# Annex A to Procedural Order No. 8
# Decision on Claimant's Requests for Document Production

| **Document Request 1** | |
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| **A. Document(s) or category of document(s) requested** | Copy of the court file "*GARCÍA LLORENTE, Ramón y otros s/ negociaciones incompatibles (art. 265 CP), defraudación por administración fraudulenta y defraudación contra la administración pública"*, File No. CFP 6850/2020 (Coirón N° 68424/2020), submitted before the Federal Criminal and Correctional Court No. 11 under investigation by the National Criminal and Correctional Prosecutor's Office No. 10. This request includes (but is not limited to) (*a*) the criminal complaint filed by the Anticorruption Office; (*b*) the pleadings or defense briefs filed by those persons who are the target of the investigation; (*c*) the accusation brief (*imputación*) filed by the Public Prosecutor's Office (if any); (*d*) any court order providing for interim measures in connection with Plots 2 and 3; and (*e*) any order, ruling or judgment which orders the "lack of merit" (*falta de mérito*), dismissal (*sobreseimiento*) or indictment (*procesamiento*) of the investigated persons. |
| **B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control** | BA Desarrollos alleges that Argentina's conduct which breaches the Treaty is motivated by political animosity between the Fernández-Kirchner administration and the Macri administration, which led the former to initiate unfounded criminal investigations against officials of the latter for their involvement in the Catalinas Norte II Project. *See* Memorial, paras. 95-98, 105-106, 115, 184-186.<br><br>As BA Desarrollos explained in its Memorial, one of the criminal investigations resulted in the dismissal of the charges against the investigated persons (*sobreseimiento*), but the other investigation is ongoing, although it does not appear to have resulted in the indictment (*procesamiento*) of any of the investigated persons. *See* Memorial, fn. 250, para. 184.<br><br>The object of this Request is for the file of the ongoing criminal investigation. This file likely contains both the criminal complaint filed by the Anticorruption Office during the Fernández-Kirchner administration (which is not in the record since **Exhibit R-82** is only an internal opinion of the Anticorruption Office), as well as the pleadings and defense briefs filed by the investigated officials. These elements, together with the court orders, rulings and judgments issued by the judge in charge of the investigation, are |

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| | relevant and substantial to demonstrate that Argentina's conduct is without basis.<br><br>Claimant reasonably believes that the Requested Documents are in the possession, custody or control of Argentina since the case is pending before Argentine courts. These documents are not in Claimant's possession, custody or control. |
| **C. Objections to Document Request (max. 500 words)** | This request is not relevant because it does not assist the Claimant in establishing "political motivation" for initiating the investigations. As already explained, the initial facts underlying the criminal proceedings were first investigated in 2019, during the administration of Mr. Mauricio Macri. The Audit Report by AABE and SIGEN of July 2019 (R-078), which unveiled that the Catalinas Norte II awardees—including Fideicomiso BAP—purchased the Plots for substantially less than the officially established *valor venal*, made evident that the investigation of serious facts surrounding the auctions of Catalinas Norte II commenced before Mr. Alberto Fernandez assumed office. Thus, it is clear that the origins of the criminal investigations were not politically motivated (*See* Counter-Memorial, ¶¶ 63-69).<br><br>This request is also unduly burdensome because Claimant may rely on Article 131 of the Argentine National Code of Criminal Procedure ("CPPN" for its Spanish acronym), which allows public authorities and private parties with a legitimate interest to obtain copies or reports of a criminal court file (*See* JMM-035). Furthermore, although R-082 is not a criminal complaint, it is a public report which denounces preliminary facts related to the investigations and precedes the proceedings initiated before the criminal court.<br><br>A) Notwithstanding the above objections, Respondent will voluntarily produce copies of documents of the referred to criminal court file that this office obtained through a request it made to the criminal court in October 2024, under Article 131 of the CPPN. During the short period that this office had access to the case, it did not download the entire criminal court file, but only some documents. The criminal court file is in the custody of the criminal court, which is part of the Judiciary, a separate branch of government. |

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| **D. Reply to Objections to Document Request No. (500 words max.)** | Argentina states that "it did not download the entire criminal court file, but only some documents" and agrees to produce only those documents. BA Desarrollos takes note that Argentina will voluntarily produce "some documents" from the criminal file.<br><br>However, BA Desarrollos requests that the Tribunal order Argentina to produce a copy of the criminal investigation file in <u>its entirety</u> (as set out in the Claimant's document request), and not only certain documents hand-selected by Argentina.<br><br>The documents requested are relevant and material to the dispute. Argentina's arguments about the "initial facts" underlying the criminal investigation are wrong and beside the point (and BA Desarrollos will address them in its Reply). The fact that Argentina submitted no documents from the criminal file into the record when it had access to the entire file further confirms that Argentina's arguments are unfounded.<br><br>As BA Desarrollos has established, and Argentina does not deny, the criminal investigations were initiated only after the Fernández Administration took power and issued Decree No. 149/2020 (a decree whose express purpose is to investigate the conduct of officials in the Macri Administration). *See* Memorial, ¶¶ 95-98, 105. The investigations are undeniably the result of political animosity. Furthermore, it is notable that the investigations have not resulted in any indictments.<br><br>Accordingly, the complete criminal file, including copies of judicial orders, if any, as well as pleadings and defense briefs filed by the investigated officials (requested by BA Desarrollos above) is relevant to the dispute and material to its outcome. This would cover documents that relate not only to the initiation of the investigation but also to any procedural steps undertaken during the investigation, as well as responses by the investigated officials.<br><br>Argentina is wrong in alleging that it is "unduly burdensome" to produce these documents when the request refers to a narrow and specific category of documents which are in its custody, possession in control. Argentina has already successfully obtained access to the criminal file in the past, and could do so again. In addition, it appears that the criminal file is available digitally since Argentina refers to its having downloaded the documents, providing further ease of access for Argentina. |

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| | In contrast to Argentina's ease of access to the criminal file, it is unlikely that the criminal court would grant BA Desarrollos access to these files. Article 131 of the National Criminal Procedural Code gives the criminal court discretion to grant access and in practice, the courts do not grant access to parties that are not targets of the investigation or public authorities. |
| **E. Decision of the Tribunal on Document Request** | The Tribunal considers that Request No. 1 is narrow and specific, and that the requested Documents seem to be *prima facie* relevant to the case and material to its outcome, as they purportedly show the reasons why the criminal investigations were initiated. If this, in turn, evidences an alleged political animosity between administrations as the ultimate motivation for the initiation of those criminal investigations is for Claimant to establish .<br><br>In addition, the Tribunal takes note of Argentina's commitment to voluntarily produce "copies of documents of the referred to criminal court file that this office obtained through a request it made to the criminal court in October 2024", which seems to show Argentina's access to the relevant record.<br><br>Therefore, Respondent shall produce the Documents that respond to this Request no later than 27 January 2025, in accordance with Annex B to PO No. 1. |

| **Document Request No. 2** | |
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| **A. Document(s) or category of document(s) requested** | Note No. NO-2023-92631626-APN-DACYGD#AABE issued by the AABE's Office of Citizen Services and Document Management, together with its enclosed files. |
| **B. Relevance and materiality, including (i) references to paragraphs in written submissions; (ii) statement on custody and control** | The Respondent has submitted into the record along with its Counter-Memorial a letter from the National Criminal and Correctional Prosecutor's Office No. 10 in which, in the context of the criminal investigation referred to in Document Request No. 1, it requires the AABE to provide information on "the jurisdictional measures adopted by AABE in connection with the absolute nullity declared by [Resolution No. 1/2023]" (**R-173**). In its response to this letter, submitted into the record by the Respondent (**R-174**), the AABE states that it provided its response by means of Note No. NO-2023-92631626-APN-DACYGD#AABE which "encloses several files that comply with the order requested by [the Public Prosecutor's Office]". Respondent has not provided the |

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| | aforementioned note or the enclosed files, all of which are relevant and substantial.<br><br>Indeed, BA Desarrollos alleges that Argentina breached the Treaty by *inter alia* definitively preventing the transfer of title to Plots 2 and 3 (which were awarded to BA Desarrollos through the Auctions and whose price was fully paid by BA Desarrollos by the end of 2018) through the issuance of Resolution No. 1/2023 (**C-183**). *See* Memorial, paras. 11, 146-147, 152, 166(d), 173(e)-174.<br><br>Resolution No. 1/2023 reinstated the Catalinas Norte II Area, including Plots 2 and 3, within the territorial limits for the Buenos Aires Port. As a result, the land is now under the control of the General Port Administration, and cannot be transferred to private parties and thus, the AABE can no longer transfer title to Plots 2 and 3 to Fideicomiso BAP. *See* Memorial, paras. 113-114, 146, 166(d), 173(e).<br><br>Accordingly, the Requested Documents are relevant and material to demonstrate the effects of Resolution No. 1/2023 on BA Desarrollos's investment and rights.<br><br>The Claimant reasonably believes that the Requested Documents are in the possession, custody or control of Argentina since it was sent by the AABE to the National Criminal and Correctional Prosecutor's Office N°10. These documents are not in the Claimant's possession, custody or control. |
| **C. Objections to Document Request No. (500 words max.)** | Respondent will voluntarily produce Note NO-2023-92631626-APN-DACYGD#AABE issued by AABE's Office of Citizen Services and Document Management, together with its enclosed files.<br><br>For the sake of transparency, Respondent will also voluntarily produce the documents attached to the files enclosed with the above note. |
| **D. Reply to Objections to Document Request No. (500 words max.)** | BA Desarrollos takes note that Argentina will voluntarily produce the requested documents. |

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| **E. Tribunal's Decision on Document Request No. 2** | The Tribunal takes note of Respondent's commitment to produce Note No. NO-2023-92631626-APN-DACYGD#AABE. Therefore, and in the event that Argentina has not yet produced the requested Document, Respondent shall produce such Note no later than 27 January 2025, in accordance with Annex B to PO No. 1. |