

**MATTER OF AN ARBITRATION UNDER THE INTERNATIONAL CENTRE FOR
THE SETTLEMENT OF INVESTMENT DISPUTES AND THE GOVERNMENT OF
THE UNITED STATES OF AMERICA AND THE REPUBLIC OF NICARAGUA
UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA FREE TRADE
AGREEMENT (CAFTA)**

Riverside Coffee, L.L.C.

INVESTOR

v.

Nicaragua

RESPONDENT

Notice of Arbitration.

March 19, 2021

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- 1) Pursuant to Article 36 of the Convention on the settlement of investment disputes between States and Nationals of Other States (“ICSID Convention”), Riverside Coffee LLC, (“Riverside” or “Investor” or Claimant”) hereby submits its request to the Secretary-General of the International Centre for Settlement of Investment Disputes (the “Centre”) to institute arbitration proceedings against the Republic of Nicaragua (“Nicaragua”) under Articles 10.16, 10.17, and 10.18 of the Dominican Republic-Central America Free Trade Agreement (“CAFTA”).¹

A. DEMAND THAT THE DISPUTE BE REFERRED TO ARBITRATION

- 2) Pursuant to CAFTA Article 10.16(3)(c) and CAFTA Chapter Ten² and the Arbitration Rules of the International Centre for the Settlement of Investment Disputes (“ICSID Arbitration Rules”) made under the ICSID Convention, the Investor initiates recourse to arbitration to recover damages for breaches by Nicaragua of its obligations under CAFTA Chapter Ten.³

B. NAMES AND ADDRESSES OF THE PARTIES

- 3) The Parties are as follows:
 - a. **Claimant/ Investor - Riverside Coffee, L.L.C.**, the Investor, is located at 6538 S Sheridan Loop, Littleton, Colorado, United States of America.
 - b. **Investment** - The investment is **Empresa Inagrosa S.A.** (“Inagrosa”), an enterprise which is located at Inagrosa (Inversiones Agropecuarias, S.A.) Semaforos de Claro Villa Fontana 20 metros al norte Casa No. 304 Managua,

¹ The Dominican Republic-Central America Free Trade Agreement (CAFTA), **CLA-001**; Member's Resolution of Riverside Coffee, L.L.C. Consent & Waiver for Claim under CAFTA, 17 March 2021, **C-027**; Officer's Resolution of Riverside Coffee, L.L.C. Consent and Waiver for Claim under CAFTA, 17 March 2021, **C-028**; Member's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, **C-026**; Officer's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, **C-029**.

² Member's Resolution of Riverside Coffee, L.L.C. Consent & Waiver for Claim under CAFTA, 17 March 2021, **C-027**; Officer's Resolution of Riverside Coffee, L.L.C. Consent and Waiver for Claim under CAFTA, 17 March 2021, **C-028**.

³ Member's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, **C-026**; Officer's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, **C-029**.

Nicaragua. Inagrosa was incorporated under the laws of the Republic of Nicaragua on February 26, 1996.⁴

- c. **Respondent** - Nicaragua is a party to this arbitration and upon belief, is notified through the Ministerio de Fomento, Industria y Comercio and the Departamento de Solución de Controversias Ministerio de Fomento, Industria y Comercio.⁵ This is the successor department to the Dirección de Integración y Administración de Tratados, identified for notification purposes in CAFTA Annex10-G.⁶ The department address is Km. 6, Carretera a Masaya, Managua, Nicaragua.⁷ The same department's email contact is jmoreno@mific.gob.ni.⁸

- 4) Concerning the matters in dispute herein, Nicaragua has acted directly through organs of the state and through others for whom Nicaragua has responsibility under the CAFTA and international law.
- 5) The Investor is represented in this arbitration by.

Barry Appleton, Appleton & Associates International Lawyers LP, 304-121
Richmond St. W, Toronto, ON, M5H 2K1.

Communications may be sent to the Investor through legal counsel at
riversideclaimant@appletonlaw.com. The Investor's executed confirmation of authority

⁴ Articles of Incorporation for Empresa Inagrosa S.A – **C-041**.

⁵ Ministerio de Fomento, Industria y Comercio and the Departamento de Solución de Controversias Ministerio de Fomento, Official Website, Official Website, accessed on August 28, 2021, **C-037**; Notification under the CAFTA for Intent to Arbitration, 28 August 2020, **C-006**.

⁶ Nicaragua never updated its CAFTA Annex however it has sent out various notices confirming that the department handling investment treatment arbitration is the Departamento de Solución de Controversias, Ministerio de Fomento, Industria y Comercio. Request for Dispute Resolution Services, MIFIC, Official Website, **C-037**.

⁷ Ministerio de Fomento, Industria y Comercio and the Departamento de Solución de Controversias Ministerio de Fomento, Official Website, Official Website, accessed on August 28, 2021, **C-037**; Notification under the CAFTA for Intent to Arbitration, 28 August 2020, **C-006**.

⁸ Ministerio de Fomento, Industria y Comercio and the Departamento de Solución de Controversias Ministerio de Fomento, Official Website, Official Website, accessed on August 28, 2021, **C-037**.

for legal counsel to act on its behalf in this arbitration is attached to this Notice of Arbitration.⁹

C. ARBITRATION AGREEMENT OR CONTRACT INVOKED

- 6) This dispute is about Nicaragua's lack of compliance with its obligations in Section A of CAFTA Chapter Ten which has resulted in a catastrophic loss to Riverside's investment in Inagrosa. Investor's investment in Nicaragua and the damages that have arisen out of Nicaragua's breach of its obligation.
- 7) The Investor invokes Section B of Chapter Ten of the CAFTA as authority for this arbitration. Section B of CAFTA Chapter Ten sets out the provisions concerning the settlement of disputes between a Party and an investor of another Party.¹⁰
- 8) The CAFTA is a multilateral treaty that came into force between the parties on 1 April 2006 and remained in force as of the date of this Notice of Arbitration.¹¹ The Republic of Nicaragua approved the CAFTA on 11 October 2005.¹² The United States ratified the CAFTA on February 28, 2006.¹³
- 9) Further, the United States is a party to the ICSID Convention, as is the Republic of Nicaragua.¹⁴
- 10) Riverside Coffee, LLC is a limited liability corporation under the laws of the State of Kansas in the United States of America.¹⁵ It was incorporated in 1999 and is a juridical national of the United States of America.

⁹ Member's Resolution of Riverside Coffee, L.L.C. Consent & Waiver for Claim under CAFTA, 17 March 2021, **C-027**; Officer's Resolution of Riverside Coffee, L.L.C. Consent and Waiver for Claim under CAFTA, 17 March 2021, **C-028**; Member's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, **C-026**; Officer's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, **C-029**.

¹⁰ The Dominican Republic-Central America Free Trade Agreement (CAFTA), **CLA-001**.

¹¹ Instrument to OAS ratifying CAFTA for Nicaragua, 1 April 2006, **C-001**.

¹² Nicaraguan Assembly approves CAFTA, **C-003**.

¹³ US Proclamation 7987 of February 28, 2006, Vol 71, US Federal Register No. 41 at 10827, March 3, 2006, **C-005**.

¹⁴ List of Contracting States and Other Signatures of the ICSID Convention, **C-004**.

¹⁵ State of Kansas Secretary of State Certificate of Good Standing, Riverside Coffee, L.L.C., 17 March 2021, **C-013**; Riverside Coffee LLC – State of Kansas Incorporation Documents, 18 June 1999, **C-040**.

D. BREACHES OF THE TREATY

- 11) Nicaragua, and through its organs, agents, and instrumentalities, as described above, have breached its obligations under Chapter 10 of the CAFTA. The legal and factual bases for these claims are described herein. The Investor and the Investment have incurred significant losses on account of those breaches.
- 12) The Investor claims breaches of CAFTA Chapter Ten, including but not limited to, the following sub-provisions of the CAFTA:
 - a. Article 10.3 – National Treatment
 - b. Article 10.4 - M.F.N. Treatment
 - c. Article 10.5 – Minimum Standard of Treatment
 - d. Article 10.7 – Expropriation and Compensation
- 13) A Claimant may commence an investment claim under the CAFTA for a governmental breach of an obligation in Section A of Chapter Ten.¹⁶
- 14) Breaches of treaty obligations in this claim took place through state actors and through non-state actors – including paramilitaries and their supporters. The international law of state responsibility confirms Nicaragua’s international responsibility in this claim.

1. NATIONAL TREATMENT AND MFN TREATMENT

- 15) CAFTA Articles 10.3 and 10.4 establishes non-discrimination norms of National Treatment and Most Favored Nation Treatment.
- 16) The CAFTA National Treatment obligation states:

Article 10.3: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its

¹⁶ The Dominican Republic-Central America Free Trade Agreement (CAFTA), Article 10.16, **CLA-001**.

own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.¹⁷

- 17) The CAFTA Most Favored Nation Treatment obligation (MFN) states:

Article 10.4: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

- 18) For the purposes of National Treatment and MFN Treatment, all persons possessing private land in the territory of Nicaragua, as well as those seeking protection of private landholdings, are in like circumstances to Inagrosa.

- 19) As described herein, Inagrosa received less favorable treatment with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other

¹⁷ CAFTA Article 10.3.

disposition of investments than that received by other locals and investments of other Parties and non-Parties in Nicaragua.

- 20) According to CAFTA Article 10.13, the Republic of Nicaragua made no reservations in Nicaragua's Annex I Schedule (Annex I -NI) or Annex II (Annex II – NI) that applies to private landholdings, agriculture, forestry, or commercial operations. For clarity, the lands at issue in this dispute are not coastal lands.
- 21) Nicaragua did make a reservation in Annex II at II-NI-5 with respect to obligations in bilateral treaties signed or in treaties that were in force before coming into force of the CAFTA. However, this reservation does not apply to obligations in the Russia-Nicaragua BIT, which was signed in 2012 and came into force in 2013.¹⁸
- 22) Nicaragua has provided treatment through the extension of more favorable treatment obligations to the investments of non-parties to the CAFTA in other treaties. For example, these other treaties include, but are not limited to the more favorable treatment offered by Nicaragua to Investors and the investments of Investors of the Russian Federation. Such investments are covered by the terms of the Agreement between the Government of the Russian Federation and the Government of the Republic of Nicaragua on the Promotion and Reciprocal Protection of Investments Bilateral Investment Treaty (Russia – Nicaragua BIT), which offers more favorable than provisions in the CAFTA. Riverside Coffee, LLC relies on other more favorable treaties with non-Parties to the CAFTA, including the entirety of the Russia – Nicaragua BIT.
- 23) Without limitation, Riverside Coffee is entitled to rely at least upon the following provisions in the Russia- Nicaragua BIT:
 - a. the more favorable definition of investment contained in Article 1 of the Russia – Nicaragua BIT¹⁹;

¹⁸ The Russian Federation -Nicaragua Bilateral Investment Treaty was signed on January 26, 2012 in Moscow and it came into force on September 3, 2013. The Treaty was authenticated in Russian, Spanish and English. An Authentic English version is at **CLA-033**.

¹⁹ Nicaraguan-Russian Bilateral Investment Treaty, 3 September 2013, Article 1, **CLA-033**.

- b. the more favorable fair and equitable treatment and national treatment obligations contained in Article 3 of the Russia – Nicaragua BIT²⁰; and
 - c. the more favorable expropriation obligation contained in Article 4 of the Russia – Nicaragua BIT²¹.
 - d. the more favorable obligations which remove the requirements of any waiver of remedy as well as the ability to file notices to the government of Nicaragua broadly as permitted under the Russia- Nicaragua BIT.
- 24) To the extent that treatment to Investors and Investments of Investors in the Russia – Nicaragua BIT is more favorable, Nicaragua is required to extend that more favorable treatment to investments of investors of the United States as Riverside Coffee, LLC. and its investment Inagrosa are in like circumstances to any Russian investor or its investment in Nicaragua. Also, the treatment is made in connection to the management, conduct, operation, maintenance, use, disposal, or alienation of the investments.
- 25) Nicaragua’s MFN reservation at Annex II-NI-5 does not apply as the Russia – Nicaragua BIT was signed and came into force after CAFTA’s coming into force.
- 26) Inagrosa is entitled to treatment as favorable as that provided to those in like circumstances to those investments and investors from Nicaragua and those from states other than the United States. Others in like situations were treated more favorably with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. EXPROPRIATION

- 27) The CAFTA provides that expropriation can be either direct or indirect. Article 10.7 of CAFTA sets out the expropriation and compensation provisions.

²⁰ Nicaraguan-Russian Bilateral Investment Treaty, 3 September 2013, Article 3, **CLA-033**.

²¹ Nicaraguan-Russian Bilateral Investment Treaty, 3 September 2013, Article 4, **CLA-033**.

Article 10.7:

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (“expropriation”), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and

(d) in accordance with due process of law and Article 10.5.

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“the date of expropriation”);

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.²²

- 28) A permanent seizure of private property is a direct expropriation. Annex 10-C of the CAFTA states that a direct expropriation is one in which:

“...an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.”²³

- 29) As discussed below, the physical taking of the Hacienda Santa Fé, the physical taking of the land became permanent on August 17, 2018, when the paramilitaries stayed at the plantation.

- 30) In addition to the direct expropriation of the land, there was an indirect expropriation. Under Annex 10-C of the CAFTA, indirect expropriation is defined as follows:

²² CAFTA Article 10.7

²³ CAFTA Annex 10-C(3)

“...indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

the character of the government action.

Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.”²⁴

- 31) Indirect expropriation requires that the State took an action or series of actions that had the same effect as a direct expropriation. In this claim, the adverse impact on the Investor factor under Annex 10-C has been met. The taking was total. The government measures were taken without due process or the rule of law. They interfered with reasonable investment-backed expectations and resulted in total and catastrophic adverse effect on the economic value of the investment.
- 32) While the expropriation in this circumstance would meet the terms of CAFTA Annex 10-C, in any event, the limitation under Annex 10-C is not applicable as Nicaragua provides more favorable treatment to investments of investors in like circumstances from Russia under Article 4 of the Russia- Nicaragua BIT.

²⁴ CAFTA Annex 10-C(4).

3. FAIR AND EQUITABLE TREATMENT

- 33) Article 10.5 of the CAFTA provides that Nicaragua must provide Fair and Equitable Treatment to the investments of American investors in Nicaragua. It states:

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to 3 provide:

(a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.²⁵

- 34) Article 10.5 of the CAFTA specifies that Fair and Equitable Treatment includes an:

obligation not to deny justice in criminal, civil, administrative adjudicatory proceedings in accordance with the principle of due process.²⁶

- 35) CAFTA Annex 10-B limits the obligation only to “the customary international law principles that protect the economic rights of aliens.”²⁷ Annex 10-B states:

²⁵ CAFTA Article 10.5.

²⁶ CAFTA Article 10.5(2)(a).

²⁷ CAFTA Chapter Ten, Annex B.

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Articles 10.5, 10.6, and Annex 10-B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.²⁸

36) The concept of Fair and Equitable Treatment has been applied widely. The Permanent Court of Justice opined that what are “widely known as principles of equity have long been considered to constitute part of international law, and as such they have often been applied by international tribunals.”²⁹ Fair and Equitable Treatment incorporates requirements of fairness, good faith, non-discrimination, and due process.³⁰

37) The limitation in Annex 10-B is not a limitation affecting the current case.

38) As the *Merrill & Ring* Tribunal noted:

A requirement that aliens be treated fairly and equitably in relation to business, trade, and investment [...] has become sufficiently part of widespread and consistent practice so as to demonstrate that it is reflected today in customary international law as *opinio juris*.³¹

39) This evolutionary approach also was endorsed by *Waste Management II*.³²

40) Tribunals consider the meaning of the term in light of the facts and circumstances of a case.³³ In *Mondev v United States of America*, the Tribunal said:

“A judgment of what is fair and equitable cannot be reached in the abstract; it must depend on the facts of a particular case. It is part

²⁸ CAFTA Chapter Ten, Annex B.

²⁹ Individual Opinion of Judge Hudson, *Diversion of Water from the Meuse Case* (Netherlands v. Belgium). [1937], P.C.I.J. (Ser. A/B) No. 70. at p. 76, **CLA-002**.

³⁰ Cox J., *Expropriation in International Investment Treaty Arbitration*, (Oxford University Press 2019) p.255, **CLA-003**.

³¹ *Merrill & Ring Forestry. Canada*, UNCITRAL Arbitration, Award, March 31, 2010 at ¶ 210, **CLA-004**.

³² *Waste Management, Inc. v. United Mexican States*, Award, 2004 WL 3249803 (April 30, 2004), ¶93, **CLA-005**.

³³ Cox J., *Expropriation in International Investment Treaty Arbitration*, (Oxford University Press 2019) p.255, **CLA-003**.

of the essential business of courts and tribunals to make judgments such as these”³⁴

- 41) The duty of good faith and the duty to provide Fair and Equitable Treatment are inter-related as fundamental principles of the international law standard. A state’s failure to act will be judged against a standard of taking reasonable and good faith steps to address wrongful conduct.
- 42) Tribunals have considered the good faith principle in interpreting the treaty obligation to provide the Fair and Equitable Treatment:
 - a. The *S.D. Myers* Tribunal said that the obligation contains “the international law requirements of due process, economic rights, obligations of good faith and natural justice.”³⁵
 - b. The *TECMED* Tribunal said that “the commitment of fair and equitable treatment included in Article 4(1) of the [Spain-Mexico] Agreement is an expression and part of the *bona fide* principle recognized in international law.”³⁶
 - c. The *Eureko v. Poland* Tribunal endorsed the *TECMED* Tribunal’s reliance on the good faith principle in interpreting the obligation to provide Fair and Equitable Treatment.³⁷
 - d. The Tribunal in *Saluka v. The Czech Republic* held that a foreign investor was entitled to expect a State,

“... implements its policies *bona fide* by conduct that is, as far as it affects the investor’s investment, reasonable justifiable by public

³⁴ *Mondev International Ltd v. United States of America*, Award, October 11, 2002, ¶118 **CLA-006**.

³⁵ *S.D. Myers, Inc. v. Government of Canada*, First Partial Award, 2000 WL 34510032 (November 13, 2000) at ¶134 [*emphasis added*], **CLA-007**.

³⁶ *Técnicas Medioambientales, TECMED S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 2003 WL 24038436, May 29, 2003, (“*TECMED*”), ¶153, **CLA-008**.

³⁷ *Eureko B.V. v. Republic of Poland*, Partial Award, 2005 WL 2166281 (19 August 2005) at ¶235, **CLA-027** (Citing to *TECMED*, at ¶154, **CLA-008**: “The Tribunal finds apposite the words of an ICSID Tribunal in a recent decision that the guarantee of fair and equitable treatment according to international law means that: “ ... this provision of the Agreement, in light of the good faith principle established by international law, requires the Contracting Parties to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment”).

policies and that such conduct does not manifestly violate the requirements of consistency, transparency, even-handedness and non-discrimination [emphasis added].”³⁸

- 43) In this case, there are situations involving the state's active participation, which violates the good faith obligation and the failure to take due diligence regarding full protection and security. However, the failure of the police department and other authorities to act in good faith primarily makes this arbitration about a breach of good faith.
- 44) The principle whereby a State acts in good faith and reasonably addresses disturbances caused by private actors has been reaffirmed on multiple occasions.
- 45) It has been reaffirmed by academics such as Prof. James Crawford:

“In the case of localized riots and mob violence, substantial neglect to take *reasonable* precautionary and preventative action and inattention amounting to outright indifference or connivance on the part of responsible officials may create responsibility for damages to foreign public and private property in the area.”³⁹

- 46) Professor Crawford’s articulation of responsibility draws attention to the elements of a failure to take reasonable steps, as well as a lack of good faith on the part of the state comparable to ‘indifference or connivance.’⁴⁰
- 47) While the fair & equitable treatment violations in this circumstance would meet the terms of CAFTA Annex 10-B, in any event, the limitation under Annex 10-B is not applicable as Nicaragua provides more favorable treatment to investments of investors in like circumstances from Russia under Article 3 of the Russia- Nicaragua BIT.

³⁸ *Saluka Investments B.V. v. Czech Republic*, UNCITRAL Arbitration Rules, Partial Award, 2006 WL 1342817, March 17, 2006 ¶307, **CLA-009**.

³⁹ Crawford, J., *Brownlie’s Principles of Public International Law*, (Oxford University Press 2008), p. 551(citing to Ziat, Ben Kiran (1924) 2 RIAA 729; Youmans (1926) 4 RIAA 110; Noyes (1933) 6 RIAA 308; Pinson (1928) 5 RIAA 327; Sarropoulos v Bulgaria (1927) 4 ILR 245), **CLA-010**.

⁴⁰ Crawford, J., *Brownlie’s Principles of Public International Law*, (Oxford University Press 2008), p. 551, **CLA-010**.

a) **Protection against the abuse of rights**

- 48) The protection against the abuse of rights is an obligation within the international law standard of treatment that the writings of eminent scholars such as Prof. Bin Cheng⁴¹ and Sir Hersch Lauterpacht⁴² have reinforced as a part of the duty of good faith.
- 49) In his treatise about the central role of general principles of law within international law, Professor Bin Cheng has explained that the obligation to act in good faith includes an obligation on the state not to abuse powers. He wrote:
- [T]he theory of abuse of rights (*abus de droit*), recognized in principle both by the Permanent Court of International Justice and the International Court of Justice, is merely an application of this principle [of good faith] to the exercise of rights.⁴³
- 50) Prof. Cheng further explained that:
- The principle of good faith requires that every right be exercised honestly and loyally. Any fictitious exercise of a right for the purpose of evading either a rule of law or a contractual obligation will not be tolerated. Such an exercise constitutes an abuse of the right, prohibited by law.⁴⁴
- 51) This long-standing principle also applies within the context of abuses of administrative authority. Sir Hersch Lauterpacht demonstrates that the principle allows for international tribunals to ensure that the actions of states are judged in accordance with modern views of morality.⁴⁵
- 52) In the context of the international law standard of treatment, the abuse of rights arises in three principal ways, namely:

⁴¹ Cheng B., *General Principles of Law as applied by International Courts and Tribunals* (Cambridge University Press 1987), at p. 123, **CLA-028**.

⁴² Lauterpacht H., *The Function of Law in the International Community* (Oxford University Press, 1933) at 289, **CLA-030**.

⁴³ Cheng, B. *General Principles* at 121, **CLA-028**.

⁴⁴ Cheng, B. *General Principles* at 123, **CLA-028**; see also Marion Panizzon, *Good Faith in the Jurisprudence of the WTO: The Protection of Legitimate Expectations, Good Faith Interpretation and Fair Dispute Settlement* (Portland: Hart Publishing, 2006) , at 31, (referencing Cheng, at pp. 121–32), **CLA-029**.

⁴⁵ Lauterpacht, H. *The Function of Law* at 287 & FN 4, **CLA-030**.

- a. A state exercises powers in such a way as to hinder an investor in the enjoyment of the investor's rights, resulting in injury to the investor;
 - b. A fictitious exercise of a right; or
 - c. An abuse of discretion in the exercise of governmental powers.⁴⁶
- 53) The Treaty should be read as preserving and affirming the right of Nicaragua to regulate for legitimate purposes but each of these manifestations of improper governmental action is a fundamental violation of the most longstanding part of the international law standard of treatment.
- 54) Alexandre Kiss, in his article on Abuse of Rights in the *Encyclopedia of Public International Law*, agrees with this type of three-part abuse of rights catalog and concludes that no proof of intention to cause harm is necessary where there is an abuse of discretion in the exercise of governmental powers.⁴⁷ However, such intent is necessary when looking at the fictitious exercise of a right (such as where a right is exercised intentionally for an end that is different from that for which that right was created).⁴⁸

E. PROCEDURAL ISSUES, CONSENT & WAIVER

- 55) Under Article 10.16(2) of the CAFTA, the Investor delivered to the Republic of Nicaragua a Notice of Intent to Submit a Claim to Arbitration on August 28, 2020, more than ninety days before the submission of this registration request.⁴⁹
- 56) The CAFTA Notice of Intent was sent to both Minister Orlando Solórzano at his official office at the Ministerio de Fomento, Industria y Comercio and to José Abraham Moreno at the Departamento de Solución de Controversias at the Ministerio de

⁴⁶ See Panizzon, M. *Good Faith* at 30-31, **CLA-029**.

⁴⁷ Alexandre Kiss, "Abuse of Rights," in *Max Plank Encyclopedia of Public International Law*, 1992, at ¶ 5-6, **CLA-031**.

⁴⁸ Alexandre Kiss in his article on *Abuse of Rights*, **CLA-031**, at ¶ 12 references the *Free Zones of Upper Savoy and the District of Gex* (France v. Switzerland), at P.C.I.J., Judgment, 7 June 1932, **CLA-032**; Cheng, B. *General Principles* at p. 123, **CLA-028**.

⁴⁹ Riverside Coffee, LLC Notice of Intent to Submit a Claim to Arbitration under the CAFTA, **C-006**.

Fomento, Industria y Comercio. They were notified by email on August 28, 2020 and by subsequent personal delivery on August 31, 2020.⁵⁰

- 57) The office specified in the CAFTA no longer exists. The delivery of notice went to the successor to the office specified in the CAFTA. While the submission of the Notice of Intent is compliant with the CAFTA, in any event, Riverside Coffee, LLC, relies upon the more favorable provisions of the Russia – Nicaragua BIT, which only require notification of disputes to the Republic of Nicaragua and not notification to any specific venue or office. There is no doubt that notice was given to Nicaragua both by email and by personal delivery in August 2020.
- 58) Under Articles 10.17 and 10.18 of the CAFTA, Riverside Coffee, LLC consents to arbitration in accordance with the procedures set out in the CAFTA.⁵¹
- 59) Riverside Coffee, LLC also consents to the jurisdiction and the rules of procedure of the ICSID.⁵²
- 60) In accordance with CAFTA Article 10.18, Riverside Coffee, LLC. the Investor hereby waives its right to initiate or continue before any administrative tribunal or any court, or any other dispute settlement procedures, any proceedings with respect to the measures outlined herein, except as permitted under CAFTA Article 10.18(3) for proceedings for injunctive declaratory or other extraordinary relief, not involving payment of damages for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration., before an administrative tribunal or court under the laws of Nicaragua.

⁵⁰ Cover e-mail on Re Notification under the DR-CAFTA- Notice of Intent, Riverside Farms, LLC (received), C-030.

⁵¹ Member's Resolution of Riverside Coffee, L.L.C. Consent & Waiver for Claim under CAFTA, 17 March 2021, C-027; Officer's Resolution of Riverside Coffee, L.L.C. Consent and Waiver for Claim under CAFTA, 17 March 2021, C-028.

⁵² Member's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, C-026; Officer's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, C-029.

- 61) The Investor's executed consent and waiver attached to this Notice of Arbitration.⁵³ The consent and waiver has been issued by Melva Jo Winger de Rondon, the Sole owner and one of two Operating Managers of Riverside Coffee, LLC.⁵⁴ A consent and waiver was also issued by the members of this limited liability corporation.⁵⁵
- 62) Riverside Coffee has not had recourse to the courts of Nicaragua and has not made any allegation of a breach of an obligation under CAFTA Section A in any proceedings before a court or administrative tribunal of a CAFTA Party.
- 63) While the waiver in this circumstance would meet the express terms of CAFTA, in any event, the waiver is not required due to the operation of the CAFTA MFN obligation in Article 10.4. Nicaragua provides more favorable treatment to investments of investors in like circumstances from the Russian Federation by not requiring a waiver under the Russia- Nicaragua BIT. This is more favorable than the treatment offered to Riverside Coffee, and thus the more favorable treatment must be offered by Nicaragua.
- 64) With the transmission of its Notice of Intent on August 28, 2020, the Investor offered consultations and negotiations consistent with its obligations in CAFTA Article 10.15 with respect to the matters in controversy. No response to the Investor's offer was forthcoming in the nearly seven months since the filing. Thus, no consultation could take place before the filing of this Notice of Arbitration in the absence of a response from the Respondent.
- 65) As required by Article 10.16(3) of the CAFTA more than six-months have elapsed since the events giving rise to the claim took place. Further, it has been less than three year since the investor first acquired, or should have first acquired, knowledge of the breach alleged in the claim, and the loss/damage incurred therefrom.

⁵³ Member's Resolution of Riverside Coffee, L.L.C. Consent & Waiver for Claim under CAFTA, 17 March 2021, **C-027**; Officer's Resolution of Riverside Coffee, L.L.C. Consent and Waiver for Claim under CAFTA, 17 March 2021, **C-028**; Member's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, **C-026**; Officer's Resolution of Riverside Coffee, L.L.C. re ICSID CAFTA Claim, 17 March 2021, **C-029**.

⁵⁴ Officer's Resolution of Riverside Coffee, L.L.C. Consent and Waiver for Claim under CAFTA, **C-028**

⁵⁵ Member's Resolution of Riverside Coffee, L.L.C. Consent & Waiver for Claim under CAFTA, **C-027**

F. POINTS IN ISSUE

- 66) Has Nicaragua taken measures inconsistent with its obligations under CAFTA Articles 10.3, 10.4, 10.5, and 10.7?
- 67) If so, what is the compensation to be paid to the Investor because of the failure of Nicaragua to comply with its international law obligations under CAFTA Chapter Ten?

G. APPOINTMENT OF ARBITRATOR

- 68) CAFTA Article 10.19 provides the rules for the constitution of this Tribunal. It provides:

Article 10.19: Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.⁵⁶

- 69) CAFTA Article 10.16(6) provides:

6. The claimant shall provide with the notice of arbitration:
 - (a) the name of the arbitrator that the claimant appoints; or
 - (b) the claimant's written consent for the Secretary-General to appoint such arbitrator.⁵⁷

Under CAFTA Articles 10.16(6) and 10.19, the Claimant hereby appoints Lucy Greenwood of Greenwood Arbitration Limited as a party-appointed arbitrator for this arbitration claim. Ms. Greenwood is a national of the United Kingdom.

⁵⁶ CAFTA Article 10.19.

⁵⁷ CAFTA Article 10.16(6).

H. THE GENERAL NATURE OF CLAIM

- 71) This CAFTA claim arises out of the unfair and hostile treatment of the Nicaraguan government and those under its direction and control, including paramilitary operatives, which ultimately resulted in the direct expropriation of the Investor's Nicaraguan-based company and its properties. Set forth below is a summary of the facts and circumstances surrounding the Parties' dispute.
- 72) At its heart of this claim is the lack of respect for the foundational international law obligation of good faith and the international law principle that no one may rely on their own wrongdoing. Each and every allegation hereunder will be fully supported by documentary and witness evidence at an appropriate onward stage of the proceedings.
- 73) Nicaragua failed to protect Inagrosa and Hacienda Santa Fé. The State, directly and indirectly, destroyed Riverside's longstanding and substantial investment in Inagrosa at Hacienda Santa Fé.

1. Riverside Is An Investor of the United States with an Investment in Nicaragua

- 74) The Investor, Riverside Coffee, L.L.C., is a limited liability company incorporated in the State of Kansas. It is a juridical national of the United States of America.⁵⁸ Melva Jo Winger de Rondon is the sole member and one of two Operating Managers of the Kansas limited liability Corporation.
- 75) In 1999, Riverside Coffee, LLC acquired majority control of the shares of Inagrosa. On August 31, 2004, Riverside owned 50% of the issued shares in its own name⁵⁹ Riverside Coffee was able to exercise effective control over Inagrosa through a voting bloc agreement between Riverside Coffee, LLC, Carlos Rondon (CEO of Inagrosa)⁶⁰, and his father in law, Melvin Winger.⁶¹ As a result, Riverside Coffee controlled 80% of the voting shares of Inagrosa since August 31, 2004. This voting arrangement continued to

⁵⁸ Certificate of Good Standing, Riverside Coffee, L.L.C., 17 March 2021, **C-013**; Riverside Coffee LLC - Incorporation Documents, 18 June 1999, **C-040**.

⁵⁹ Inagrosa Share Certificates 12, 13, 14, 15 and 16, issued 31 August 2004 (totaling 50,000 shares) **C-043, C-044, C-045, C-046, C-047**.

⁶⁰ Inagrosa Share Certificates 19 and 20, issued 31 August 2004 (totaling 26,000 shares), **C-050, C-051**.

⁶¹ Inagrosa Share Certificates 17 and 18, issued 31 August 2004 (totaling 4,000 shares), **C-048, C-049**.

- maintain control and ownership over Inagrosa until August 28, 2020, when Inagrosa obtained 95% of the shares in its own name and maintained the voting agreement with Mr. Rondon – to effectively control 100% of the shares.
- 76) On August 28, 2020, Melvin Winger retired at the age of 93. Riverside directly obtained 95% of the shares of Inagrosa.⁶² The remaining 5% of the Inagrosa shares were retained by Mr. Rondon.⁶³ At the time of the claim, Riverside owned 95% of the shares of Inagrosa. The shares of Riverside Coffee LLC are owned entirely by Melva Jo Winger de Rondon.
- 77) Melva Jo Winger de Rondon was the legal representative of Riverside Coffee and had the authority to act on behalf of Riverside Coffee, L.L.C as of January 4, 2013.
- 78) Thus, Riverside Coffee, LLC owns and controls an investment within the territory of the Republic of Nicaragua: namely Empresa Inagrosa S.A.
- 79) Inagrosa is located at Inagrosa (Inversiones Agropecuarias, S.A.) Semaforos de Claro Villa Fontana 20 metros al norte Casa No. 304 Managua, Nicaragua. Inagrosa is a Nicaraguan-based investment. Inagrosa owns Hacienda Santa Fé, a 1,343-hectare plantation, located in La Naranja Community in the Municipality of San Rafael del Norte, Jinotega Department, Nicaragua.⁶⁴
- 80) Hacienda Santa Fé operated a Haas avocado plantation where Inagrosa cultivated and processed Haas avocados. Hacienda Santa Fé had 1,000 hectares of land in development for Haas avocado cultivation and had a forest of well-over 35,000 hardwood trees. Hacienda Santa Fé had offices, production facilities, residences, and a nursery facility designed to increase production both at Hacienda Santa Fé and at local farms.
- 81) Hacienda Santa Fé was recognized in Nicaragua for its innovative and sustainable avocado business. Inagrosa diversified local economic development, hiring many local

⁶² Inagrosa Share Certificate 23, issued 28 August 2020, **C-053**.

⁶³ Inagrosa Share Certificate 22, issued 28 August 2020, **C-052**.

⁶⁴ Inagrosa purchased Hacienda Santa Fé at a public auction in 1997. Public Auction Certificate No. 43, December 15, 1997, **C-042**.

workers to develop avocado crops and the processing of Haas avocados into additional products such as avocado oil. Inagrosa also had a full Haas avocado nursery and had developed nursery stock to permit additional local farms to grow Haas avocados that could be processed by Inagrosa for sale to export markets.

82) The prospect of long-term enhanced economic prosperity for the Jinotega region of Nicaragua was destroyed with the destruction and taking of the Hacienda Santa Fé.

83) Article 10.28 of the CAFTA defines investment in relevant part as follows:

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 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;⁶⁵

84) Riverside's investment in Inagrosa is an investment covered under the Treaty. Riverside owns 95% of the shares of Inagrosa.⁶⁶ Riverside has controlled Inagrosa since 1999.⁶⁷ Inagrosa, as a company in Nicaragua, qualifies as an enterprise. The equity participation of Riverside in the shares in Inagrosa meets the definitions of an investment.

85) This investment was for a business purpose and with the expectation of gain. All of these property interests constitute investments under the CAFTA.

86) While the characteristics of the investment in this claim would meet the terms of the CAFTA, in any event, the CAFTA definition is not applicable as Nicaragua provides

⁶⁵ CAFTA Annex 10.28.

⁶⁶ Inagrosa owns Hacienda Santa Fé: Public Auction Certificate No. 43, December 15, 1997, **C-042**.

⁶⁷ Kansas Secretary of State, Certificate of Good Standing, Riverside Coffee, L.L.C., 17 March 2021, **C-013**; Riverside Coffee LLC - Incorporation Documents, 18 June 1999, **C-040**;

more favorable treatment to investments of investors in like circumstances from Russia in its definition of investment under Article 1 of the Russia-Nicaragua BIT.⁶⁸

87) Riverside's investment in the equity of Inagrosa has the characteristics of an investment through the commitment of capital in the expectation of profit and through the assumption of risk. This investment meets the requirements of an Investment under Article 10.25 of the CAFTA and under Article 25 of the ICSID Convention as follows:

- a. Riverside made its first investment in Inagrosa in 1999 and was of a continuous duration.
- b. Riverside's investment was of a sizeable financial contribution, and it owned a majority of the voting stock of Inagrosa. Riverside controlled Inagrosa.
- c. Riverside's investment was targeted in a commercial environmentally sustainable investment project designed to produce an ongoing and long-term economic benefit for the Republic of Nicaragua, developing a sustainable large-scale avocado production business and a sustainable rare hardwood business operation.
- d. All agricultural operations (including forestry operations) and agricultural processing operations have some element of risk inherent to the business of growing crops. Further, there is business risk associated with the export of agricultural products into global markets. These risks can be managed by management, but the risk is inherent in such business operations.
- e. Riverside reinvested in the development of Haas avocado agronomy, in nurseries and processing facilities for future production, in marketing, and in the development and husbandry of a rare woods forest. All the steps and the associated economic activity contributed to the economic development of the Republic of Nicaragua.
- f. The investment operated in accordance with the laws of the Republic of Nicaragua and always acted in good faith.

88) In every way, Riverside made an investment as contemplated by CAFTA Article 10.25 and Article 25 of the ICSID Convention.

⁶⁸ Nicaraguan-Russian Bilateral Investment Treaty, 3 September 2013, Article 1, **CLA-033**.

2. THE RESPONDENT

- 89) Nicaragua is a Party to the CAFTA. Nicaragua is responsible for its observance of the CAFTA pursuant to CAFTA Article 1.4.
- 90) This arbitration claim addresses the direct and indirect activity of Nicaragua, for which international responsibility attaches to the Republic of Nicaragua.
- 91) In April 2018, anti-government protests in Nicaragua erupted as a result of proposed government social welfare reforms.⁶⁹ In response, the Sandinista National Liberation Front, the political party under the leadership of President Daniel Ortega, implemented a strategy of repression across the country.⁷⁰
- 92) Part of this campaign involved seizing land from businesspersons who criticized the Sandinista government.⁷¹ The Government rewards its paramilitary supporters with the ill-gotten lands that they have seized.⁷²

“Former Army Major Roberto Samcam explained that Ortega’s paramilitary forces are made up state workers, members of the Sandinista Party and demobilized members of the Army whose payment has been lots of land.”⁷³

- 93) These land seizures were well-organized and led by members of the Sandinista party or by state-controlled paramilitaries⁷⁴:

“The sociologist Cirilo Otero explains that the abuses and land seizures have been an old practice of Sandinismo and Ortegaism and he gave as an example when the FSLN lost power in 1990 and sent his people to take land, promising that he would later legalize them.”⁷⁵

⁶⁹ Amnesty International, “Instilling Terror: From Lethal Force to Persecution in Nicaragua,” October 18, 2018 at p. 3, **C-009**.

⁷⁰ Amnesty International, “Instilling Terror: From Lethal Force to Persecution in Nicaragua,” at p. 3, **C-009**.

⁷¹ La Prensa, “Orteguismo Uses Land Intakes as a Political Weapon in Nicaragua,” July 29, 2018, **C-010**.

⁷² La Razon, “Ortega Pays With Land the Support of the Paramilitaries in Nicaragua,” August 2, 2018, **C-039**.

⁷³ La Razon, “Ortega Pays With Land the Support of the Paramilitaries in Nicaragua,” August 2, 2018, **C-039**.

⁷⁴ El Confidential Newspaper, “Who are the tomatieras”, December 9, 2018, **C-011**.

⁷⁵ La Prensa, “Orteguismo Uses Land Intakes as a Political Weapon in Nicaragua,” July 29, 2018, **C-010**.

- 94) As part of this campaign, the taking of Hacienda Santa Fé was completed on August 17, 2018.

3. INVESTMENT DISPUTE OVER NICARAGUA'S UNLAWFUL ACTIONS

- 95) This arbitration claim involves an investment dispute. The Investor has been deprived of its investments through a series of measures for which the Republic of Nicaragua has international responsibility under the Section A of Chapter Ten of the CAFTA. Inagrosa had recognized and lawful possession of Hacienda Santa Fé. It lawfully conducted its business in Nicaragua. That business was taken by Nicaragua in the absence of due process and without the operation of law. Such actions are in direct contravention of the protections in Section A of Chapter Ten of the CAFTA and thus are the foundation to this legal dispute involving Riverside's investment in the territory of the Republic of Nicaragua.
- 96) Because of these internationally wrongful measures, Inagrosa's operations at Hacienda Santa Fé have been destroyed. Nicaragua has prevented the Investment's management from obtaining access to Hacienda Santa Fé and has consequently destroyed its business and dilapidated Inagrosa's assets at Hacienda Santa Fé.
- 97) The destruction of Inagrosa's assets has resulted in a complete and direct loss and damage to the controlling interest owned by Riverside in its wholly-owned foreign subsidiary, Inagrosa.

b) The general nature of the investment dispute

- 98) In April 2018, the Nicaraguan government commenced a campaign of oppression against democratic protests. The government used and collaborated with paramilitary forces to intimidate protestors and take land from non-supportive businesses.⁷⁶
- 99) Inagrosa was not involved in the civil disturbance.

⁷⁶ Amnesty International, "Instilling Terror: From Lethal Force to Persecution in Nicaragua," October 18, 2018 at p. 3, **C-009**; La Prensa, "Orteguismo Uses Land Intakes as a Political Weapon in Nicaragua," July 29, 2018, **C-010**; El Confidential Newspaper, "Who are the tomatieras", December 9, 2018, **C-011**; La Razon, "Ortega Pays With Land the Support of the Paramilitaries in Nicaragua," August 2, 2018, **C-039**.

- 100) On June 16, 2018, a paramilitary force consisting of more than three hundred armed paramilitaries invaded Hacienda Santa Fé. They occupied the upper area of Hacienda Santa Fé (also known as “Santa Fé Arriba”).
- 101) The paramilitary leaders were sent by the Sandinista Government of Nicaragua and were occupying the Hacienda Santa Fé **under the orders of Leonidas Centeno, Mayor of Jinotega.** On June 16, 2018, **the paramilitary leaders told the workers at Hacienda Santa Fé that Nicaraguan President Daniel Ortega had given the paramilitaries the lands as a reward for their role in the resistance against the anti-government protests.**
- 102) Hacienda Santa Fé management called the local police while the invasion was taking place, seeking immediate assistance to protect the property and the workers. However, local police Captain, William Herrera, told Santa Fé management to leave because the police had been informed that the paramilitaries intended to burn the Hacienda Santa Fé down. The police never came to the assistance of management.
- 103) Following that call, Carlos Rondón, chief executive officer and general manager of Inagrosa, called Captain Herrera directly to demand an explanation for the lack of police assistance. **Captain Herrera responded that he had orders not to remove the paramilitaries from Police Commissioner Marvin Castro, the Chief of Police for the Jinotega province.**
- 104) Later that day, members of the police arrived at Hacienda Santa Fé. The police told the Hacienda Santa Fé security guards that they were at Hacienda Santa Fé on the orders of Captain Herrera. The guards had to hand over their guns to the police immediately. The police officers present did not present any court order or basis of other lawful authority to enter Hacienda Santa Fé.
- 105) Hacienda Santa Fé management made another call to Captain Herrera to inquire as to why the security guards’ guns had been confiscated. **Captain Herrera replied that he was acting on the orders of Commissioner Marvin Castro.**

- 106) On July 16, 2018, another contingent led by paramilitaries entered the lower part of Hacienda Santa Fé (known as “Santa Fé abajo”). **The paramilitaries told the Hacienda Santa Fé workers that they were sent to occupy Hacienda Santa Fé by Mayor Leonidas Centeno. The paramilitary leaders stated that Mayor Leonidas Centeno had also promised them that they could keep part of the lands.**
- 107) A paramilitary leader told the Hacienda Santa Fé workers that they no longer had any reason to be at Hacienda Santa Fé because Carlos Rondón was not their boss anymore. Unless the workers joined the paramilitaries, they were expelled from Hacienda Santa Fé. The paramilitary then announced that the Hacienda Santa Fé management were “dead men.”
- 108) That same day, after fleeing the Hacienda Santa Fé in fear for his life, one of the employees encountered **a government employee of the Ministry of Agriculture and Forestry** (known by its Spanish acronym “MAGFOR”). **The official told the employee that the government of Nicaragua was taking Hacienda Santa Fé to put pressure on the business sector.** That employee informed Inagrosa management of the information from that conversation.
- 109) On July 24, 2018, a heavily-armed paramilitary leader entered Hacienda Santa Fé with about another forty armed persons. The heavily-armed paramilitary leader declared that the Government of Nicaragua had sent them to Hacienda Santa Fé.
- 110) On July 26, 2018, the paramilitaries brutally assaulted Jaime Vivas, a senior Hacienda Santa Fé worker. Mr. Visas refused to divulge the location of cattle thought to be at Hacienda Santa Fé. Since the paramilitaries were unable to locate the cows, they began to slaughter sheep owned by the Hacienda Santa Fé.
- 111) On August 10, 2018, Mr. Rondón sent a letter to Police Captain Herrera complaining about the lack of police action. Mr. Rondón’s letter outlined the failure to take timely action, which would have protected the property (including the Haas avocado trees) and

- the physical safety of the workers at Hacienda Santa Fé.⁷⁷ Mr. Rondón never received a response to this letter.
- 112) On August 11, 2018, Jinotega Mayor Leonidas Centeno, and Police Commissioner Marvin Castro, gave an order to the occupiers to depart the Hacienda Santa Fé. The paramilitaries followed the orders of the Jinotega Mayor and the Police Commissioner. Approximately 550 occupiers began to evacuate Hacienda Santa Fé under the leadership of a paramilitary commander. As the paramilitaries left, they looted through the remains of Hacienda Santa Fé.
 - 113) Management returned to Hacienda Santa Fé with attorney Carlos Alberto Monzón and Police Captain Herrera to take an inventory of the damaged and stolen property.
 - 114) Less than one week later, on August 17, 2018, the paramilitaries returned to Hacienda Santa Fé and re-occupied the entire property. The paramilitaries expelled the security guards forcibly from Hacienda Santa Fé.
 - 115) Inagrosa Management called Captain Herrera to inform him that the paramilitaries had returned to Hacienda Santa Fé. Captain Herrera's only response was that he would inform Jinotega Police Commissioner Marvin Castro.
 - 116) The police did not provide any assistance in removing the unlawful occupiers.
 - 117) Hacienda Santa Fé staff called Captain Herrera that same day to inform him of what the unlawful occupiers had done. Again, the police took no action.
 - 118) This time the paramilitaries and their forces did not leave Hacienda Santa Fé. They have remained in the occupation of the plantation since that day.
 - 119) To obtain better access to lands at the Hacienda Santa Fé, the unlawful occupiers destroyed the existing fences that protected the avocado crops at the plantation. At this time, the occupiers began to destroy avocado trees laden with fruit that was ready for

⁷⁷ Letter from Carlos Rondon to Police Captain Herrera, August 10, 2018, **C-012**.

- harvest. In the summer of 2018, there were approximately 350,000 Haas avocado fruits ready for harvest.
- 120) Also, there was widespread destruction of nursery plants. This destruction included:
- a. over 10,000 Haas avocado trees that were being grafted in the nursery,
 - b. other plants in the nursery, including over 1200 Black Walnut tree saplings ready for transplantation, and
 - c. the harvest of grains and tubers was destroyed.
- 121) As a result of the illegal occupation by the paramilitaries and large-scale destruction of the Hacienda Santa Fé property, Inagrosa lost the Haas avocado crop, its nursery to support the coming crop, and then its entire plantation.
- 122) The paramilitary forces destroyed the unharvested 2018 Haas avocado crop. The paramilitaries laid waste through deliberate acts of destruction to many of the Haas avocado trees or damages the avocado trees through reckless mishandling of them. This wanton destruction resulted in the loss of the following 2019 and 2020 Haas avocado crops.
- 123) The paramilitary force also fell, stole, or destroyed valuable trees in the private forest, stole equipment, and robbed the investment's corporate files and equipment.
- 124) To this day, the paramilitaries continue illegally to occupy Hacienda Santa Fé. In addition to the deprivation of the land, the wrongdoers did the following:
- a. Took equipment and farm machinery.
 - b. Looted computers, records, and books of Hacienda Santa Fé.
 - c. Ruined the commercial use, harvest, and future crops of the avocado trees and their fruit.

- d. Engaged in widespread deforestation and destruction of Hacienda Santa Fé lands, resulting in significant and irreparable environmental damage to the sensitive ecological conditions at Hacienda Santa Fé, including its private wildlife reserve.
- e. Redistributed lands at Hacienda Santa Fé to the paramilitaries and their supporters.
- f. Made ongoing credible threats of physical harm against the management of Hacienda Santa Fé.

4. THE FIRST INVASION

- 125) In April 2018, anti-government protests in Nicaragua erupted as a result of proposed government social welfare reforms.⁷⁸ In response, the Sandinista National Liberation Front, the political party under the leadership of President Daniel Ortega, implemented a strategy of repression across the country.⁷⁹
- 126) Part of this campaign involved seizing land from businesspersons who criticized the Sandinista government.⁸⁰ The Government rewards its paramilitary supporters with the ill-gotten lands that they have seized.⁸¹

“Former Army Major Roberto Samcam explained that Ortega’s paramilitary forces are made up state workers, members of the Sandinista Party and demobilized members of the Army whose payment has been lots of land.”⁸²

- 127) These land seizures were well-organized and led by members of the Sandinista party or by state-controlled paramilitaries⁸³:

“The sociologist Cirilo Otero explains that the abuses and land seizures have been an old practice of Sandinismo and Ortegaism and he gave as an example when the FSLN lost power in 1990 and sent

⁷⁸ Amnesty International, *Instilling Terror: From Lethal Force to Persecution in Nicaragua*, October 18, 2018 at p. 3, **C-009**.

⁷⁹ Amnesty International, *Instilling Terror: From Lethal Force to Persecution in Nicaragua*, at p. 3, **C-009**.

⁸⁰ La Prensa, “Orteguismo Uses Land Intakes as a Political Weapon in Nicaragua,” July 29, 2018, **C-010**.

⁸¹ La Razon, “Ortega Pays With Land the Support of the Paramilitaries in Nicaragua,” August 2, 2018, **C-039**.

⁸² La Razon, “Ortega Pays With Land the Support of the Paramilitaries in Nicaragua,” August 2, 2018, **C-039**.

⁸³ El Confidential Newspaper, “Who are the tomatieras”, December 9, 2018, **C-011**.

his people to take land, promising that he would later legalize them.”⁸⁴

- 128) As part of this campaign, the taking of Hacienda Santa Fé commenced on June 16, 2018, and was completed on August 17, 2018.
- 129) The first invasion of Hacienda Santa Fé occurred in two phases: 1) the seizure of the upper part of Hacienda Santa Fé, and 2) the seizure of the lower part of Hacienda Santa Fé.

c) Upper Santa Fé Invasion — Phase 1(A)

- 130) On June 16, 2018, approximately 350 armed persons directed by paramilitaries stormed into the upper part of Hacienda Santa Fé and took possession of the facilities.
- 131) The paramilitary leaders told the Hacienda Santa Fé workers that they were sent by the Mayor of the Jinotega Department, Leónidas Centeno, on behalf of the national government. The paramilitaries stated that ownership of Hacienda Santa Fé had been given to them by President Ortega as a reward for their role in the Nicaraguan Resistance.
- 132) The administrator of Hacienda Santa Fé, Luis Gutierrez, called the local police for help. Police Captain William Herrera told Inagrosa management to abandon Hacienda Santa Fé because Captain Herrera had received word that the paramilitaries intended to burn down the plantation.
- 133) Mr. Gutierrez called Carlos Rondón, General Manager of Inagrosa, to inform him of the invasion. Mr. Rondón, in turn, spoke with Police Captain Herrera, who advised him that Regional Police Commissioner Marvin Castro⁸⁵ had issued orders to not evict the paramilitaries.⁸⁶

⁸⁴ La Prensa, “Orteguismo Uses Land Intakes as a Political Weapon in Nicaragua,” July 29, 2018, **C-010**.

⁸⁵ Commissioner Castro was the highest-ranking police officer of all the police departments in the Department of Jinotega.

⁸⁶ Letter from Carlos Rondon to Police Captain Herrera, August 10, 2018, **C-012**.

- 134) Later that morning, Police Inspector Calixto Vargas and police arrived at Hacienda Santa Fé.⁸⁷ Inspector Vargas demanded that the Hacienda Santa Fé workers hand over their weapons rather than retain them to defend the business. When Inagrosa Management inquired with Inspector Vargas about this approach, Inspector Vargas said that he was acting on the direct orders of Captain Herrera.
- 135) Mr. Gutierrez contacted Captain Herrera to seek an explanation and was told that the police were acting upon the instructions of Commissioner Castro. Mr. Gutierrez requested a confiscation order as proof of the legitimacy of the police action. Captain Herrera responded that he would take the guns by force. Accordingly, Inagrosa Management concluded that the Jinotega police department was assisting the paramilitaries.

d) Lower Santa Fé Invasion — Phase 1(B)

- 136) On July 16, 2018, the second wave of approximately 60 armed paramilitaries led by Comandante Gorgojo and Comandante Ciro Manuel Montenegro entered the lower part of Hacienda Santa Fé. The paramilitary leaders told the Hacienda Santa Fé workers that they were sent by Mayor Leonidas Centeno and that he had promised that the insurgents could keep the lands. In addition, Arlen Chavarria, a local elected councilwoman in San Raphael del Norte, joined Comandante Gorgojo and Comandante Cinco Estrellas at Hacienda Santa Fé. Astonishingly, while supporting the insurgents, Councilwoman Chavarria reserved some of the ill-gotten lands for herself and her family.
- 137) During this invasion, the paramilitaries grew more violent and made multiple death threats towards Hacienda Santa Fé workers. On one occasion, Comandante Gorgojo threatened Mr. Gutierrez, proclaiming Inagrosa senior management members Gutierrez and Rondón to be “dead men.” Ultimately, the paramilitaries took over all of the remaining buildings and prevented the employees from doing work at the plantation. The paramilitaries informed the workers that unless they joined them, they had to leave.

⁸⁷ Inspector Vargas was the second in command at the police station in San Rafael del Norte.

- 138) Domingo Ferrufino Rivera, a security guard of Hacienda Santa Fé, who refused to turn over his shotgun to the paramilitaries, was kicked and beaten with the shotgun. Among his assailants was a police officer named Cristobal Luque. Officer Luque identified himself to Mr. Ferrufino as an active police officer who was not afraid to kill him. Mr. Ferrufino was then taken to meet with Comandante Gorgojo. During their meeting, Comandante Gorgojo offered a reward of land at the Hacienda to Mr. Ferrufino in exchange for assisting the paramilitaries.
- 139) After the meeting, Security Guard Ferrufino contacted Raymundo Palacios, a fellow Hacienda Santa Fé security guard. When Mr. Palacios and Mr. Ferrufino went back to Hacienda Santa Fé, they discovered that the paramilitaries had removed the shotguns and rifles, and the paramilitaries told them that they would not be allowed to return to the plantation unless they joined them.
- 140) Once the paramilitaries had completely occupied Hacienda Santa Fé, Mr. Gutierrez left. At one of the barricades, Mr. Gutierrez encountered Fabio Enrique Darío, a Nicaraguan government official, who confirmed that the Government was taking Hacienda Santa Fé to put pressure on the business sector.

5. THE SECOND INVASION

- 141) On July 24, 2018, a heavily armed paramilitary leader, Comandante “Toño Loco,”⁸⁸ entered Hacienda Santa Fé with approximately 40 armed paramilitaries. After Toño Loco’s arrival, the paramilitary leaders met at the administrative residence of the Hacienda Santa Fé. They repeatedly expressed that they had been sent to Hacienda Santa Fé by the Government.

a) Death Threats and Property Destruction

- 142) The paramilitaries utilized the seized Hacienda Santa Fé as an operational headquarters for suppressing student protests in Jinotega.

⁸⁸ Comandante Toño Loco’s is the nom de guerre of Luis Antonio Rizo. He is described as one of the primary paramilitaries in the Jinotega region.

- 143) Jaime Vivas, the field supervisor at Hacienda Santa Fé, informed Mr. Gutierrez that Comandante Toño Loco and Comandante Gorgojo had frequently made death threats against Mr. Gutierrez. According to Mr. Vivas, those two had told the workers that *“when that little engineer presents himself here, I am going to fill his chest with bullets.”*
- 144) Shortly thereafter, on July 26, 2018, the paramilitaries brutally assaulted Jaime Vivas for refusing to share information about Hacienda Santa Fe assets with them. The paramilitaries began to slaughter sheep owned by Hacienda Santa Fé, stole a four-wheel vehicle, and unsuccessfully attempted to steal a tractor.
- 145) To obtain better access to Hacienda Santa Fé, the paramilitaries destroyed the fences protecting the planted portions of the plantation. As the paramilitaries were passing through the Haas avocado crops, they would cut down the avocados that were ready for harvest. In July 2018, there were approximately 350,000 Haas avocado fruits ready for harvest, which were decimated due to the actions of the paramilitaries. There was also widespread destruction of the nursery saplings, the cornerstone of the plantation’s expansion plans. The plantation also lost access to the water and forest conservation areas.

b) Police Escorted the Paramilitaries into Hacienda Santa Fé

- 146) On August 4, 2018, paramilitary leader Comandante Cinco Estrellas was escorted into Hacienda Santa Fé by members of the Nicaraguan National Police, including Captain Herrera. Instead of ordering the paramilitaries to leave, Captain Herrera conversed with them.
- 147) That same day, Comandante Cinco Estrellas met with the paramilitaries to review land distribution from the seized lands for retired military officers and civilians. The lands were assigned to persons in accordance with their rank. Some of the members of the police department of San Rafael del Norte arranged for reserved lots in the Hacienda Santa Fé lands through representatives.

c) The Mayor Addressed the Paramilitaries

- 148) On August 6, 2018, Mayor Herrera Blandón, the Mayor of the nearby Municipality of San Rafael del Norte, accompanied by her advisor Noël Gutiérrez López,⁸⁹ met with the paramilitaries at Hacienda Santa Fé. These government officials were escorted by members of the National Police.
- 149) Approximately 400 paramilitaries gathered around Mayor Herrera Blandón to hear her speak. Mayor Herrera Blandón proposed that the municipality would support the insurgents with new water, electricity, and housing infrastructure projects at Hacienda Santa Fé for the paramilitaries. Mayor Herrera Blandón said that the paramilitaries only had to propose projects for the land to the local town council.
- 150) At no point during Mayor Herrera Blandón's visit did she or any of the members of the National Police instruct or demand the paramilitaries to end their unlawful occupation of Hacienda Santa Fé.

d) Paramilitaries Temporarily Abandoned Hacienda Santa Fé

- 151) On August 10, 2018, Mr. Rondón sent a letter to Captain Herrera complaining about the inaction of the police to protect the workers at Hacienda Santa Fé and the property from the armed paramilitaries.
- 152) On August 11, 2018, Mayor Leonidas Centeno and Commissioner Marvin Castro ordered Comandante Toño Loco to tell the paramilitaries to leave the premises of Hacienda Santa Fé. Approximately 550 paramilitaries left Hacienda Santa Fé, looting what they could as they departed.
- 153) The Inagrosa Management team was then able to return to Hacienda Santa Fé. They requested that the police return the confiscated shotguns and rifles. However, the police refused. The local police told the Inagrosa Management that it was inevitable that the paramilitaries would return and take the weapons.

⁸⁹ Noël Gutiérrez López is also a political secretary for the SFLN.

- 154) Mr. Rondón received a call from Pro-Nicaragua, the official investment and export promotion agency in Nicaragua. Based on that communication, Mr. Rondón authorized Mr. Gutierrez to return to Hacienda Santa Fé.
- 155) On August 14, 2018, Mr. Gutierrez returned to Hacienda Santa Fé with a Public Notary and Captain Herrera to assess the damage done by the paramilitaries. While Mr. Gutierrez and Captain Herrera were doing an inventory check, Mr. Gutierrez found a note in Jaime Vivas' office that read, "*we will return, and we are going to kill you for being a snitch.*" Mr. Gutierrez showed the note to Captain Herrera and the notary. After that, Jaime Vivas left Hacienda Santa Fé. He has not been seen since.

e) Completion of the Taking of Hacienda Santa Fé

- 156) On August 17, 2018, the paramilitaries returned and re-occupied the entire property. They told the workers that they were going to kill them to ensure that there would be no witnesses. Mr. Gutierrez on behalf of Inagrosa, called Captain Herrera to inform him that the paramilitaries had returned. Police Captain Herrera's only response was that he would inform Police Commissioner Castro.
- 157) The paramilitaries attacked and threatened to kill Mr. Chavarría, a worker at the plantation, as punishment for keeping the management informed of their activities on the plantation. Mr. Chavarría was then forcibly removed from the property.
- 158) Mr. Chavarría called Police Captain Herrera and told him of the attack. Police Captain Herrera explained to Mr. Chavarría that the paramilitaries were only trying to scare him and that he should not worry about it.
- 159) On August 19, 2019, Omar Gómez, another Hacienda Santa Fé worker, went to see Councilwoman Arlene Chavarría to ask for her help with the death threats he and his family were receiving. **Councilwomen Chavarría told Mr. Gómez that Mayor Leonidas Centeno had ordered the invasion of the Hacienda Santa Fé.**
- 160) Since the paramilitary returned on August 17, 2018, the local police have not provided any assistance to the workers or to Inagrosa, the owners of the plantation. To this day,

the paramilitaries continue to illegally occupy Hacienda Santa Fé causing long-lasting destruction of the facilities, including but not limited to processing facilities, the nurseries, the physical plant, and the deforestation and destruction of the rare wood forests.

6. CONSEQUENCES OF THE INVASIONS

- 161) As a result of the invasion, Riverside has lost its extensive investment in its Nicaraguan avocado business, has lost the value of the land itself, and a rare hardwood tree forest.
- 162) In addition to the deprivation of land, the wrongdoers did the following:
- a. Took equipment and farm machinery.
 - b. Looted computers, records, and books of Hacienda Santa Fé;
 - c. Ruined the commercial use and harvest of the avocado trees;
 - d. Engaged in widespread deforestation and destruction of the private forests, resulting in significant and irreparable environmental damage to the sensitive ecological conditions at Hacienda Santa Fé, including its private wildlife reserve.
 - e. Redistributed lands at Hacienda Santa Fé to the paramilitaries and their supporters; and
 - f. Made ongoing credible threats of physical harm against the management of Hacienda Santa Fé.
- 163) Inagrosa has suffered because the avocado production cannot proceed due to the staff's inability to approach or cultivate the land.
- 164) Riverside has lost the return on its investment in the avocado business and future profits.

7. LAND INVASIONS ARE PART OF A GOVERNMENT POLICY OF REPRESSION

- 165) The Government of Nicaragua bears responsibility for the taking of land at Hacienda Santa Fé, as well as the losses suffered by Riverside because it caused the wrongful act to occur.

- 166) The Government's use of land takings as a form of intimidation is not a new occurrence. According to Nicaraguan sociologist Cirilo Otero, land taking is an old practice and "*pressure method*" that the Orteguismo uses against its opponents.⁹⁰
- 167) The resurgence of land invasions in 2018 is a consequence of businesses aligning themselves with anti-government dissents.
- 168) A report from *La Prensa* confirmed that the lands invaded belonged to business persons and producers that criticized the Government. The report also confirmed that the lands owned by Sandinistas had not been taken.⁹¹

a) The Government's Connection to the Paramilitaries

- 169) The land takings were part of an agreement between the paramilitaries and the government. The paramilitaries supported and assisted the Government with the protestors, and in exchange they would receive land.⁹²
- 170) An invader interviewed by a local television channel confirmed that it was the Government's practice to reward paramilitaries with the land taken from private property owners. He said that:

"...as long as we supported the government in some activities, taking out barricades, protesting, dedicated directly to support the Commander [President Ortega] in exchange they opened that door to us, and we were able to come into those places [the invaded properties] by means of that promise..."⁹³

- 171) The paramilitaries are closely connected to the government of Nicaragua, and the government played a significant role in creating, supporting, and directing their conduct.

⁹⁰ *La Prensa*, "Orteguismo Uses Land Takings as a Political Weapon In Nicaragua," July 29, 2018, **C-010**.

⁹¹ *La Prensa*, "Orteguismo Uses Land Takings as a Political Weapon In Nicaragua," July 29, 2018, **C-010**.

⁹² Video: "Invaders Reveal Agreement With The Government, Todo Aqui," September 23, 2018, **C-014**.

⁹³ Transcript Excerpt of video titled: "Todo Aqui - Tomatierras Sacan A Luz Acuerdos Con El Gobierno Ayudarían A Desmontar Tranques" at min. 1:15, **C-015**.

b) The Business Sector Denounces the Land Takings

172) In addition to newspaper reports confirming the political nature of the land takings, public figures in Nicaragua have also spoken out against the practice.

173) According to José Pallais, a former member of the Justice Commission of the National Assembly, the land takings were ordered by President Ortega's Government. In an interview with the local press, Mr. Pallais stated:

“These invasions are directed by the Government with the intention of getting revenge for breaking the agreement (consensus model)⁹⁴ that was in place.”⁹⁵

174) The agreement Mr. Pallais is referring to is a silent pact between the Government and the Council of the Private Enterprise (“COSEP”), under which private enterprises would refrain from criticizing the government in exchange for business-friendly policies.

175) Business leaders in Nicaragua have condemned the land takings as constituting an attack on the private sector. José Adán Aguerri, president of the Council of the Private Enterprise, described the land takings as confiscation. In an interview with the local press, Mr. Aguerri stated:

The information that we have received indicates that there are government officials, municipal officials and party members behind these acts. These properties belong to private producers, some with ties to unions. Among the property owners affected there are no known government party members. From the private sector we have been denouncing this new violation to the rule of law and that it is a directed repression measure given the situation in the country.⁹⁶

176) On June 29, 2018, COSEP issued a statement that groups of “parapolice” were directly intimidating the private sector through land taking.

⁹⁴ “For a decade, the Government and COSEP had a “dialogue and consensus model” in which only economic matters were discussed and not the institutional and political situation of the country” *La Prensa* – “Government Goes Against The Properties Of The Private Sector,” June 21, 2018, **C-016**.

⁹⁵ *La Prensa*, “Government Goes Against The Properties Of The Private Sector,” June 21, 2018, **C-016**.

⁹⁶ *La Prensa*, “Orteguismo Uses Land Takings As A Political Weapon In Nicaragua,” July 29, 2018, **C-010**.

177) An extract of the statement reads as follows:

These groups continue to act with total impunity, and it is now demonstrated that they are being used to directly intimidate and repress the private sector by directing and organizing the taking of lands outside the Constitution and the law, violating the right to private property with the complicity of the Government authorities and the National Police, which we observe with great concern the de fact confiscations in our country.⁹⁷

178) The Union of Agricultural Producers (“UPANIC”) monitored and documented the takings of private properties by the government through the paramilitaries. UPANIC has received 66 complaints on the takings of 10,200 manzanas (71 400 square meters) of land. As of July 4, 2019, 30 private properties, which UPANIC claims correspond to 5,071 manzanas, (35, 497 square meters), were still occupied in seven departments.⁹⁸

179) Michael Healy, the President of UPANIC, confirmed that the Nicaraguan Government was behind the taking of private property by armed paramilitaries and invaders. In a statement to the local press, he said:

"In the last few weeks, in the last two or three weeks, we have seen how in Leon, Managua, Esteli, and the Rivas Departments there have been land invasions. These invasions are sponsored by leaders of the Sandinista Front, in which political secretaries are involved and in certain places the Mayors and people close to the government, who have invaded properties that do not belong to them by orders, I imagine, of the same government, the high commands, to pressure and intimidate the private sector.”⁹⁹

180) The evidence of the Government’s involvement in land takings across the country is compelling.

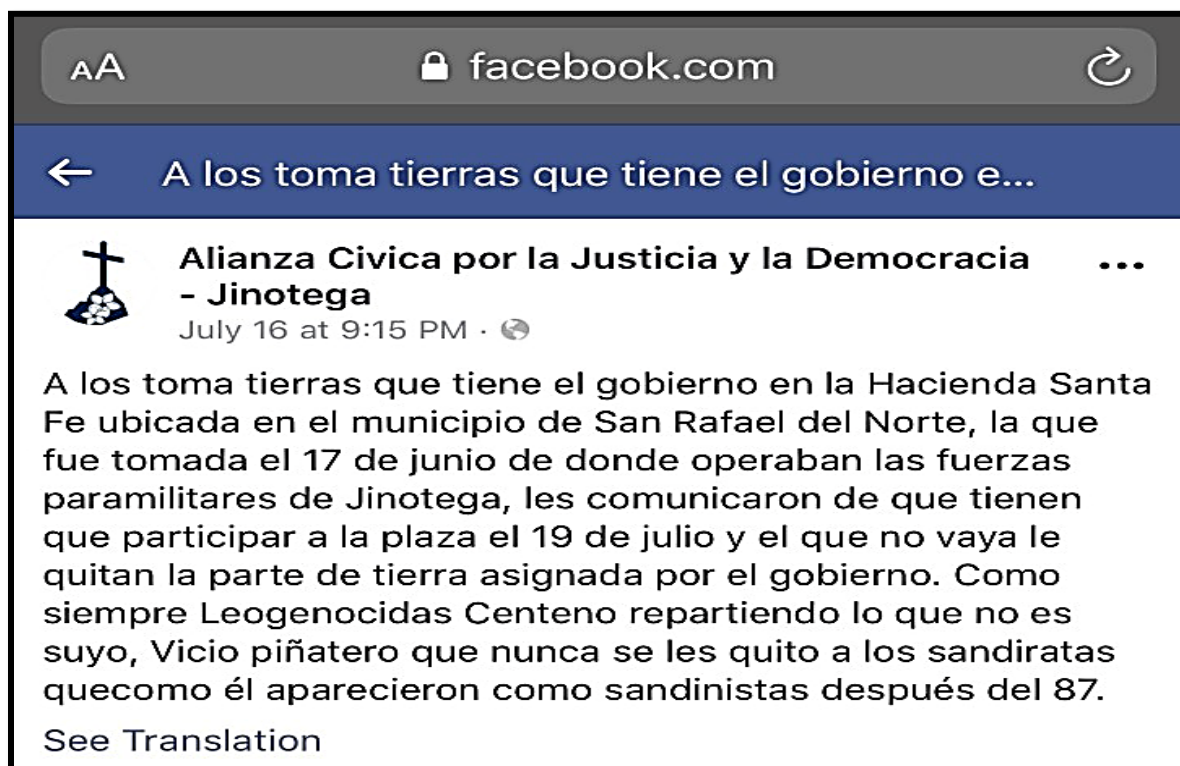
⁹⁷ *El Nuevo Diario*, “Tomatierras Cause Damages of US \$24 million,” Oct. 31, 2018, **C-017**.

⁹⁸ UPANIC, *Report On Land Takings*, July 11, 2019, **C-018**. The Investor calculates the total slightly differently (1 hectare containing 1.41 Manzana) however it associates itself with the position taken by UPANIC but not UPANIC’s mathematical calculations.

⁹⁹ UPANIC, *President Denounces That The Government Is Behind The Tomatierras*, *La Trinchera De La Noticias*, June 22, 2018, **C-019**.

8. CIVIC ORGANIZATIONS CONFIRM THE TAKING OF HACIENDA SANTA FÉ

- 181) Civic organizations have also observed and reported on the taking of Hacienda Santa Fé by the government-supported paramilitaries.
- 182) The Civic Alliance for Democracy and Justice is a coalition of human rights activists, students, members of the peasant movement, and members of the business sector.¹⁰⁰ The Jinotega Chapter of the Civic Alliance for Democracy and Justice confirmed the occupation of Hacienda Santa Fé by the armed paramilitaries on its social media page.



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- 183) Figure 1 English Translation:

To the paramilitaries that the government has in Hacienda Santa Fé located in the Municipality of San Rafael del Norte, which was taken on June 17th from where the paramilitary forces in Jinotega operate, they were told that they had to go to the square on July

¹⁰⁰ Civic Alliance for Democracy and Justice Official Website, accessed on October 9, 2019, C-020.

¹⁰¹ Figure 1 - Civic Alliance Facebook Post – July 16, 2018, C-035.

19th and anyone that does not attend will have the land assigned from the government taken away. As always, Leogenocides Centeno¹⁰² taking what is not his, Vicio Piñatero that the sandirats¹⁰³ never got over who as him only called themselves Sandinista after 87.

- 184) In a second post, the Civic Alliance for Democracy and Justice also confirmed that Hacienda Santa Fé was taken under the orders of Mayor Leonidas Centeno and confirm that the lands were distributed amongst the paramilitaries.



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¹⁰² Term used in Nicaragua to refer to Leonidas Centeno, Mayor of Jinotega.

¹⁰³ Pejorative term to refer to the Sandinistas.

¹⁰⁴ Figure 2 - Civic Alliance Facebook Post Aug. 26, 2018, C-036.

I. BREACH OF THE TREATY

- 185) The facts of this claim demonstrate that Nicaragua has not acted in conformity with its obligations under Chapter Ten of the CAFTA.

1. FACTS DEMONSTRATING A BREACH OF FAIR AND EQUITABLE TREATMENT

- 186) Nicaragua has failed to provide the investments owned by Riverside with fair and equitable treatment. This is demonstrated where:
- a. Nicaragua failed to act in good faith. Instead, Nicaragua acted with willful neglect of duty and engaged in an abuse of process and an arbitrary and unfair reliance upon form as part of this abuse of process.
 - b. Nicaragua failed to provide due process to Inagrosa.
 - c. Nicaragua wrongfully engaged in arbitrary, unfair, and capricious conduct.
 - d. Nicaragua failed to consider the legitimate expectations of Inagrosa and its investor, Riverside.
 - e. Nicaragua failed to provide full protection and security to Inagrosa.
- 187) Riverside's investment in Inagrosa was harmed with respect to the following:
- a. The conspiracy where the State acted to facilitate and assist the paramilitaries in the seizure of the Hacienda Santa Fé and its continued occupation;
 - b. The failure of the State to protect the legitimate ownership expectations of the foreign investors;
 - c. The failure of the State to take steps to remove the unlawful occupiers;
 - d. The positive steps taken by the State to arm and equip the occupiers; and

- e. The steps taken by Government to assist the unlawful occupiers in the taking and continued occupation at Hacienda Santa Fé.
- 188) The actions and omissions of the state officials during the first invasion of Hacienda Santa Fé on June 16, 2018, constitute an abuse of rights and a violation of the duty to act in good faith under the obligation of Fair and Equitable Treatment.
- 189) The police orders, issued by Commissioner Castro, not to evict the paramilitaries from the Hacienda Santa Fé and to assist in disarming the Hacienda Santa Fé workers were an abuse of rights and a violation of good faith.¹⁰⁵ The actions taken by Officer Luque, the officer who assaulted and threatened a Hacienda Santa Fé security guard, are an abuse of power and violation of reasonable conduct. Officer Luque used his position and power as a police officer to intimidate staff.
- 190) The police continued to act contrary to the principle of good faith when on August 4, 2018, they escorted paramilitary Comandante Cinco Estrellas into Hacienda Santa Fé. This cannot be anything other than a manifest failure to comply with the obligation of Fair and Equitable Treatment.¹⁰⁶
- 191) On August 6, 2018, the police continued to evade their responsibilities when they escorted Mayor Herrera Blandón to Hacienda to give a speech to the paramilitaries. The police have also been providing weapons to the paramilitaries to assist them.
- 192) Nicaragua, through the police force, has actively taken steps to reduce the physical protection of the Claimant's investments. They have failed to treat Hacienda Santa Fé fairly and equitably and have not acted in good faith.

¹⁰⁵ Letter from Carlos Rondón to Police Captain Herrera, August 10, 2018, **C-012**.

¹⁰⁶ JF O'Connor, *Good Faith in International Law* (Dartmouth Press), 124. Prof. O'Connor defines good faith as "The principle of good faith in international law is a fundamental principle from which the rule *pacta sunt servanda* and other legal rules distinctively and directly related to honesty, fairness and reasonableness are derived, and the application of these rules is determined at any particular time by compelling standards of honesty, fairness and reasonableness prevailing in the international community at that time," **CLA-011**.

2. EXPROPRIATION FACTS

- 193) After investing resources into developing a sustainable avocado plantation, the Investor's business operation in Hacienda Santa Fé has been destroyed. Riverside has no ability to use or enjoy its investment. The paramilitaries have destroyed all the plantation's assets to such an extent that the property has lost its value. The avocado crops have been destroyed or removed, and the standing forest is valueless without the ability to exploit it. The staff and management can no longer access the property.
- 194) The seizure of the Hacienda Santa Fé lands has also resulted in other consequential crop losses, including:
- a. about 7,000 trees that were being grafted in the nursery, and 70, 000 saplings;
 - b. harvest of grains and tubers; and
 - c. forest conservation area.
- 195) The CAFTA contains rules in Article 10.7 that address the process for compensation in the event of expropriation. Article 10.7 provides:

2. Compensation shall:

- (a) be paid without delay;
- (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");
- (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
- (d) be fully realizable and freely transferable. ¹⁰⁷

¹⁰⁷ CAFTA Treaty, Article 10.1 (1)(a).

- 196) Nicaragua's breach of its CAFTA Article 10.5 obligation as described above is relevant to the breach of Article 10.7.
- 197) The Treaty sets out the standard of compensation for breaches of the Expropriation obligation under Chapter Ten. Nicaragua must pay "prompt, adequate, and effective compensation" whenever there is taking.¹⁰⁸ CAFTA Article 10.7(3) confirms that this requires the payment of fair market value plus interest at a commercially reasonable rate.
- 198) The CAFTA does not set out the standard for breaches of other provisions of the Treaty and so to determine those are determined in accordance with international law.
- 199) Riverside has lost both its initial investment in the avocado project at Hacienda Santa Fé, as well as all future profits that were projected. In addition, significant and irreparable environmental damage has occurred to the sensitive ecological conditions at Hacienda Santa Fé, including its private wildlife reserve.
- 200) The State is responsible for the paramilitaries. There has been explicit acceptance from groups on the involvement of the Government in the outright seizure of the Hacienda lands.¹⁰⁹ The Civic Alliance for Democracy and Justice confirmed that the Hacienda Santa Fé was taken under the orders of Mayor Leonidas Centeno and later distributed arbitrarily among the paramilitaries.¹¹⁰
- 201) As a result, the reality of the situation is that Riverside cannot use or enjoy Hacienda Santa Fé. It has lost its land and has had its business aspirations in the avocado industry virtually destroyed.
- 202) The duration of the expropriation of Hacienda Santa Fé has been more than two years since the expropriation was completed when the paramilitaries permanently seized outright the entire plantation on August 17, 2018. Since the arrival of the paramilitaries on August 17, 2018, Riverside has lost the ability to enjoy or control the plantation.

¹⁰⁸ CAFTA Article 10(7)(1)(c).

¹⁰⁹ Figure 1. Facebook post, dated July 16, 2018 at 9:15 PM, **C-035**.

¹¹⁰ Figure 2. Facebook post, dated August 26, 2018 at 8:54 AM, **C-036**.

- 203) If there is a finding of expropriation, compensation is required, even if the taking is, for a public purpose, non-discriminatory and in accordance with due process of law.¹¹¹

3. NATIONAL TREATMENT AND MFN TREATMENT

- 204) Others lawfully possessing or owning land in the territory of Nicaragua were treated more favorably than Inagrosa. All of these measures were with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
- 205) Such more favorable treatment to nationals of Nicaragua constituted a violation of Nicaragua's national treatment obligation in Article 10.3. Such more favorable treatment to nationals of other CAFTA Parties or to nationals of Non-CAFTA Parties constituted a violation of Nicaragua's Most Favored Nation treatment obligation in Article 10.4.
- 206) For the purposes of National Treatment and MFN Treatment, all persons possessing private land in the territory of Nicaragua, as well as those seeking protection of private landholdings, are in like circumstances to Inagrosa.
- 207) Inagrosa received less favorable treatment with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments than that received by other locals and investments of other Parties and non-Parties in Nicaragua.
- 208) Inagrosa is entitled to treatment as favorable as that provided to those in like circumstances to those investments and investors from Nicaragua and those from states other than the United States. Others in like situations were treated more favorably with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

¹¹¹ CAFTA Article 10.7.1(c).

J. INTERNATIONAL LAW OF STATE RESPONSIBILITY

- 209) The principles of state responsibility apply after a breach of a primary obligation, such as a treaty violation, can be established. These longstanding principles of international law have been codified by the International Law Commission in the Articles of Responsibility of States for Internationally Wrongful Acts (ARSIWA) and also consisted are customary international law.

1. RESPONSIBILITY FOR GOVERNMENT BRANCHES

- 210) ARSIWA Article 4 codifies the international law standards for international responsibility for acts taken by members of organs of the state. It provides:

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.

- 211) A State is responsible for the acts of any and all persons or organs of a State that exercises its respective powers. In the *Caire* case, the French-Mexican Claims Commission stated that responsibility could only be excluded where “the act had no connection with the official function and was, in fact, merely the act of a private individual.”¹¹² In *Caire*, the actions of an off-duty Mexican police officer were attributable to Mexico.
- 212) Police are considered organs of the State, even if they are in a country in which they have special status independent of the executive; a state can never avoid responsibility for the actions of the police.¹¹³

¹¹² Crawford, *International Law Commission Commentary*, p. 99, CLA-019.

¹¹³ Crawford, *International Law Commission Commentary*, p. 98, CLA-019.

- 213) Nicaragua is responsible for the actions that took place at Hacienda Santa Fé under ARSIWA Article 4. Specifically, Nicaragua is responsible for the actions of the police and the Mayors in the taking of the lands at Hacienda Santa Fé.
- 214) Throughout the invasions of Hacienda Santa Fé, the police engaged in multiple acts that assisted the paramilitaries. The assistance provided by the police has been discussed at length in the CAFTA breaches section; however, some key events worth reiterating are:
- a. During the initial invasion, Captain Herrera informed management that Commissioner Marvin Castro had given an order to not evict the paramilitaries from Hacienda Santa Fé.¹¹⁴
 - b. Police Inspector Calixto Vargas and other members of the police came to Hacienda Santa Fé and demanded that the workers hand over their weapons without lawful orders or authorizations. The order to confiscate the weapons was issued by Captain Herrera, who was acting on the orders of Commissioner Marvin Castro.
 - c. On July 24, 2018, Officer Luque used his position as an active police officer to threaten workers at Hacienda.
 - d. On August 4, 2018, members of the Nicaraguan National Police, including Herrera, escorted a paramilitary leader into Hacienda.
 - e. On August 6, 2018, the National Police escorted Mayor Herrera Blandón to Hacienda to give a speech on assisting the paramilitaries to live at Hacienda.
- 215) These acts demonstrate the integral governmental role of the police, which actively engaged in measures to assist the paramilitaries and harm Riverside's investment.
- 216) The two main state officials who abused their powers were Mayor Leonidas Centeno and Mayor Herrera Blandón. Mayor Leonidas Centeno sent the paramilitaries to invade Hacienda Santa Fé on behalf of the Government and was acting in his official capacity as he said the orders were given on behalf of the Government.
- 217) Mayor Herrera Blandón, on the other hand, while acting in her official capacity, came to Hacienda Santa Fé to give a speech telling the paramilitaries about her efforts to help them in getting electricity, water and allowing them to build housing on the Hacienda Santa Fé lands.

¹¹⁴ Letter from Carlos Rondón to Police Captain Herrera, August 10, 2018, **C-012**.

- 218) Nicaragua is responsible for the acts of both Mayors, as they all acted in their official capacity as organs of the State.

2. DIRECTION - ARSIWA ARTICLE 8

- 219) Generally, under international law, the actions of private individuals or entities are not attributable to States.¹¹⁵
- 220) ARSIWA Article 8 addresses the special situation where State responsibility stems from a factual relationship between the private entity or person(s) and the State.¹¹⁶ ARSIWA Article 8 on Conduct Directed, or Controlled by a State provides that:

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is, in fact, acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.¹¹⁷

- 221) The International Court of Justice (‘ICJ’) elaborated on this in the *Bosnian Genocide* case:

“international responsibility would be incurred owing to the conduct of those of its own organs which gave the instructions or exercised the control resulting in the commission of acts in breach of its international obligations. What must be determined is whether [FRY] organs ...originated the genocide by issuing instructions to the perpetrators or exercising direction or control, and whether, as a result, the conduct of organs of the Respondent, having been the cause of the commission of acts in breach of its international obligations, constituted a violation of those obligations.”¹¹⁸

- 222) Under the ICJ’s decision, a State is responsible when an organ of the State either instructed, directed, or controlled the violation of international law. To attribute conduct under this ARSIWA Article, it is not enough that the State supported or assisted with the

¹¹⁵ Crawford, *International Law Commission Commentary*, p.110, **CLA-019**.

¹¹⁶ Crawford, *International Law Commission Commentary*, p.110, **CLA-019**.

¹¹⁷ Crawford, *International Law Commission Commentary*, Article 8, **CLA-019**.

¹¹⁸ ICJ, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, February 26, 2007 (“ICJ Bosnian genocide”) ¶ 397, **CLA-020**.

execution of the wrongful action, but the responsibility is shown when the State caused the breach through its own conduct.

- 223) In the *Bosnian Genocide* case, the ICJ asserted that instructions from a State organ must be given:

‘in respect of each operation in which the alleged violations occur, not generally in respect of the overall actions taken by the persons or groups of persons having committed the violations’¹¹⁹

Consequently, State responsibility occurs if a person or groups of persons are specifically instructed to commit the internationally wrongful act.

- 224) Paramilitary leaders were sent by organs of Nicaragua. They identified themselves as being sent by the “Government of Reconciliation and National Unity.” They proclaimed that they were occupying the Hacienda on the orders of Leonidas Centeno, Mayor of Jinotega, and on behalf of the Government of the Republic of Nicaragua.
- 225) A government official, Fabio Enrique Dario, confirmed that the government took Hacienda Santa Fé to put pressure on the business sector.¹²⁰
- 226) These spontaneous statements by the paramilitary leaders and the state officials constitute admissions that Nicaragua instructed the taking of Hacienda Santa Fé.
- 227) State responsibility under ARSIWA Article 8 can also be the result of a private person, or group of persons, acting under the direction or control of the State.¹²¹
- 228) The commentary to ARSIWA Article 8 states that:

“More complex issues arise in determining whether conduct was carried out “under the direction or control” of a State. Such conduct will be attributable to the State only if it directed or controlled the specific operation and the conduct complained of was an integral part of that operation. The principle does not

¹¹⁹ ICJ *Bosnian Genocide* ¶ 400, **CLA-020**.

¹²⁰ Copy of the Facebook profile of Fabio Enrique Dario confirming that he is a government official, Last accessed May 7, 2019, **C-021**.

¹²¹ Crawford, J, *State Responsibility – the General part*, (Cambridge University Press) at p. 144, **CLA-021**.

extend to conduct which was only incidentally or peripherally associated with an operation and which escaped from the State's direction or control.”¹²²

229) According to the ILC, the State's direction or control must be directly related to the specific conduct of the private person.¹²³

230) The degree of control necessary to incur State responsibility was a key issue in the case of *Nicaragua v. the United States of America*. In the Nicaragua case, the ICJ found that responsibility is attributable if:

“it would in principle have to be proved that State had *effective control* of the military or paramilitary operations in the course of which the alleged violations were committed.”¹²⁴

231) The ICJ has since reaffirmed this test on multiple occasions, including in *Democratic Republic of The Congo v. Rwanda*,¹²⁵ and in the *Bosnian Genocide* case. In the *Bosnian Genocide* case, the ICJ explained that the relationship of dependency between the actor and the State is not as important as the exercise of effective control:

‘it is not necessary to show that the persons who performed the acts alleged to have violated international law were in general in a relationship of “complete dependence” on the respondent State; it has to be proved that they acted in accordance with that State's instructions or under its “effective control.”’¹²⁶

232) Effective control requires that the State be more than a mere influencer or supporter of the conduct.¹²⁷ In order to meet the effective control test, the claimant has to demonstrate the existence of:

¹²² Crawford, *International Law Commission Commentary*, at p.110, **CLA-019**.

¹²³ Crawford, *International Law Commission Commentary*, at pp.47-48, **CLA-019**.

¹²⁴ ICJ, *Nicaragua v. United States of America, Military and Paramilitary Activities*, Judgement of 27 June 1986 ¶ 115, **CLA-022**.

¹²⁵ ICJ, *Case Concerning Armed Activities on the Territory of The Congo (New Application: 2002)*, **CLA-023**.

¹²⁶ ICJ, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 26 Feb. 2007 ¶ 400, **CLA-020**.

¹²⁷ ICJ, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 26 Feb. 2007 ¶ 412, **CLA-020**.

- a. a *de facto* link by virtue of factors such as assistance, financing, organizing, training, selecting targets and planning; and
 - b. control such that it is clear that the acts had been ordered or imposed on the relevant individuals and entities by the state.¹²⁸
 - c. Effective control can also be shown in the level of operational control the state has throughout the act itself.¹²⁹
- 233) A key finding in the *Nicaragua* case, under which the ICJ came to the conclusion that the United States lacked effective control over the contras, was that the United States did not ‘create’ the contras.¹³⁰
- 234) The Government can be shown to have exercised effective control over the paramilitaries that took the land at Hacienda Santa Fé:
- a) The State planned and selected the paramilitaries targets,
 - b) The State provided the means to assist the commission of expropriations and other violations,
 - c) The State exercised control through local municipalities and the National Police, and
 - d) The State imposed its will on the paramilitaries.
- 235) The land taking at Hacienda Santa Fé was not an isolated event but was rather part of a statewide campaign of government oppression. The invasion of Hacienda Santa Fé can be traced back to the initiation of the government’s campaign of repression.

¹²⁸ Boon, K. "Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines" (2014) 15(2) *Melbourne Journal of International Law* 329. Citing *Nicaragua* (Separate Opinion of Judge Ago) [1986] ICJ Rep 14, 188 [16]., **CLA-024**; See also Perova, N., “Disentangling ‘Effective Control’ Test for the Purpose of Attribution of the Conduct of UN Peacekeepers to the States and the United Nations” (2017), 86 *Nordic Journal of International Law*, 30-67, 54, **CLA-025**; and Talmon S. “The Responsibility of Outside Powers for Acts of Secessionist Entities” (2009), 58(3), *International & Comparative Law Quarterly* 493-517, **CLA-026**.

¹²⁹ Talmon S. “The Responsibility of Outside Powers for Acts of Secessionist Entities” (2009), 58(3), *International & Comparative Law Quarterly* 493-517, **CLA-026**.

¹³⁰ Crawford, J, *State Responsibility – the General part*, (Cambridge University Press) at p.147, **CLA-021**.

- 236) Many of the paramilitaries confirmed they were acting on the government's instruction and that the land was gifted to them for their support. Government official Fabio Enrique Dario also verified that the paramilitaries' were at Hacienda Santa Fé at the direction of the government. Inagrosa Management was told the State selected the target, in this case, Hacienda Santa Fé, as part of a plan to put pressure on businesses. As a result of the State's planning and instruction, the paramilitaries arrived at the plantation.
- 237) To ensure that the paramilitaries had the means to commit land takings and other violations, the Government provided them with weapons and support. Interviews with former members of the State, paramilitaries, and pro-government land paramilitaries have revealed how the State provided the paramilitaries with the means and support necessary to exercise its will.
- 238) Edgardo Antonio Solís Arias, a member of the paramilitaries, spoke to La Prensa newspaper and described how the paramilitaries were armed to remove blockades set up by protestors. In his own words:
- "All of us were given weapons, shotguns, so that we could clean the blocks and as proof of that we have videos."¹³¹*
- 239) Rafael Solís, former magistrate of the Supreme Court of Justice (CSJ) and ex-ally of President Ortega, also revealed that the President and Vice-President Rosario Murillo allowed the arming of people to remove barriers raised by protestors.
- 240) According to information provided to Mr. Gutierrez by an anonymous employee from the Ministry of Agriculture, Cattle Raising and Forestry ("MAGFOR"), the police station of San Rafael del Norte has been providing guns to the paramilitaries at Hacienda Santa Fé

¹³¹ Infobae, "How the paramilitary army Rosario Murillo put together for her husband," Daniel Ortega works, May 26, 2019, C-034.

3. THE GOVERNMENT ADMITS THE CONNECTION BETWEEN THE PARAMILITARIES AND THE POLICE

- 241) President Ortega has admitted a connection between paramilitaries and the State in saying that the paramilitaries are volunteer police.¹³² President Ortega is the ‘supreme chief’ of the National Police and has the power to command and dismiss them at will. An admission from President Ortega is meaningful and compelling.¹³³
- 242) Other members of the Government have also referred to the paramilitaries as volunteer police, including Nicaraguan Vice Minister of Foreign Affairs Valdrack Jaentschke.¹³⁴
- 243) To the extent that the volunteer police are part of the police, they incur state responsibility under ARSIWA Article 4. To the extent that they are directed and controlled, the state incurs responsibility under ARSIWA Article 8.
- 244) The recognition of paramilitaries as voluntary police under Nicaraguan law demonstrates the State’s control over the paramilitaries. According to Nicaraguan law, volunteers are dependent on the State and are accountable to certain State authorities.¹³⁵
- 245) Furthermore, a report by independent observers, the Grupo Interdisciplinario de Expertos Independientes (Interdisciplinary Group of Independent Experts, GIEI), on the protests in Nicaragua between April 18, 2018, to May 30, 2018, discusses how the paramilitaries have been involved in government efforts such as quelling protests and have been recognized by the Government as voluntary police.¹³⁶ Specifically, the report discusses how the government of President Ortega relied heavily on paramilitaries to

¹³² Video: Euronews, Interview of Nicaragua’s President Daniel Ortega on Country’s Deadly Crisis, Uploaded July 30, 2018, **C-031**.

¹³³ Human Rights Watch, “Crackdown in Nicaragua: Torture, Ill-Treatment and Prosecutions,” June 2019 at p.2, **C-023**.

¹³⁴ Al Jazeera, “Upfront: Who is responsible for the violence in Nicaragua?”, September 28, 2018, **C-033**.

¹³⁵ The Organization, Functions, Career, and Special Regime of Social Security of the National Police (hereinafter “National Police Law”) came into force on July 17, 2014, **C-038**; The Voluntary Police of the Sandinista Police (hereinafter “Voluntary Police Law”) entered into force on November 15, 1983, **C-007**; *see also* Nicaragua Investiga, “Paramilitaries are Paid with Village Money, for being ‘volunteer police,’” July 31, 2018, July 31, 2018, **C-008**.

¹³⁶ Giancarlo Fiorella, “Analysis of Nicaragua’s Paramilitary Arsenal,” February 12, 2019, **C-032**.

attack protesters and outlines how military weapons were used by the police and paramilitaries against protesters opposing President Ortega.¹³⁷

- 246) The State maintained a level of control over the paramilitaries who were a party to the armed land invasions both generally and specifically at Hacienda Santa Fé.

c) The State Exercised Control Through Municipalities and National Police

- 247) To organize the campaign of land takings and oppression, the Government used municipal structures and national police to recruit, direct and organize the paramilitaries.
- 248) The link between the State, the municipalities, the national police, and the paramilitaries has been identified and explained in several reports by NGOs and other international organizations. The Group of Interdisciplinary Independent Experts found that the State collaborated with paramilitary groups using municipal structures and national police. The Group of Interdisciplinary Independent Experts Report states that:

“Another significant feature that could be observed was the mutual collaboration between several State organs or structures linked to the State: the National Police, Mayor’s offices, and parapolice groups. The latter include the aforementioned shock groups, as well as more lethal and organized factions that are commonly known as “paramilitary” or “parapolice.” These groups comprise unidentified individuals who bear firearms, sometimes even weapons of war, and act in coordination with the official police forces.”¹³⁸

- 249) The Inter-American Court of Human Rights reports the relationship between the paramilitaries and police was more than a mutual collaboration. The Inter-American Court of Human Rights Report exposes that the paramilitaries act on instructions from State institutions:

“Based on the information available to the Commission, it transpires that in many cases those groups act on instructions from

¹³⁷ Giancarlo Fiorella, “Analysis of Nicaragua’s Paramilitary Arsenal,” February 12, 2019, **C-032**.

¹³⁸ Group of Interdisciplinary Independent Experts, “Report on Violent Events That Took Place in Nicaragua between April 18th and May 30th: Executive Summary,” December 21, 2108, p.2, **C-024**.

the National Police, or else are organized and armed, and act on instructions from local mayors or district political secretaries.”¹³⁹

- 250) In a Human Rights Watch Report, *Crackdown in Nicaragua*, Human Rights Watch reveals that ‘political secretaries’ served as the means of communication between paramilitary groups and the police:

“During the 2018 protests, political secretaries in the police and other agencies were told to collaborate with armed pro-government groups in responding to anti-government protests.”¹⁴⁰

- 251) In Nicaragua, political secretaries are municipal employees who act as liaisons between government agencies, the current political party, and the paramilitaries.¹⁴¹ The level of coordination and collaboration described explaining how the Government used local municipalities and national police to create, assist, and control the paramilitaries.
- 252) The police were active aids in the expropriation of Hacienda Santa Fé. When the paramilitaries arrived on June 16, 2018, the police disarmed the Hacienda workers. On August 4, 2018, Police Captain Herrera, along with the police themselves, escorted a paramilitary leader into Hacienda Santa Fé. During these events, the police used their power and authority over the paramilitary to assist and direct the execution of the land taking at Hacienda Santa Fé.
- 253) The municipal authorities aided the taking of Hacienda Santa Fé. On August 6, 2018, Mayor Herrera Blandón came to Hacienda Santa Fé, escorted by the police, to give a speech to the paramilitaries in which she promised to provide water and electricity to them and stated that they could make plans of projects of what they wanted to do with the lands at Hacienda Santa Fé.

¹³⁹ IACHR, “Gross Human Rights Violations in the Context of Social Protest in Nicaragua,” ¶ 122, C-025.

¹⁴⁰ Human Rights Watch, “Crackdown in Nicaragua: Torture, Ill-Treatment and Prosecutions,” June 2019 p.15, C-023.

¹⁴¹ Human Rights Watch, “Crackdown in Nicaragua: Torture, Ill-Treatment and Prosecutions,” June 2019 p.15, C-023. In Nicaragua, government institutions are intimately connected to the FSLN, as every agency, including the National Police and the Attorney General’s Office, has an employee who is also a ‘political secretary’.

d) The State controlled the Paramilitaries.

254) Nicaragua directed land invasions to reward supporters and punish critics.¹⁴² After the lands were successfully taken by the paramilitaries, the government maintained control over its supporters through the use of their municipalities and political organs.

255) The systemic approach used by the paramilitaries as explained by an *El Confidential* newspaper source:

“coordinator's first task is to take the core group that will settle on the elected property. The orientation they have received since May is to invade the properties of businessmen who have expressed their opposition to the Government. Once the first group is installed, they attract more people.”¹⁴³

256) The coordinators are generally appointed by the local political secretary or an official of the corresponding City Hall.¹⁴⁴ The coordinators maintain a connection as part of the control mechanism with the municipality and organize services such as water for occupied lands.¹⁴⁵

257) The Government promised that it would legalize land that had been taken. There is evidence of occupiers paying coordinators for the land.¹⁴⁶

258) In connection to the invasion of Hacienda Santa Fé, there was systemic support from the local municipality as a “coordinator.”

259) Mayor Herrera Blandón, escorted by the police, promised that “city hall would provide new water, electricity, and housing infrastructure’ for the paramilitaries.” The promise of this support was based on the condition that the paramilitaries follow the Mayor’s instructions and organize themselves.

¹⁴² La Prensa, “Orteguismo Uses Land Takings As A Political Weapon In Nicaragua,” July 29, 2018, **C-010**.

¹⁴³ Confidential News Article, “Who are the Tomatierres?,” last updated 18 November 2019, **C-011**.

¹⁴⁴ Confidential News Article, “Who are the Tomatierres?,” last updated 18 November 2019, p. 17, **C-011**.

¹⁴⁵ Confidential News Article, “Who are the Tomatierres?,” last updated 18 November 2019, p. 17, **C-011**.

¹⁴⁶ Confidential News Article, “Who are the Tomatierres?,” last updated 18 November 2019, **C-011**; The Ortega government will legalize the stolen lands in the last two months in Nicaragua, La Prensa, July 21, 2018, **C-022**.

- 260) The Civic Alliance for Democracy and Justice statement said that Mayor Leonidas Centeno forced the paramilitary at Hacienda to attend a meeting on July 17, 2018. The Civic Alliance for Democracy and Justice Facebook post explains that if members of the paramilitary do not attend the rally, their land shall be taken away.¹⁴⁷
- 261) This level of management exercised by the municipality overrunning the occupation indicates that the State maintains actual control over the paramilitaries at Hacienda Santa Fé.

4. ARTICLE 11 – ACKNOWLEDGEMENT & ADOPTION

- 262) ARSIWA Article 11 recognizes that a State is responsible for the actions of private individuals where the State acknowledges and adopts the conduct of those persons as their own. This responsibility under ARSIWA Article 11 is additional to state responsibility arising under ARSIWA Article 8.

- 263) ARSIWA Article 11 provides:

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.¹⁴⁸

- 264) The Nicaraguan Government has repeatedly acknowledged and adopted the actions of the paramilitaries.
- 265) President Ortega is the ‘supreme chief’ of the National Police and has the power to command and dismiss the police at will.¹⁴⁹

¹⁴⁷ Figure 2 - Civic Alliance Facebook Post – July 16, 2018, **C-036**.

¹⁴⁸ Int’l Law Commission Draft Articles of State Responsibility for Internationally Wrongful Acts with commentaries, Vol. II, Part Two, 2001, Article 11, **CLA-017**.

¹⁴⁹ Human Rights Watch, “Crackdown in Nicaragua: Torture, Ill-Treatment and Prosecutions,” June 2019 p.2, **C-023**.

- 266) In an interview with Euronews on July 30, 2018, Nicaraguan President Ortega acknowledged a connection between paramilitaries and the State. President Ortega admitted that the paramilitaries are volunteer police.¹⁵⁰
- 267) According to José Pallais, a former member of the Justice Commission of the National Assembly, the land takings were ordered by President Ortega's Government. In an interview with the local press, Mr. Pallais stated:
- “These invasions are directed by the Government with the intention of getting revenge for breaching the agreement (consensus model)¹⁵¹ that was in place.”¹⁵²
- 268) Rafael Solís, a former magistrate of the Supreme Court of Justice (CSJ) and ex-ally of President Ortega, also revealed that the President and Vice-President Rosario Murillo allowed the arming of people to remove barriers raised by protestors.¹⁵³
- 269) In Mayor Herrera Blandón's speech to the paramilitaries, on August 6, 2018, she promised to assist the paramilitaries to stay at Hacienda Santa Fé. Mayor Herrera Blandón stated that she would ensure the paramilitaries were given water and electricity to live at the plantation and that the paramilitaries would only have to plan the housing they wanted for the plantation.
- 270) Nicaragua acknowledges and adopts the actions of the paramilitary and identifies with the actions taken by the paramilitary.

¹⁵⁰ Video: Euronews, Interview of Nicaragua's President Daniel Ortega on Country's Deadly Crisis, Uploaded July 30, 2018, **C-031**

¹⁵¹ “For a decade, the Government and COSEP had a dialogue and consensus model in which only economic matters were discussed and not the institutional and political situation of the country.” La Prensa, “Government Goes Against The Properties Of The Private Sector,” June 21, 2018, **C-016**.

¹⁵² La Prensa, “Government Goes Against The Properties Of The Private Sector,” June 21, 2018, **C-016**.

¹⁵³ Video: Euronews, Interview of Nicaragua's President Daniel Ortega on Country's Deadly Crisis, Uploaded July 30, 2018, **C-031**

K. DAMAGES

- 271) Nicaragua is obliged to provide compensation for the breach of its internationally wrongful actions contrary to Section A of CAFTA Chapter Ten described in this Notice of Arbitration.

1. EXPROPRIATION DAMAGES

- 272) Inagrosa was in the process of carrying out its ongoing development plan. It was expanding its productive capacity to plant its available 1000 hectares. Crops would have been brought at the farm gate, and as a result, transportation costs would be low. The total tree planting operation on the plantation was set for 800,000 avocado trees.
- 273) The present value of the Investor's business at the time of the internationally wrongful taking in August 2018 was over US\$539,500,000 after taxes.
- 274) Additionally, the Investor has been deprived of a rare species private timber forest. The private forest lands have considerable value as a standing forest and a future supply of rare hardwoods. The deforestation on the site has resulted in severe losses to the company.

2. Damages For Other Internationally Wrongful Acts

- 275) International law requires that parties be compensated for the entirety of their loss and put back into the position they would have been in but for the internationally unlawful behavior.
- 276) The principle of full reparation is provided in Art. 38(1) of the ARSIWA. The ARSIWA Commentary states:

“an injured State is entitled to interest on the principal sum representing its loss if that sum is quantified as at an earlier date than the date of the settlement of, or judgment or award concerning, the claim and to the extent that it is necessary to ensure full reparation.”

- 277) The principle of making a Claimant whole was addressed in *Chorzów Factory*. *Chorzów Factory* provides:

“The essential principle contained in the actual notion of an illegal act ... is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation for an act contrary to international law.”¹⁵⁴

278) The Permanent Court of International Justice in *Chorzów Factory* stated that any award must make the claimant whole as if it had suffered no loss.¹⁵⁵ Where the loss is quantifiable, any award should ensure that the claimant is compensated for the entire amount of the loss. Thus, an investor should be able to recover all damages caused to it by the government’s wrongful conduct. These damages would extend to all proximate damages, including consequential damages or lost profits.

279) Judge Brower in his Concurring Opinion in *Amoco* clarified the decision of the *Chorzów Factory* case in the context of a modern valuation and business analysis as follows:

“In my view Chorzow Factory presents a simple scheme: If an expropriation is lawful, the deprived property is to be awarded damages equal to 'the value of the undertaking' which it has lost, including any potential future profits, as of the date of taking; in the case of an unlawful taking, however, either the injured party is to be actually restored to enjoyment of his property, or, should this be impossible or impractical, he is to be awarded damages equal to the greater of (i) the value of the undertaking at the date of loss (again including lost profits), judged on the basis of information available as of that date, and (ii) its value (likewise including lost profits) as shown by its probable performance subsequent to the date of loss and prior to the date of the award, based on actual post-taking experience, plus (in either alternative) any consequential damages. Apart from the fact that this is what Chorzow Factory says, it is the only set of principles that will guarantee just compensation to all expropriated properties.”¹⁵⁶

¹⁵⁴ *Factory at Chorzów* (Germ. v. Pol.), 1927 P.C.I.J. (ser. A) No. 12 (Order of Nov. 21) at ¶47, **CLA-012**.

¹⁵⁵ *Chorzów Factory* at ¶47, **CLA-012**.

¹⁵⁶ *Amoco International Finance Corp. and The Government of the Islamic Republic of Iran, et al.* (1987) 15 Iran-US CTR 189, Concurring Opinion of Judge Brower, at 300-2, ¶¶17-19 (emphasis added), **CLA-013**.

- 280) A Tribunal should assess the extent of the economic harm suffered by the Investor and the Investment, including the extent of economic benefits foregone in all probability. All losses must naturally flow from the treaty violation.
- 281) The Tribunal will be able to award damages on the breaches of Fair and Equitable Treatment under CAFTA Article 10.5.1.
- 282) In the circumstances of this claim, the damages arising from a breach of Article 10.5 would essentially be calculated on the same basis as expropriation damages under Chapter 10.7. In addition to the value of the lost business interest, all amounts would be entitled to interest at commercial market rates and costs.

3. CLAIMS UNDER ARTICLE 16.1(A) COVER THE LOSS OF THE BUSINESS

- 283) The internationally wrongful actions of Nicaragua destroyed Inagrosa's economic value and viability.
- 284) The *RosInvestCo v. Russia* Tribunal noted that "investment treaty arbitration does not require that a shareholder can only claim protection in respect of measures that directly affect shares in their own right, but that the investor can also claim protection for the effect on its shares by measures of the host state taken against the company." In this circumstance, the loss was total and complete. The identity of interest between Inagrosa's loss and that of Riverside is co-extensive.
- 285) The provisions in NAFTA Article 1116 and 1117 are identical to those in CAFTA Article 10.16(a) and 10.16(b). In considering the nature of a shareholder claim, the *Pope & Talbot* Tribunal held that:

[I]t could scarcely be clearer that claims may be brought under Article 1116 by an investor who is claiming for loss or damage to its interest in the relevant enterprise, which is a juridical person that the investor owns. In the present case, therefore, where the investor is the sole owner of the enterprise (which is a corporation, and thus an investment within the definitions contained in Articles 1139 and 201), it is plain that a claim for loss or damage to its interest in that enterprise/investment may be brought under Article

1116. . . . [T]he existence of Article 1117 does not bar bringing a claim under Article 1116.¹⁵⁷

- 286) A similar situation arose in the *UPS of America v Canada* claim. UPS brought a claim on behalf of its wholly-owned subsidiary, UPS Canada under NAFTA Article 1116. The Tribunal dismissed Canada's complaint.

[T]he claims here are properly brought under article 1116 and [we] agree as well that the distinction between claiming under article 1116 or article 1117, in the context of this dispute at least, is an almost entirely formal one, without any significant implication for the substance of the claims or the rights of the parties. UPS is the sole owner of UPS Canada. As such, it is entitled to file a claim for its losses, including losses incurred by UPS Canada. . . . Whether the damage is directly to UPS or directly to UPS Canada and only indirectly to UPS is irrelevant to our jurisdiction over these claims.¹⁵⁸

- 287) Riverside's investment in Inagrosa was entirely for the development of Hacienda Santa Fé and its agricultural and forestry projects. The loss of the opportunity for Hacienda Santa Fé was one and the same as the loss of the opportunity for Riverside. Inagrosa had no other operations or value other than what was developed at Hacienda Santa Fé. The loss of the Hacienda Santa Fé was a total loss to Riverside.
- 288) The Hacienda Santa Fé lands' invasions are either an outright seizure of the lands, or a governmental interference with Riverside's investment, which were acts tantamount to expropriation. The acts, in this case, are both in line with past cases in which tribunals have discussed the definition of expropriation and the ordinary meaning of the terms under the Treaty. Therefore, under the breach of national treatment, MFN Treatment, international minimum standards, or expropriation, Riverside is entitled to compensation.

¹⁵⁷ *Pope & Talbot v. Canada*, Award in Respect of Damages at ¶80, CLA-014.

¹⁵⁸ *UPS of America v. Canada*, Merits at ¶35, CLA-015.

4. ARBITRATION & LEGAL COSTS

- 289) Costs are typically considered separately from professional fees, which are often treated similarly. These are claimed in a separate submission after the award or partial award has been rendered.
- 290) Costs are determined on a case-by-case assessment and can be based both on each party's relative success in the proceedings and the conduct of the parties.

5. MORAL DAMAGES

- 291) Moral damages are well established in international law. They compensate a claimant for an injury that resulted in “mental suffering, injury to feelings, humiliation, shame, degradation, loss of social position or injury to his credit or reputation.”¹⁵⁹
- 292) Indeed, the Commentary to ARSIWA provides a persuasive illustration of the types of moral damages for which an individual may be compensated: Non-material damage is generally understood to encompass loss of loved ones, pain and suffering, as well as the insult to sensibilities associated with an intrusion on the person, home, or private life.¹⁶⁰
- 293) An award of moral damages is not uncommon in investment arbitrations. In *Al-Kharafi v Libya*, the tribunal awarded \$30 million for the loss of reputation caused to the Plaintiff by Libya.¹⁶¹ In *Desert Line v. Yemen*, the tribunal awarded \$1 million in moral damages to the claimant on account of the physiological suffering, stress, and anxiety that their corporate officials suffered due to Yemen's actions.¹⁶²
- 294) The expropriation of Riverside's investments in Nicaragua directly relates to Nicaragua's breach under the CAFTA. The wrongful expropriation under the Treaty morally

¹⁵⁹ Rep. Int'l Arbitral Awards, Mixed Claims Commission, United States - Germany, Opinion in the *Lusitania* Cases, Vol. VII pp. 32-44, November 1923 - October 1939 p. 40, **CLA-016**.

¹⁶⁰ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, Commentary on Article 36, at ¶16, **CLA-017**.

¹⁶¹ *Mohammed Al-Kharafi & Sons v Libya*, Final Arbitral Award, March 22, 2013, p. 392, **CLA-018**.

¹⁶² Int'l Law Commission Draft Articles of State Responsibility for Internationally Wrongful Acts with commentaries, Vol. II, Part Two, 2001, Commentary on Article 36, at ¶16, **CLA-017**.

damaged Hacienda Santa Fé, its owner Inagrosa and its ultimate owner, Riverside, along with Inagrosa's employees and management.

- 295) The facts and acts in this claim are of the type that would warrant moral damages. The wrongs committed against the management of the Claimant included threats of violence and death.
- 296) During the invasions, Hacienda Santa Fé staff were harassed, humiliated, and threatened. On several occasions, staff members were physically castigated. Additionally, the paramilitary troops often engaged in erratic conduct such as killing sheep, destroying property, and burning down trees. Fearing for their lives and safety, some staff fled the plantation and have never returned.
- 297) Also, the abuse of process caused by the involvement of the police is nothing short of egregious. Moral damages apply to the harm, stress, humiliation, and suffering caused to the Claimant. The Claimant is seeking \$45 million for moral damages.
- 298) Nicaragua's measures are egregious, a breach of good faith and an abuse of process, without the color of legality. They are internationally wrongful. At their heart, they violate the obligation of good faith.

L. RELIEF REQUESTED

299) Because of Nicaragua's breach:

- a. the business operations of Hacienda Santa Fé have been destroyed, resulting in loss to the Investment and the Investor,
- b. the agricultural production at the Hacienda Santa Fé has been destroyed,
- c. hardwood trees have been illegally harvested, and forests have been destroyed,
- d. industrial equipment has been looted, and
- e. threats of grievous bodily injury have been made to the management of the Hacienda Santa Fé.

300) The acts described herein have involved a breach of fair and equitable treatment and are uncompensated takings of the American Investor's investment. Further, Nicaragua has failed to provide treatment as favorable as that provided to others in Nicaragua who were not invaded and suffered the same improper actions, in violation of the national treatment and MFN Treatment obligations. Besides, others who have made investments in Nicaragua in like circumstances have received more favorable treatment than that received by the Investment and the Investor. Nicaragua has engaged in flagrant and systemic violations of its CAFTA Chapter Ten obligations. As a result of these internationally wrongful actions, the Investor and its investments in Nicaragua have suffered losses estimated at no less than US\$590 million arising from the seizure of the Investments and the subsequent looting and destruction of Hacienda Santa Fé's facilities.

301) The Investor seeks the following relief:

- a. Damages of not less than US\$545 million as compensation for the economic loss, harm, and damage arising from Nicaragua's breach of its obligations in Section A of CAFTA Chapter Ten.

- b. Moral damages of U.S. \$45 million arising from the improper actions of Nicaragua against the Investor and the Investments;
 - c. Interest;
 - d. Costs of these proceedings, including all professional fees and disbursements plus interest;
 - e. Tax costs triggered by the governmental actions, fees, and expenses incurred to mitigate the effect of the unlawful measures taken by Nicaragua;
 - f. Pre-award and post-award interest on all amounts at a rate to be fixed by the Tribunal; and
 - g. Such further relief as counsel may advise, and the Tribunal may deem appropriate.
- 302) This request for arbitration is hereby signed and submitted this 19th day of March 2021 in accordance with Article 36 of the ICSID Convention and the Institution Rules therein.

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