

NIKO RESOURCES (BANGLADESH) LTD.
V.
BANGLADESH PETROLEUM EXPLORATION & PRODUCTION COMPANY LIMITED
(“BAPEX”)
AND BANGLADESH OIL & GAS MINERAL CORPORATION (“PETROBANGLA”)
(ICISD CASE NOS. ARB/10/11 AND ARB/10/18)

Procedural Order No 25
(Scope of November 2020 Hearing)

1. In their Decision on Liability of 28 February 2020, the Tribunals decided that Niko was liable for the blowout of 7 January 2005 (the first blowout) and held:

The compensation owed by Niko to BAPEX includes the gas that escaped from the Chattak 2 Well by reason of the first blowout; the identification of other loss and damage that Niko must compensate and the quantum of such compensation are reserved for the next phase of these proceedings ...

2. According to the procedure that had been agreed at the end of the Hearing on 2 – 7 November 2015, the Respondents produced on 25 March 2016 BAPEX’s Memorial on Damages. In this memorial, BAPEX presented its Corruption Claim, supported by Petrobangla in a separate letter of the same day. In addition, BAPEX identified in this memorial various losses attributed to the blowouts and quantified some of them. With respect to “environmental and health losses” BAPEX claimed amounts “to cover the expenses of monitoring, surveying and abatement” and requested the Tribunals:

...to hold this proceeding open until such time as a complete survey and monitoring of the Tengratila area can be conducted and BAPEX can provide the fullest possible accounting of environmental and health related losses;

3. Following the Decisions on the Corruption Claim and the aforementioned Decision on Liability, the Tribunals consulted the Parties and determined in Procedural Order No 24 the procedure for the quantum phase concerning the Compensation Declaration. Considering the duration of the required evidentiary hearing and the time at which all participants could be available for such a hearing, the Tribunals “examined how any of the controversial issues which do not require an evidentiary hearing can be considered and decided in advance of that hearing”.¹ The Tribunals decided that in a first step the

¹ Procedural Order No 24, paragraph 8.

heads of recoverable loss would be determined in light of the Tribunals' Decision on Liability.

4. The Parties were invited to develop their positions with respect to the recoverable loss in simultaneous written submissions, in particular to

... identify with specificity which heads of recoverable loss presented in the Memorial on Damages of 25 March 2016 (including the environmental damage reserved for subsequent quantification) satisfy the requirements of the Tribunal's findings on Niko's liability for the Chattak 2 blowout and the limitations of such liability. The Respondents shall also address the admissibility and justification of the requested changes from the November 2015 agreed procedure.

5. According to the programme set out in Procedural Order No 24, these submissions were to be followed by a hearing

... for oral argument on the issues addressed in these submissions [...]. In particular the Parties will be given an opportunity to respond to their opponent's argument identifying the recoverable heads of loss in light of the Tribunal's findings.

6. In consultations with the Parties, the time for that hearing was fixed for 19-20 November 2020, referred to now as "the November 2020 Hearing" or simply "the Hearing".
7. The Parties filed their submissions on 7 September 2020. Further to its request, BAPEX was given the opportunity to file a written presentation in advance of the November 2020 Hearing and did so on 22 October 2020.
8. In preparation of the November 2020 Hearing, the Tribunals convened a Pre-Hearing Conference on 4 November 2020. They circulated on 2 November 2020 proposed Agenda Items for that conference (the "Agenda"). The Agenda identified *inter alia* a List of Issues to be addressed at the Hearing. The list included the following issue:

3.1 Criteria for distinguishing recoverable heads of loss from those which are excluded by Clause 27.2 of the JVA and Section 73 of the Contract Act; for the Tribunals it is important to understand, in light of the Tribunals' findings in the Decision on Liability, the reasons why the Parties consider each of the losses claimed as recoverable heads of loss or deny recoverability;

9. At the Pre-Hearing Conference the Parties agreed with the issues listed by the Tribunals with the exceptions of two items. One of the points of disagreement concerned the scope of argument on the Claimant's set-off defence and was resolved at the conference by agreement of the Parties, as recorded in the agreed Summary Minutes of the Pre-Hearing Conference. The agreement is reflected in item (i) of the Order below.
10. The other issue of disagreement concerned the definition of issues in **item 3.1 of the List of Issues**. The Claimant argued that this item should not be limited to distinguishing recoverable losses from losses that were excluded by Clause 27.2 of the JVA and Section 73 of the Contract Act, as in its opinion it was anticipated by the wording of this item in the List. The Claimant stated that all issues of liability that arose from the submissions should be addressed at the Hearing. The Claimant cited as example the objections it had raised against the claims for environmental damages to third parties, including (but not limited to) environmental monitoring. The Respondents objected and argued that considering this issue would go beyond the scope that had been announced for the November 2020 Hearing.
11. With respect to the question raised concerning item 3.1 of the List of Issues, the President explained at the Pre-Hearing Conference that the objective of the Tribunals in structuring the procedure following the Decision on Liability, as set out in Procedural Order No 24, was to begin by identifying which claimed losses were recoverable in principle, so as to avoid costly and time consuming expert and factual investigations and submissions on quantum with respect to claims which would fail on the legal grounds. In order to allow the full Tribunals to consider the controversy about the scope of item 3.1, the Parties were invited to explain their respective positions in writing. They did so on 6 November 2020.
12. The full Tribunals considered these explanations and, after deliberation, confirmed the clarification provided by the President at the Pre-Hearing Conference: Item 3.1 of the Agenda concerns all claims by BAPEX and the question whether the claims are recoverable in principle. If the Claimant "den[ies] recoverability", its argument at the Hearing is not limited to specific grounds of its denial. The Tribunals see no need to modify the definition of the issue in item 3.1 of the List of Issues.
13. This confirmation is based on the following considerations:
14. **The losses for which BAPEX claims in these arbitrations**, as they were eventually presented in the Amendment to BAPEX's Memorial on Damages of 7 September 2020 (the Amendment), were presented under three headings:

- (i) BAPEX's First Head of Loss: Escaped Gas Due to the Blowout of the Chattak 2 Well and Corresponding Loss of Production;
 - (ii) BAPEX's Second Head of Loss: Loss of Production Due to Damage and Drilling Hazards Caused by the Chattak 2 Well Blowout;
 - (iii) BAPEX's Third Head of Loss: Loss Due to Pollution Caused by the Chattak 2 Well Blowout.
15. There is no dispute between the Parties that item 3.1 of the List of Issues correctly describes the scope for oral argument at the November 2020 Hearing and the following decision by the Tribunals with respect to the first and the second head of loss claimed by BAPEX. The difference between the Parties concerns only the third head of loss.
16. With respect to the third head of loss, **the Respondents** conclude in their submission of 6 November 2020: "BAPEX therefore maintains that Niko's arguments relating to third party claims are outside the scope of the November Hearing". They describe as "misguided" the Claimant's "argument that BAPEX is seeking damages suffered by 'individual third parties (i.e. by specific inhabitants and property owners in Tengratila)'"'. The Respondents add:
- Niko seeks to frame its argument as a legal issue appropriate for the November Hearing based on the false premise that BAPEX has allegedly brought a "subrogated or representative type claim on behalf of individual residents or property owners" and that it failed to "identify any duty to account to the local population for any damages received." Niko completely misses the mark in characterizing what BAPEX is seeking as damages in this arbitration.*
17. The Respondents clarify that
- ...BAPEX seeks as damages the costs to the Government of Bangladesh associated with addressing Niko's failures related to the ongoing gas seepage risk and its failure to adequately monitor the situation following the blowouts. BAPEX maintains that all such costs are recoverable as direct loss because they result directly from Niko's breach of its obligations as the Operator under the JVA.*
18. The Respondents also argue that "BAPEX has a clear contractual right to indemnification in relation to any loss or damage to third parties caused by Niko's negligent operations".

19. The Respondents further assert that the argument of Niko "goes far beyond the scope" of the November 2020 Hearing, as defined in Procedural Order No 24 and "would require in-depth adjudication of the nature and extent of environmental and human health damage sought by BAPEX, which is also entirely improper for the November Hearing".
20. Finally, the Respondents argue that Niko's post-blowout monitoring was inadequate and add: "The adequacy of Niko's monitoring raises issues requiring expert testimony, and cannot be resolved as purely a legal issue at the November Hearing" and

... to the extent that the issue relates to the nature and full extent of direct loss due to pollution, it is not ripe for adjudication at the November Hearing because the nature and extent of the loss are yet to be determined.

21. **The Claimant** argues that "the question of whether environmental losses allegedly suffered by third parties are recoverable losses of the Government, Petrobangla or BAPEX has long been at issue in the Compensation Declaration". The Claimant cites from its submissions on the Compensation Declaration in which it had noted the absence of any effort "to establish that any of the damage alleged was to their property or interests, as opposed to the private interests of the local community members who owned the businesses, agriculture, vegetation, fisheries allegedly affected".
22. Considering BAPEX's Memorial on Damages and its Counter-Memorial, the Claimant states:

There was, therefore, nothing novel in the position stated by Niko in paragraph 137 of its Counter-Memorial on Damages of 7 September 2020:

"Finally, BAPEX offers no explanation as to the legal basis for an entitlement to claim for damages that are asserted to have been suffered, or may be suffered in the future, by individual third parties (i.e. by specific inhabitants and property owners in Tengratila). They point to no legal right to bring a subrogated or representative type claim on behalf of individual residents or property owners, and they fail to identify any duty to account to the local population for any damages received."

23. In conclusion, the Claimant submits

...that the Tribunals should reject BAPEX's suggestion that it had no prior occasion to consider whether it may properly claim as recoverable losses

the environmental damages it now seeks to recover, including the environmental monitoring program costs it claims relating to damages allegedly suffered by third parties and not by it, the Government or Petrobangla.

24. **The Tribunals** note three aspects in the Respondents' objections: (i) the argument concerning third party claims, (ii) the question whether the issue is "beyond the scope" of the November 2020 Hearing and (iii) the assertions that the "nature and full extent of direct loss due to pollution [...] is not ripe for adjudication" and "are yet to be determined".
25. Concerning the **first of these points**, the Tribunals take note of the Respondents' statement according to which BAPEX's claims should not be understood as **claims for losses of third parties**. If any argument remains concerning the question whether BAPEX's claims are for losses of third parties, the issue would concern the question whether such losses are recoverable by BAPEX and thus may be addressed at the 19-20 November 2020 Hearing.
26. Concerning **the second point**, the question **whether "recoverability" of all or part of the environmental losses claimed by BAPEX are "beyond the scope of" or "improper for the November Hearing"**, as argued by the Respondents, the Tribunals note that environmental and related losses have been analysed since 2005 and were presented in these arbitrations in a variety of reports, claims and other submissions. Without any claim for completeness, the Tribunals mention the following:
- (i) Several reports of Environmental Loss Committees formed by the authorities in Bangladesh, issued at various dates between 17 January 2005 and 15 September 2005;
 - (ii) A report of a committee formed to assess "local losses", issued on 8 June 2005;
 - (iii) The Money Suit brought by the Government and Petrobangla;
 - (iv) Niko's Reply concerning the Compensation Declaration, dated 29 May 2014, the attached witness statement of Mr Glaholt and an expert report of Mr Robert Kemp;
 - (v) A report of the Tribunals' expert, Mr Ian Wallis of 8 June 2015;
 - (vi) The Respondents' Comments on the Tribunal Experts' Reports of 31 August 2015, including a report by Dr Ian Borthwick of 31 August 2015, containing at page 5 a list of reports on environmental and related damage;

- (vii) Niko's Comments on BAPEX's Comments on the Reports of the Tribunal Experts Concerning the Compensation Declaration of 30 September 2015;
- (viii) BAPEX's Memorial on Damages of 25 March 2015.
27. Further to Procedural Order No 24, the Respondents updated their claim for damages in BAPEX's Amendment to Memorial on Damages dated 7 September 2020. In this amendment, BAPEX presented the three heads of loss as quoted above. With respect to the third head of loss, the Memorial on Damages had identified a number of "immediate and long term environmental and health harm". Referring in particular to the reports of the Government Committees, the Memorial identified a series of such harm and losses.
28. In the Amendment these explanations were further developed. In particular, BAPEX explained that all of the losses were direct. It commenced its explanations by referring to the first blowout and stating that "the blowout instantaneously began to cause these environmental harms, which persisted over time. No harm could be more direct". In the discussion that followed, BAPEX examined in further detail specific types of environmental and health damage and in each case asserted that the damage was direct. It referred again to the Committee reports, adding that these reports
- ... did not address—and Niko did not pay—any losses related to the long-term effects of the first blowout on the land and environment of the affected areas. These long-term effects include arsenic exposure, the long-term effects of the deposition of sand and other subsurface materials, and the continuous gas flow from the blowout into the village living areas, ponds, air and soil.²*
29. BAPEX relies on the reports of its three environmental experts. With respect to the arsenic exposure, BAPEX explains

While further studies are required to determine the extent of arsenic poisoning and its precise cause, BAPEX's environmental damages experts explained the ways that levels of arsenic could have increased in the groundwater following the blowouts. Arsenic could have been released into drinking water from the material expelled from the well as a consequence of the blowout. Alternatively, arsenic could have been also released as a result of the disturbance in the aquifer caused by the blowout. In either case, the first blowout is a direct cause of increased arsenic in drinking water.³

² Amendment, paragraph 59.

³ Amendment, paragraph 61.

30. The Amendment continues by describing other long-term damage:

*BAPEX's environmental experts also described the long-term impacts caused by the deposit of sand and other subsurface material over a large area in the village of Tengratila on (1) fish farming, (2) agriculture and (3) people's health based on their interviews with the inhabitants of Tengratila. This deposit of sand and other subsurface material occurred when the gas from the blowout erupted to the surface with force and its environmental effects occurred when those materials landed on the village, its people, their homes and the land and water from which they make a living. The long-term effects are those effects of these depositions that persist or are revealed over time. This is again a direct physical effect of the first blowout.*⁴

31. After a description of further damage, this part of the Amendment concludes as follows:

*In sum, the first blowout directly caused environmental and health damages from gas released from the reservoir underground and seeping at the surface. These constitute direct loss due to Niko's breaches of the JVA compensable under Section 73 of the Bangladesh Contract Act. As discussed at paragraphs 80-81 and 96 of the Memorial on Damages, significant additional monitoring and field work is required to assess the full extent of these damages.*⁵

32. **The Tribunals conclude** that the occurrence of the loss and damage claimed as the third head of loss has been examined in depth over an extended period of time. BAPEX considers that all this loss and damage must be compensated by Niko, that the loss and damage are direct and that they are not excluded by the JVA and the Contract Act. At the forthcoming November 2020 Hearing, the Claimant must be given "an opportunity to respond to [BAPEX's] argument identifying the recoverable heads of loss in light of the Tribunals' finding".⁶
33. As to **the third point** of the Respondents' objections, the question whether the "**nature and full extent of direct loss due to pollution [...] is not ripe for adjudication**" and still requires expert opinions, the Tribunals again considered the Respondents' submissions and in particular the latest of them, BAPEX's Amendment to Memorial on Damages. In that Amendment, like in the Memorial on Damages itself, the question whether the claimed losses must be compensated is considered separately from the

⁴ Amendment, paragraph 62.

⁵ Amendment, paragraph 67 (footnotes omitted).

⁶ Procedural Order No 24, paragraph 17.

valuation of these losses. This was indeed the approach that had been decided in Procedural Order No 24. The "significant additional monitoring and field work [that] is required to assess the full extent of these damages", is described in Chapter III B of the Amendment, dealing with "Valuation of the Environmental Losses and Human Health Damage", issues that have been reserved for the next step in the procedure.

34. **The Tribunals conclude** that any further monitoring and assessment which BAPEX wishes to be performed by the Respondents' experts is no justification to avoid addressing at the forthcoming November 2020 Hearing the question whether, as a matter of principle, BAPEX's claims for Environmental Losses and Human Health Damages are recoverable.
35. With respect to BAPEX's request concerning this further work of its environmental experts, **the claim for estimated future expenses** is a matter of recoverability to be addressed as part of item 3.1 of the List of Issues. BAPEX's request for a suspension of the procedure to allow time for this work was addressed in Procedural Order No 24, where the Respondents had been invited to "address the admissibility and justification" of this change from the procedure agreed in November 2015.⁷ Any argument by the Parties concerning this request concerns item 3.4 of the List of Issues. The Tribunals expects it to be addressed during the November 2020 Hearing.
36. **The Tribunals conclude** that, apart from the limitation of item 3.3 as agreed at the Pre-Hearing Conference, there is no need for modifying the List of Issues to be addressed at the 19-20 November 2020 Hearing as set out in section 3 of the Agenda Items for that Pre-Hearing Conference. The Tribunals therefore make the following

ORDER

- (i) Item 3.3 of the List of Issues to be addressed at the Hearing, as set out in the 2 November 2020 Agenda Items for the Pre-Hearing Video Conference on 4 November 2020 (the List of Issues, Attachment 1) will be limited to the admissibility of the Claimant's set-off defence and the Tribunals' jurisdiction over it. If the Tribunals determine in the forthcoming Decision on Recoverable Heads of Loss that the set-off defence is admissible, liability and quantum of that defence will be subject of the final phase of these arbitrations.
- (ii) Otherwise the List of Issues is confirmed, without prejudice to clarifications which the Tribunals reserve to make after consultation with the Parties.

⁷ Procedural Order No 25, paragraph 11.

Niko Resources (Bangladesh) Ltd.

v.

*Bangladesh Petroleum Exploration & Production Company Limited ("Bapex"), and
Bangladesh Oil Gas and Mineral Corporation ("Petrobangla")*

(ICSID Case Nos. ARB/10/11 and ARB/10/18)

Procedural Order No 25

- (iii) The Hearing Protocol, including the allocation of time proposed by the Parties jointly and agreed by the Tribunals, is confirmed (Attachment 2).

On behalf of the two Arbitral Tribunals

[signed]

Michael E. Schneider
President
15 November 2020

Attachment 1: List of Issues

Attachment 2: Hearing Protocol

Attachment 1**NIKO RESOURCES (BANGLADESH) LTD.****V.****BANGLADESH PETROLEUM EXPLORATION & PRODUCTION COMPANY LIMITED
("BAPEX")
AND BANGLADESH OIL & GAS MINERAL CORPORATION ("PETROBANGLA")
(ICISD CASE NOS. ARB/10/11 AND ARB/10/18)****LIST OF ISSUES**

(Item 3.1 – 3.5 of the Agenda for the 4 November 2020 Pre-Hearing Video-Conference)

3. Issues to be addressed at the Hearing: The Tribunals see the following issues to be addressed at the Hearing:
 - 3.1. Criteria for distinguishing recoverable heads of loss from those which are excluded by Clause 27.2 of the JVA and Section 73 of the Contract Act; for the Tribunals it is important to understand, in light of the Tribunals' findings in the Decision on Liability, the reasons why the Parties consider each of the losses claimed as recoverable heads of loss or deny recoverability;
 - 3.2. Legal issues concerning the Government's tort claim;
 - 3.3. Admissibility and justification of the Claimant's set-off claim, including the question whether heads of loss relied upon are recoverable in light of the Tribunals' decision on liability;
 - 3.4. The procedure for the quantification of recoverable claims, following the Tribunals' forthcoming Decision on Heads of Claim;
 - 3.5. The Claimant's request for a final award on the Payment Claim: the Tribunals' assume that, following the Parties' replies to be filed on 6 November 2020, no argument on the costs related to the proceedings on the Payment Claim will be required at the Hearing;

Attachment 2**NIKO RESOURCES (BANGLADESH) LTD.****V.****BANGLADESH PETROLEUM EXPLORATION & PRODUCTION COMPANY LIMITED
("BAPEX")****AND BANGLADESH OIL & GAS MINERAL CORPORATION ("PETROBANGLA")
(ICISD CASE NOS. ARB/10/11 AND ARB/10/18)****HEARING ON HEADS OF RECOVERABLE LOSS****19 – 20 NOVEMBER 2020**

by Zoom

PROTOCOL REGARDING REMOTE HEARING MATTERS**I. PRIOR TO THE HEARING**

1. Testing. The Secretariat will offer technical tests with the Members of the Tribunals and each Party in advance of the Hearing, to test connectivity to the Zoom video conference platform and to the real-time transcription. The test for all Hearing participants and the court reporter is scheduled for Tuesday, 17 November 2020. The Secretariat has communicated the connection details in advance of the test.
2. Each Hearing participant should join the test with the same device(s) and internet connection (preferably also from the same physical location) that is intended to be used during the Hearing.
3. List of Hearing Participants. Each Party has provided its respective List of Hearing Participants ("List of Participants"). The completed List of Participant is attached in Annex B and indicates those participants who will have an active speaking role ("Active Participants").
4. Access to the videoconference shall be restricted to those included in the List of Participants. Should any non-listed participant attempt to connect to the videoconference, the technical operator

hosting the meeting will alert the Secretary of the Tribunal. All Hearing participants bear an ongoing duty to warn of the presence of any other person on the videoconference.

5. Data Privacy. The List of Participants for the Hearing contains personal data provided to ICSID in the context of the remote Hearing, including names and contact information, such as business email addresses and telephone numbers. The parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of these arbitration proceedings and the Hearing. The parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceedings, where necessary. Each of the parties and their representatives shall indemnify and hold harmless the Tribunals with respect to any breach of applicable data protection and privacy regulations by the party or its representatives in relation to the arbitration proceedings.

II. JOINING THE HEARING VIA ZOOM

6. Connectivity. For best connectivity, it is recommended that Hearing participants (i) use ethernet connection if available; (ii) avoid streaming services in the household using the same internet connection during the Hearing; and (iii) close all unnecessary browser tabs/windows. Download speed should ideally be higher than 20 Mbps (for testing, go to www.speedtest.net).
7. Use of the Zoom Application. Participants are strongly encouraged to join the Hearing using the Zoom application rather than joining by web browser.
8. ICSID Secretariat Support. If a Hearing participant has any doubt or questions concerning connectivity or Zoom functionality, please contact the ICSID Secretariat as soon as the doubt or question arises but in any event before the commencement of the Hearing.
9. Joining the Hearing Room. The details to join the Zoom session and the real-time transcript for each day are attached to this Protocol as Annex A.
10. Daily Schedule and Time Allocation. The daily sitting hours as proposed by the Tribunals and agreed by the parties are set out in Annex A. Annex A also reflects the allocation of time at the Hearing as proposed by the parties jointly on 5 November 2020 and approved by the Tribunals.

11. All participants are invited to join the Zoom session 30 minutes prior to the scheduled starting time on each day. This will allow addressing setup, connectivity and other IT issues before the starting time.
12. Naming Convention. Participants should indicate their first and last names. Hearing attendees participating on behalf of the Claimant should add a “C-“ before their first name and attendees participating on behalf of the Respondents should add a “R-“ before their first name (e.g. C-Barton Legum; R-Derek Smith).
13. Starting on Time. The Tribunals will start promptly on time unless a key participant (Member of the Tribunals or lead counsel expected to speak or present documents) is unable to join the Zoom session.
14. Audio/Video Feed. Upon the joining of participants to the Zoom session on the first day of the Hearing, those using their computer should turn both their audio and video feed on. The President of the Tribunals will invite each party to introduce its team.
15. After each party has introduced its participants, all participants who are not expected to speak will turn their video feed off and mute their microphones.
16. Joining by Phone: Participants who are joining by phone will be asked to confirm their names so that it is clear that the list of participants generated by the Zoom platform is aligned with the names appearing on the List of Participants in Annex B.

III. DURING THE HEARING

17. Video connections. Operation of the Zoom platform is improved if the number of video connections is kept to a minimum. Only those Hearing participants who are speaking shall appear on video in addition to the Members of the Tribunals, lead counsel for each party and the Secretary of the Tribunals. Participants appearing on video shall ensure that they have adequate front lighting and avoid a light source behind them (e.g. a window). If a participant experiences connectivity issues, Zoom will automatically prioritize the audio feed and may disconnect the video feed.
18. Microphone muting. All Hearing participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The IT technician may also mute Hearing participants if needed to avoid background noise.

19. Equipment. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the main speakers use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they use for the Zoom videoconference. If not available, Active Participants are asked to speak close to the microphone.
20. While not indispensable, Hearing participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online real-time transcript; and (iii) offline documents.
21. Transcription. Real-time transcription services will be provided by Dawn Larson of Worldwide Reporting. To facilitate the accurate transcription, speakers are advised to speak at a reasonable speed and with pauses between phrases. The court reporter may seek to clarify the record from time to time during the course of the Hearing.
22. The real-time transcript will be made available to the Hearing participants by way of an online link to be opened in a web browser. The connection link is listed in Annex A.
23. The court reporter will send the transcript of each Hearing Session by email to the designated recipients following the Session. The parties will be provided with an audio recording shortly after the conclusion of the Hearing.
24. Sound recording. The Hearing will be recorded and the audio recording will be shared with the parties and the Tribunals following conclusion of the Hearing. The Tribunals and the parties agree that the attendees will not otherwise record (audio, video or screenshot) the Hearing or any part of it.
25. PowerPoint presentations. The parties may use PowerPoint for their oral argument. Each Party shall make its presentation *via* the Zoom video platform using the “Share Content” function.
26. All Hearing participants will have the technical ability to display a presentation or document to all Hearing participants via Zoom. Each party shall number its PowerPoint presentations consecutively and indicate the document reference(s) where needed. The Hearing participant displaying the PowerPoint presentation will be the only one with the ability to scroll through the slides being displayed (the parties are advised to limit their use of this scrolling function, to minimize pressure on the internet bandwidth and on the stability of the connection).

27. Sharing of PowerPoint presentations. As agreed between the parties, the party wishing to use a PowerPoint presentation shall provide it by email to the other party immediately prior to its use. The electronic copies of presentations for the Tribunal Members, the Secretary, and the court reporter shall be provided to the Tribunal Secretary no later than one hour prior to its use. In addition, promptly after the conclusion of the Hearing Session during which the presentation was used, the parties shall upload a PDF of the slide deck to the November 2020 Hearing folder in the BOX files sharing platform, designating each file with the corresponding CH-__ or RH-__ number.
28. Technical Issues. If participants experience technical issues during the Hearing, they may (i) use the chat function in Zoom to communicate with the IT technician; (ii) send an email to the IT technician and the ICSID Secretariat staff; or (iii) call the ICSID Secretariat staff at the numbers indicated in the list of participants. The emails for the IT technicians are: Mr. Kun-Ying Yang kyang3@worldbank.org and Mr. Brandon David Kolpak bkolpak@worldbankgroup.org.
29. Zoom chat function/break-out rooms. The Zoom chat function should be reserved for communications dealing with technical matters. Break-out rooms will be made available to the parties and the Tribunals.
30. Social Distancing. Participants should respect any local social distancing guidelines if they are sitting together in the same room.

ANNEX A – HEARING AGENDA, ALLOCATION OF TIME & CONNECTION DETAILS

Link to Join the Zoom Session¹:

<https://worldbankgroup.zoom.us/j/97669152590?pwd=ZGNoNDIYb1psSVZhNGdNYkxIUU1oQT09>

Meeting ID: 976 6915 2590

Passcode: XS5*Xr0+lv

<u>Hearing Day 1</u>						
Hearing Day 1 – Session 1 (<i>Hearing Session 1</i>)						
<u>UTC-time</u>	<u>Wellington</u>	<u>Dhaka</u>	<u>Manama</u>	<u>Geneva/Paris</u>	<u>Washington, DC</u>	<u>Calgary</u>
Thu 5pm-7pm	Fri 6am-8am	Thu 11pm-Fri 1am	Thu 8pm-10pm	Thu 6pm-8pm	Thu 12pm-2pm	Thu 10am-12pm
- Respondents' Affirmative argument on agenda items 3.1 and 3.2 (75min), corresponding to items 3.1 and 3.2 of the List of Issues in Attachment 1 - Tribunal questions (45min)						
Transcription Connection: https://www.streamtext.net/player?event=1119NIKODAY1AMSESSION&player-type=legal						
<u>Hearing Day 1 – Session 2 (<i>Hearing Session 2</i>)</u>						
<u>UTC-time</u>	<u>Wellington</u>	<u>Dhaka</u>	<u>Manama</u>	<u>Geneva/Paris</u>	<u>Washington, DC</u>	<u>Calgary</u>
Fri 3am-5am	Fri 4pm-6pm	Fri 9am-11am	Fri 6am-8am	Fri 4am-6am	Thu 10pm-Fri 12am	Thu 8pm-10pm
- Claimant's Affirmative argument on agenda items 3.1 and 3.2 (75min) - Tribunal questions (45min)						
Transcription Connection: https://www.streamtext.net/player?event=1119NIKODAY1PMSESSION&player-type=legal						
<u>Hearing Day 2</u>						
Hearing Day 2 – Session 1 (<i>Hearing Session 3</i>)						
<u>UTC-time</u>	<u>Wellington</u>	<u>Dhaka</u>	<u>Manama</u>	<u>Geneva/Paris</u>	<u>Washington, DC</u>	<u>Calgary</u>
Fri 5pm-7pm	Sat 6am-8am	Fri 11pm-Sat 1am	Fri 8pm-10pm	Fri 6pm-8pm	Fri 12pm-2pm	Fri 10am-12pm
- Claimant's Affirmative argument on agenda items 3.3 to 3.5 (45min) - Respondents' Affirmative argument on agenda items 3.3 to 3.5 (45min) - Tribunal questions (30min)						
Transcription Connection: https://www.streamtext.net/player?event=1120NIKODAY2AMSESSION&player-type=legal						

¹ Additional login options are set out on the next page.

ANNEX A – HEARING AGENDA, ALLOCATION OF TIME & CONNECTION DETAILS

Hearing Day 2 – Session 2 (<i>Hearing Session 4</i>)						
<u>UTC-time</u>	<u>Wellington</u>	<u>Dhaka</u>	<u>Manama</u>	<u>Geneva/Paris</u>	<u>Washington, DC</u>	<u>Calgary</u>
Sat 3am – 5am	Sat 4pm-6pm	Sat 9am-11am	Sat 6am-8am	Sat 4am-6am	Fri 10pm-Sat 12am	Fri 8pm-10pm
• Respondents’ rebuttal on agenda items 3.1 and 3.2* • Claimant’s rebuttal on agenda items 3.1 to 3.5 (30min) • Respondents’ rebuttal on agenda items 3.3, 3.4 and 3.5* • Tribunal questions (30min) * Total time combined: 30min						
Transcription Connection: https://www.streamtext.net/player?event=1120NIKODAY2PMSESSION&player-type=legal						

Additional Zoom Connection Details

One tap mobile:

+13126266799,,97669152590#,,,,,0#,,7286663028# US (Chicago)
+16465588656,,97669152590#,,,,,0#,,7286663028# US (New York)

Join by SIP:

97669152590@zoomcrc.com

Join by H.323

162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia)
149.137.40.110 (Singapore)
Meeting ID: 976 6915 2590
Passcode: 7286663028

ANNEX B – LIST OF PARTICIPANTS

Name	Role/ Affiliation	Location of Connection	Joining by AC/VC or AC Only; Active Speaker
TRIBUNALS			
Mr. Michael E. Schneider	President of the Tribunals	Geneva	AC/VC
Prof. Jan Paulsson	Arbitrator	Manama	AC/VC
Prof. Campbell McLachlan	Arbitrator	Wellington	AC/VC
ICSID SECRETARIAT			
Ms. Frauke Nitschke	Secretary of the Tribunals	Washington, D.C.	AC/VC
Ms. Ekaterina Minina	Paralegal	Washington, D.C.	AC
Ms. Lamiss Al-Tashi	Conference Officer	Washington, D.C.	AC
CLAIMANT			
Mr. Barton Legum	Dentons	Paris	AC/VC; Active Speaker
Mr. Gordon Tarnowsky, QC	Dentons	Calgary	AC/VC; Active Speaker
Mr. Anthony Cole	Dentons	Calgary	AC/VC; Active Speaker
Ms. Rachel Howie	Dentons	Calgary	AC/VC; Active Speaker
Mr. William Hornaday	Niko	Calgary	AC Only
Mr. Glen Valk	Niko	Calgary	AC Only
RESPONDENTS			
Mr. Derek C. Smith	Counsel/ Foley Hoag LLP	Washington, D.C.	AC/VC
Ms. Tafadzwa Pasipanodya	Counsel/ Foley Hoag LLP	Washington, D.C.	AC/VC
Ms. Christina Hioureas	Counsel/ Foley Hoag LLP	New York City	AC
Ms. Christina Beharry	Counsel/ Foley Hoag LLP	Washington, D.C.	AC
Ms. Diana Tsutieva	Counsel/ Foley Hoag LLP	Washington, D.C.	AC
Mr. Nicholas Renzler	Counsel/ Foley Hoag LLP	Washington, D.C.	AC
Ms. Alejandra Torres Camprubí	Counsel/ Foley Hoag AARPI	Madrid	AC/VC
Mr. Sudanshu Roy	Counsel/ Foley Hoag LLP	Washington, D.C.	AC
Ms. Rumbidzai Maweni	Counsel/ Foley Hoag LLP	Washington, D.C.	AC
Ms. Sarah LeBarron	Paralegal Assistant/Foley Hoag LLP	Washington, D.C.	AC
Ms. Megan Tribble	Paralegal Assistant/ Foley Hoag LLP	Washington, D.C.	AC
Ms. Silvia Gómez	Legal Administrative Assistant/ Foley Hoag LLP	Maryland	AC
Mr. Peter Hakim	IT Support Technician/ Foley Hoag LLP	Washington, D.C.	AC
Mr. Kevin High	IT Support Technician/ Foley Hoag LLP	Washington, D.C.	AC
Mr. John Hicks	DOAR Litigation Support	Wilmington, NC	AC
Mr. Peter Fitzgerald	DOAR Litigation Support	Washington, D.C.	AC
Mr. Manuel Reese	DOAR Litigation Support	Choctaw, OK	AC
Mr. Gabriel Dash	DOAR Litigation Support	New York City	AC
Mr. Moin Ghani	Local Counsel/ Alliance Laws	Dhaka	AC/VC
Mr. Azhar Uddin Bhuiyan	Local Counsel/ Alliance Laws	Dhaka	AC

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Ms. Sumaiya Binta Tanvir	Local Counsel/ Alliance Laws	Dhaka	AC
Mr. Imtiaz Asif	Local Counsel/ Aequitas Chambers	Dhaka	AC
Mr. Nasrul Hamid MP	Honorable State Minister Ministry of Power, Energy and Mineral Resources Bangladesh Secretariat Dhaka	Dhaka	AC/VC
Mr. MD. Anisur Rahman	Senior Secretary Energy & Mineral Resources Division, Ministry of Power, Energy and Mineral Resources (Bangladesh)	Dhaka	AC/VC
Mr. A K M Fazlul Haque	Additional Secretary (Development) Energy and Mineral Resources Division, Ministry of Power, Energy and Mineral Resources (Bangladesh)	Dhaka	AC/VC
Mr. SK Aktar Hossain	Joint Secretary (Development) Energy & Mineral Resources Division, Ministry of Power, Energy and Mineral Resources (Bangladesh)	Dhaka	AC/VC
Mr. MD. Rokon-Ul-Hasan	Deputy Secretary & Private Secretary to Honorable State Minister, Ministry of Power, Energy and Mineral Resources (Bangladesh)	Dhaka	AC/VC
Mr. Abdullah Arif Muhammad	Senior Assistant Secretary (Development) Energy & Mineral Resources Division, Ministry of Power, Energy and Mineral Resources (Bangladesh)	Dhaka	AC/VC
Mr. A B M Abdul Fattah	Chairman, Petrobangla	Dhaka	AC/VC
Mr. Syed Ashfaquzzaman	Secretary, Petrobangla	Dhaka	AC/VC
Mr. Mohammad Ali	Managing Director, BAPEX	Dhaka	AC/VC
COURT REPORTER			
Ms. Dawn Larson		Worldwide Reporting	
ZOOM TECHNICIANS			
Mr. Kun-Ying Yang		kyang3@worldbank.org	
Mr. Brandon David Kolpak		bkolpak@worldbankgroup.org	