

International Centre for Settlement of Investment Disputes

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By e-mail

October 5, 2009

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Dr. Carlos Lopez
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Re: Piero Foresti, Laura de Carli and others v. Republic of South Africa
(ICSID Case No. ARB(AF)/07/1)

Dear Sirs,

I refer to the Petition for Limited Participation as Non-Disputing Parties filed on July 17, 2009, by the Centre for Applied Legal Studies, the Center for International Environment Law, the International Centre for the Legal Protection of Human Rights and the Legal Resources Centre, as well as the Petition filed on August 19, 2009, by the International Commission of Jurists.

Please be informed that the Tribunal has decided to allow the above mentioned Non Disputing Parties (NDPs) to participate in this proceeding in accordance with Arbitration (Additional Facility) Rule 41(3). The Tribunal has accordingly fixed the schedule for the involvement of the above mentioned NDPs in the next stages of the case and has given directions for the disclosure of documents to them, having in mind two basic principles:

- (1) NDP participation is intended to enable NDPs to give useful information and accompanying submissions to the Tribunal, but is not intended to be a mechanism for enabling NDPs to obtain information from the Parties.
- (2) Where there is NDP participation, the Tribunal must ensure that it is both effective and compatible with the rights of the Parties and the fairness and efficiency of the arbitral process.

Accordingly, the Tribunal has taken the view that the NDPs must be allowed access to those papers submitted to the Tribunal by the Parties that are necessary to enable the NDPs to focus their submissions upon the issues arising in the case and to see what positions the Parties have taken on those issues. The NDPs must also be given adequate opportunity to prepare and deliver their submissions in sufficient time before the hearing for the Parties to be able to respond to those submissions.

The Tribunal does not at this stage envisage that the NDPs will be permitted to attend or to make oral submissions at the hearing. A final decision on those questions will be taken after March 12, 2010, by which date the Parties will have responded to the NDP submissions.

For the time being, the schedule is as follows:

November 2, 2009	Claimants' Reply
November 6, 2009	Exchange between the Parties of the redacted versions of the documents to be sent to the NDPs
November 16, 2009	Filing by the Parties of the redacted documents for the NDPs – Transmission to the NDPs by the Centre
December 21, 2009	NDP's Submissions to be filed with the Centre
March 12, 2010	- Respondent's Rejoinder; - Parties' response to the NDPs' submissions; and - Claimants' additional submission on compensation mechanism
March 26, 2010	Respondent's reply to Claimants' additional submission
April 12-23, 2010	Hearing

In view of the novelty of the NDP procedure, after all submissions, written and oral, have been made the Tribunal will invite the Parties and the NDPs to offer brief comments on the fairness and effectiveness of the procedures adopted for NDP participation in this case. The Tribunal will then include a section in the award, recording views (both concordant and divergent) on the fairness and efficacy of NDP participation in this case and on any lessons learned from it.

Sincerely yours,



Eloïse M. Obadia
Secretary of the Tribunal

cc:
Tribunal Members and Parties