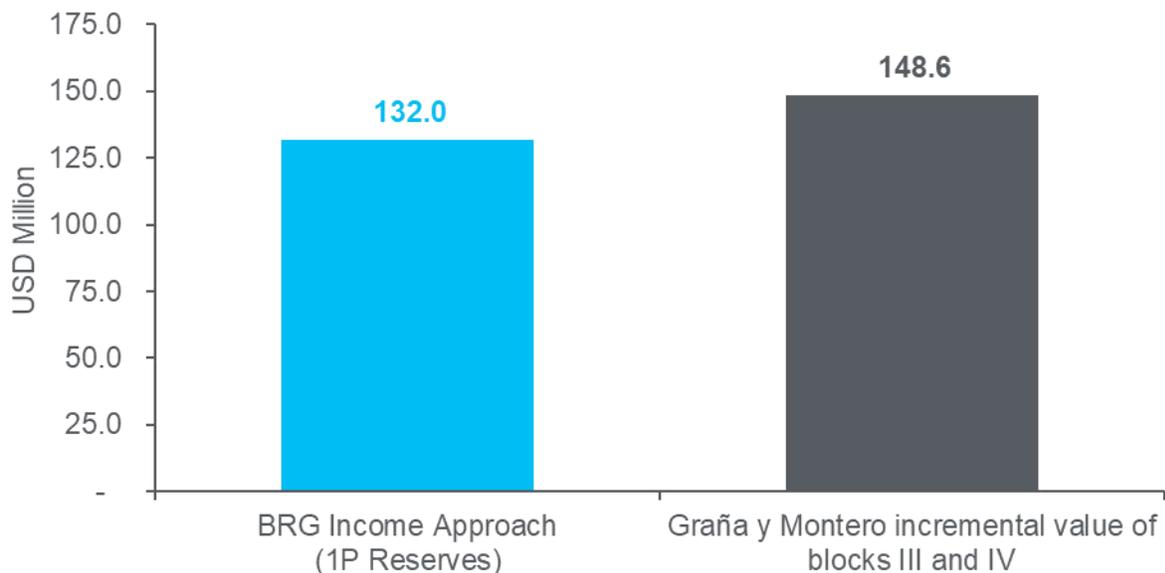
⁷⁴⁶ *Id.* at 32.

⁷⁴⁷ *Id.* at ¶ 33.

⁷⁴⁸ *Id.* at ¶ 35.

being the first year once those rights were acquired.⁷⁴⁹ The expert then determined that there was an increase in value of \$148,600,000 US dollars.⁷⁵⁰

528. To ensure that the values were similar, the expert then ran a 1P Reserve Valuation, as outlined before, but on GyM’s incremental value of Blocks III and IV as well, reproducing their results in the graph below, Figure 4 in the original report.⁷⁵¹



529. Using a weighted average cost of capital (“WACC”) of 9.5% and applying it to the various methods to determine the damages down to Claimant, BRG determined that the range on 1P reserve multiples is between \$253,400,000 and \$659,500,000 with a median of \$402,500,000.⁷⁵² Alternatively, if basing value on reserve equivalent global comparable transactions, it will be between \$183,800,000 and \$542,700,000, with a median of \$292,500,000.⁷⁵³ As a third option, the value can be determined through the aforementioned

⁷⁴⁹ *Id.* at ¶ 37.

⁷⁵⁰ *Id.*

⁷⁵¹ *Id.* at ¶ 38.

⁷⁵² *Id.* at ¶ 39.

⁷⁵³ *Id.*

valuation put forth by the investment banks. Finally, the incremental value of GyM between 2014 and 2015 through their DCF is also a comparator that makes for a valid determination of value.

c. NERA's critiques lack foundation, and their proposed alternatives ignore the realities of the market as well as the position Baspetro was in during the relevant time period

530. At no point does NERA dispute the applicability of the income approach as the primary valuation method. Instead, they take issue with several of the inputs and assumptions relied upon by BRG. These inputs and assumptions include the following: ownership of the blocks, date of valuation, crude oil production, crude oil prices, operating expenses, taxes, and discount rate.

i. Ownership of the Blocks

531. To start, NERA argues that the claimant should not get 100% of the expected cash flow from Baspetro's operations. This critique is based upon an erroneous reading of the proposal. Their argument is based on the fact that there was an "open possibility" of PeruPetro holding a 25% ownership interest. While this interest was part of early deliberations, even surviving until 2015 with GyM's negotiations, no such thing occurred in reality.⁷⁵⁴ Therefore, it feels strange to impose such a burden upon Claimant when that would not remedy the harm done to him, and instead allow for an imbalanced compensation, where GyM benefitted from corruption disproportionately to the award.

532. Additionally, Baspetro's proposal was submitted with the contemplation that it would be a sole venture, not one undertaken by any form of consortium. As a result, the claimant is entitled to 100% ownership of the project's value.

⁷⁵⁴ *Id.* at ¶ 44.

ii. *Valuation Date*

533. NERA then shifts its critiques to those centering the valuation date, focusing on the fact that GyM only signed its license agreements with PeruPetro in April 2015.⁷⁵⁵ As a result, they claim that a large discount should be applied to the damages figure. However, they provide no data on how much that value should be reduced by between the July and April figures.⁷⁵⁶

iii. *Production of Crude Oil*

534. With little to support their contentions relating to the valuation date, NERA then shifts its gears to attempting to disprove the BRG projections of oil production. These critiques can be summarized as those that critique the reasonableness of the number of wells that would have been developed, the reliance on InterOil's historical data, and the consistent production on the existing wells.

535. In determining the crude oil production figures, the BRG expert relied upon the production from existing wells, as well as developed ones.⁷⁵⁷ For existing wells, he determined that the production would decline at the average rate of 13% as reported for the existing wells in Block IV from 2009 through 2013.⁷⁵⁸ Regarding the developed wells, the expert determined that the number of new wells would follow the minimum drilling requirement of 14 wells per year as required under the agreement, and the production history of InterOil before the valuation date.⁷⁵⁹

536. Despite the amounts put forth by the BRG reports being within the minimums, and consistent with the Baspetro proposal, NERA still resists this notion. To simplify the point made

⁷⁵⁵ *Id.* at ¶ 47.

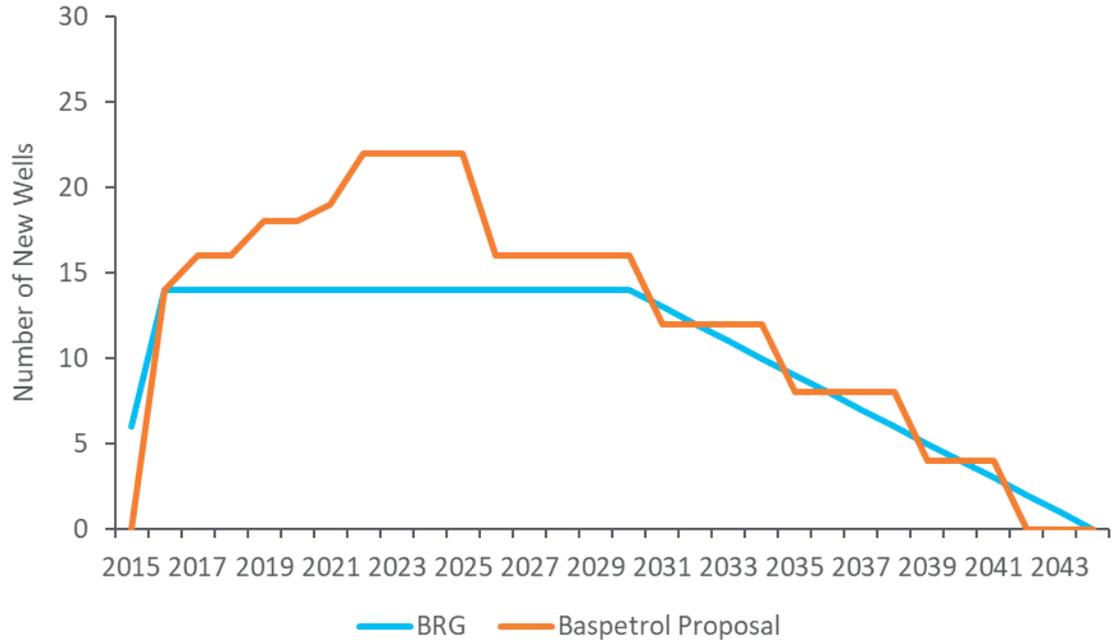
⁷⁵⁶ *Id.* at ¶ 48.

⁷⁵⁷ *See id.* at ¶ 52.

⁷⁵⁸ *Id.*

⁷⁵⁹ *Id.*

by BRG, they attached a graph, Figure 6, that shows the minimal difference between the proposal and the damages reports.⁷⁶⁰



537. InterOil’s data is informative and helpful at determining the performance of wells, making NERA’s criticisms misguided. BRG compiled 60 months’ worth of historical data from the Blocks’ prior operator, providing insightful data regarding production decline, production per well, and costs.⁷⁶¹

538. On the total production of oil, the amount asserted in the second BRG report is consistent with what Claimant and GyM were expected to achieve.⁷⁶²

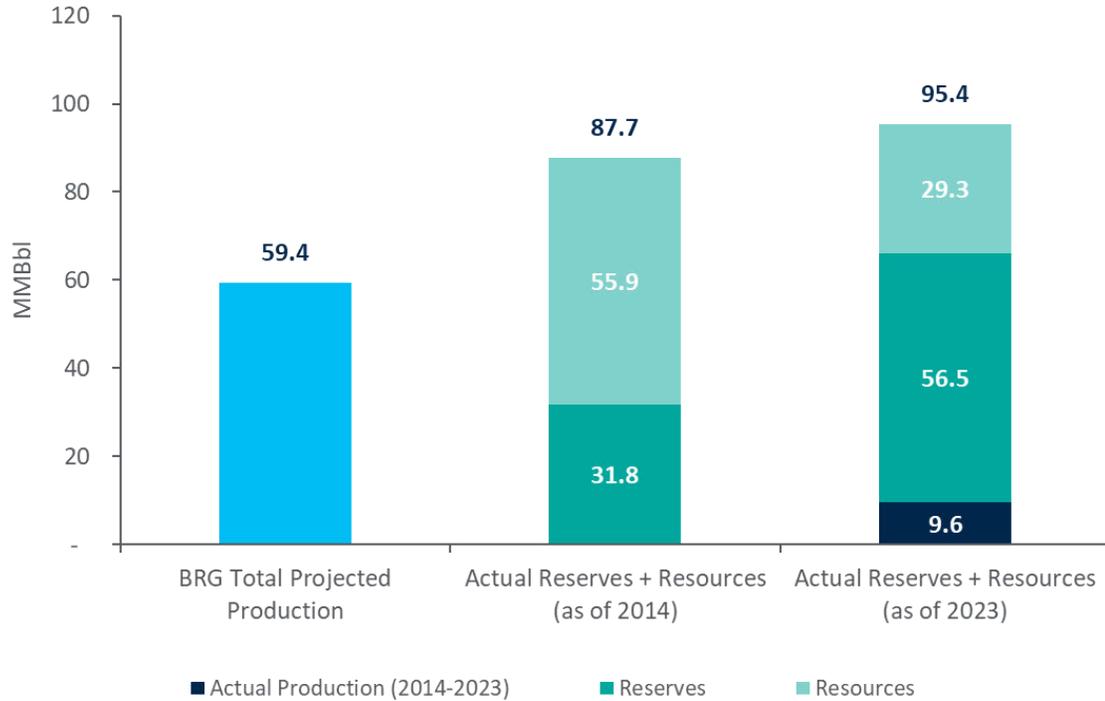
539. In another graphic, Figure 7, the second BRG report applies this rationale by depicting the expert’s figure alongside the total extractable crude oil as of the valuation date, and the total extractable crude oil as of 2023 under GyM, demonstrating an increase over time as

⁷⁶⁰ *Id.* at ¶ 57.

⁷⁶¹ *Id.* at ¶¶ 58-59.

⁷⁶² *Id.* at ¶ 64.

resources were converted into commercially recoverable quantities through appropriate investment.⁷⁶³



540. The price for oil was determined based on the Consensus Economics forecast as the base for BRG’s estimate because it was the more conservative of available independent sources.⁷⁶⁴ NERA finds issue with this because it fails to reflect a “market consensus,” which demonstrated a downward sloping price curve as future contracts do.⁷⁶⁵

541. This criticism, like all others thus far lodged by NERA, as future contracts reflect contractually agreed prices between parties, not the market’s consensus of the price at a future time.⁷⁶⁶

⁷⁶³ *Id.* at ¶¶ 62-65.

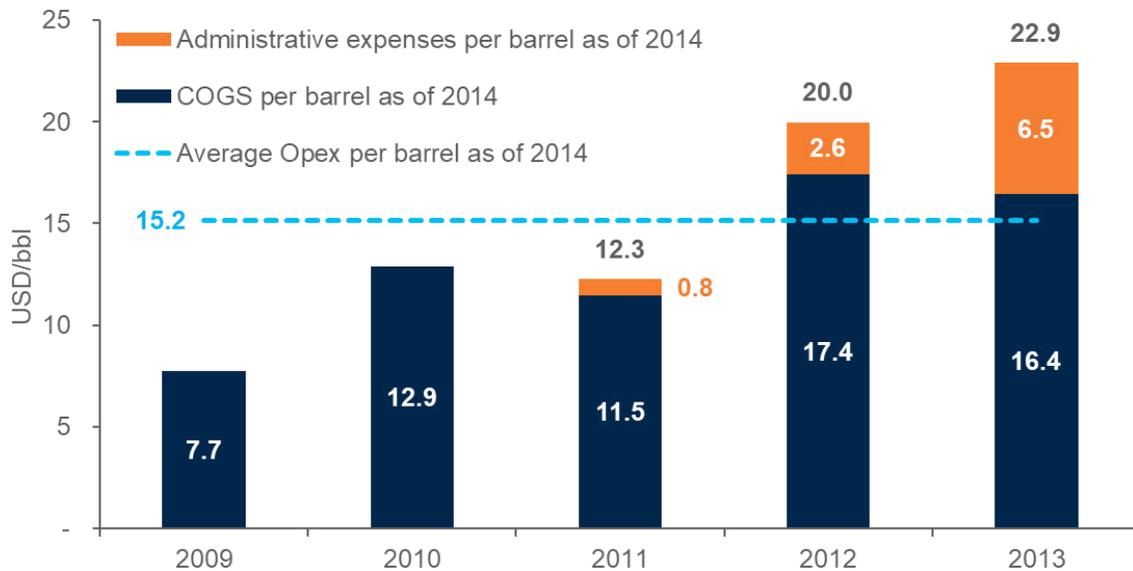
⁷⁶⁴ *Id.* at ¶ 68.

⁷⁶⁵ *Id.* at ¶ 69.

⁷⁶⁶ *Id.* at ¶ 70.

542. When dealing with operating expenses, the BRG report used InterOil’s reported variable and fixed operating expenses from 2009 to 2013. He then projected operating expenses from 2015 to 2044 by applying US inflation rates and multiplying it by the estimated crude oil production as previously outlined.

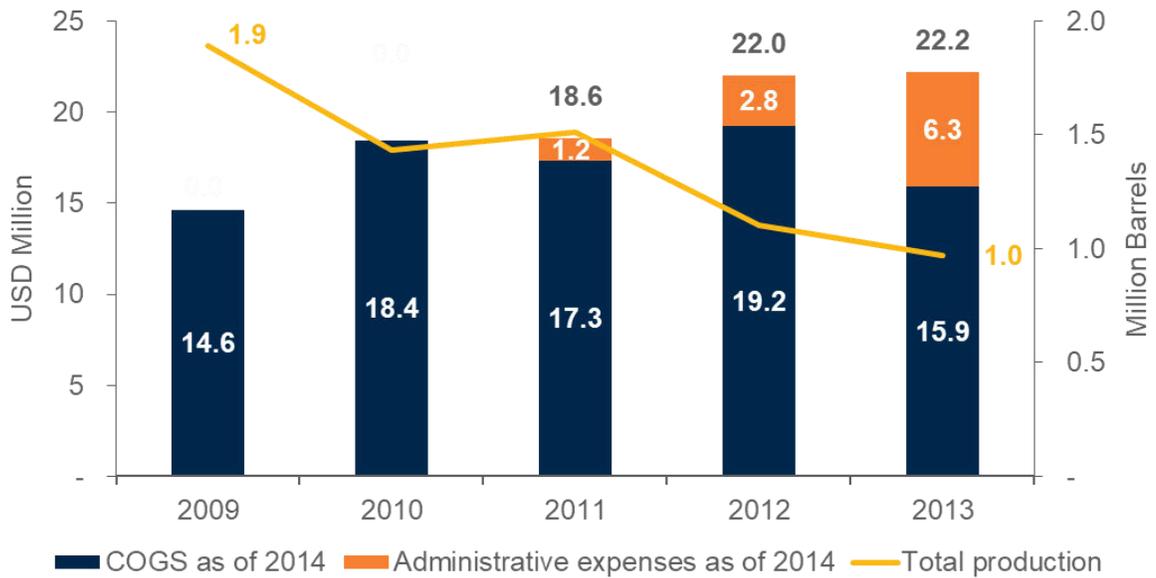
543. Figure 10 demonstrates BRG’s figures once applied to the average value of US oil barrels during the relevant time period.



544. NERA’s critiques for this valuation are unfounded, claiming that the BRG expert ignored an increase of operating expenses to InterOil in 2013, the benchmark is inconsistent with GyM’s reported 2015 expenses, understated inflation by relying on US (not Peruvian) inflation, excluded certain elements from Baspetrol’s proposal that would increase costs, and that BRG failed to account for commitments typically included in a license agreement.⁷⁶⁷

⁷⁶⁷ *Id.* at ¶ 79.

545. NERA’s criticism regarding InterOil’s expenses ignores the historical situation for the company. At the time InterOil underwent a restructuring, and as a result had significant expenses tied to related initiative. NERA decides to focus on this period of transition, ignoring that production fell from 2011 to 2013 while total expenses remained relatively stable. Figure 11 demonstrates this stability despite production decrease.⁷⁶⁸



546. NERA attempts to further bolster its point by providing data, which allegedly reveals an increased expense in oil barrels. However, this exhibit they have provided is unreliable, as it has no source cited, mislabels data, and lacks a breakdown to exclude depreciation.

547. NERA’s disagreement with the use of US inflation is also misplaced, as InterOil’s own annual reports indicated that “its foreign exchange exposure in Peru was immaterial, with receivable and cash primarily denominated in U.S. dollars[.]”⁷⁶⁹

⁷⁶⁸ *Id.* at ¶ 83.

⁷⁶⁹ *Id.* at ¶ 93.

iv. Accounts for Taxes

548. NERA's criticisms that BRG ignored taxes are unfounded, and their proposed adjustments are thus unwarranted.

549. NERA incorrectly states that a 5% profit-sharing tax was not included. However, the projected operating expenses, derived from InterOil's historical expenses, were already included. Therefore, this adjustment is not warranted.

v. Discount Rate is Consistent with Market Benchmarks

550. A 9.5% WACC is challenged by NERA despite the fact that its indicators are limited to a single 2014 study that reports an average and median WACC rate at roughly 10% in 2013.

551. Second, this report assumes a risk-free rate of 4% and an equity risk of 5%. BRG uses a rate of 2.7% risk-free rate and a 4.8% equity risk premium rate, which NERA has not disputed. Therefore, for them to rely on this WACC put forth by a single report, which has separate assumptions than those already left uncontested by NERA.

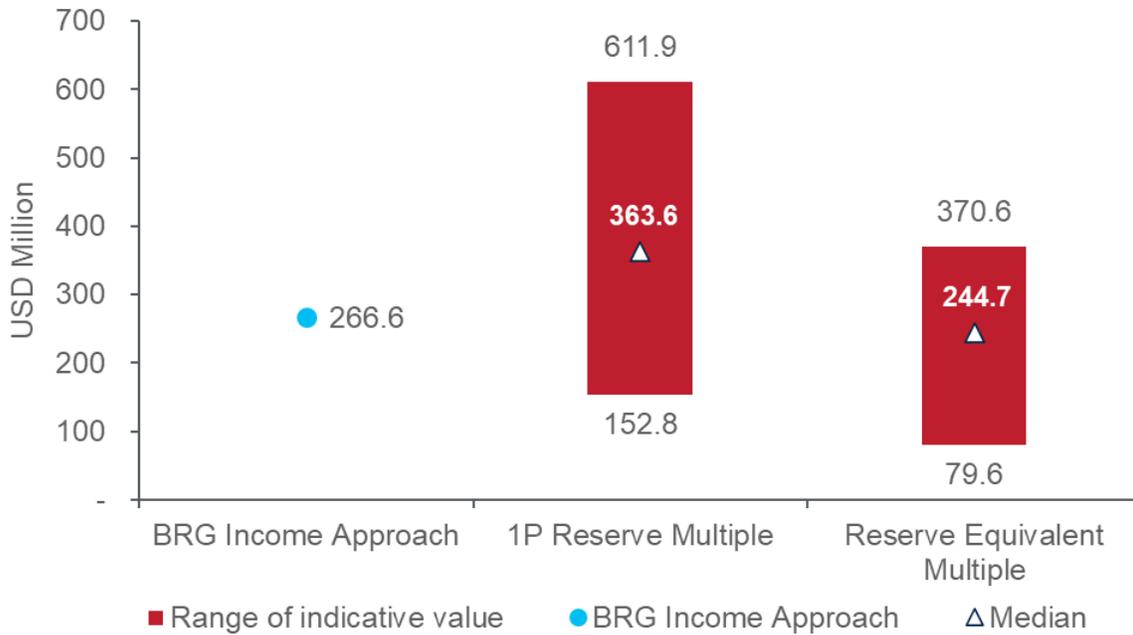
552. Additionally, this report relied upon by NERA does not have a narrow enough definition on comparator oil companies. The report relies upon the broad "oil and gas" industry, not specifically upstream exploration and production like Baspetro, InterOil, and the work done at Blocks II and IV, rendering it an improper comparison.

d. NERA's responses against the market approach lack foundation

553. NERA lodges a broad critique against the market approach, but its comments exclusively focus on the deal location.

554. NERA argues that the global sample used by BRG includes transactions from more developed countries with lower risks than Peru. NERA sub-divides the markets into "less developed countries," "emerging markets" (where Peru is), and "developed countries."

555. They then assign multiples for each valuation, but these corroborate the BRG assessment under the income approach, as demonstrated in Figure 15.



e. Pre-Award interest was properly calculated by BRG

556. BRG calculates a pre-award interest using the Claimant’s cost of debt at 7.4%.

557. However, NERA contends that the pre-award interest should be calculated on a low-risk or risk-free benchmark, pointing toward rates like that of the U.S. Treasury. However, relying on such a rate is misguided as only the U.S. government could access funding at such rates. Furthermore, using a risk-free rate is inconsistent with the principle of full compensation for the Claimant due to Respondent’s actions.

VIII. PRAYER FOR RELIEF

558. On the basis of the foregoing, without limitation and reserving Amorrortu’s rights to supplement these prayers for relief, including without limitation in the light of further action by Peru, Amorrortu respectfully requests that the Tribunal:

- a. **DECLARE** that Peru has breached Article 10.5 of the USPTPA by failing to accord Amorrortu's investment in Peru fair and equitable treatment; and
- b. **ORDER** Peru to pay damages to Amorrortu for its breaches of the USPTPA in the amount of US \$ US\$ 266.6 million plus pre-judgment interest since 14 July 2014 to the date an award is issued.
- c. **AWARD** such other relief as the Tribunal deems appropriate; and
- d. **ORDER** Peru to pay all the costs, attorneys' fees, and expenses of this arbitration, including Claimant's legal and expert fees, the fees and expenses of any experts appointed by the Tribunal, the fees and expenses of the Tribunal, and the PCA's other costs, in accordance with Article 10.26(1) of the USPTPA and Article 38 of the UNCITRAL Rules.

Respectfully submitted on December 22, 2025

/s/ Francisco A. Rodriguez

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