

International Centre for Settlement of Investment Disputes

Case No. ARB/24/8

Ricardo Filomeno Duarte Ventura Leitão Machado (Portugal)

Claimant

v.

Republic of Angola

Respondent

STATEMENT OF CLAIM

11 September 2025

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Table of Contents

List of defined terms	iv
I. Introduction.....	1
II. The facts.....	2
A. Background to the relevant facts.....	2
1. 2016-2019: the early years of the investment and the termination of the Contracts by Angola	2
2. 2019-2022: the Four Turbines were held in preventive seizure	5
B. The facts giving rise to the dispute	7
1. 2022: Angola installed and deployed the Four Turbines in its power plants.....	7
2. 2022 to date: Angola concealed and keeps on concealing the taking of the Four Turbines	11
III. The Tribunal has jurisdiction over the Claimant’s claims under the BIT	13
A. Angola has consented to ICSID arbitration	13
B. Mr Machado has met the temporal requirements of the BIT	14
C. Mr Machado is a protected investor.....	15
D. Aenergy and the Four Turbines are protected investments.....	16
IV. The Claimant has standing to bring claims of expropriation, FET and FPS in relation to the turbines.....	17
V. The Respondent has breached its obligations under the BIT	20
A. Angola has unlawfully expropriated Mr Machado’s investments	20
1. The standard for expropriation	20
2. Angola’s actions constitute an expropriation of the Four Turbines.....	23
3. Angola’s expropriation of the turbines was unlawful.....	25
a. Angola has not acted for purposes of public interest.....	25
b. Angola has not provided compensation	26
c. Angola has not acted in accordance with legal procedures	26
B. Angola has breached its obligation to provide FET.....	28
1. The FET standard	28
2. Angola has frustrated Mr Machado’s legitimate expectations	30
3. Angola has failed to grant the Claimant due process and to act transparently	32
4. Angola has arbitrarily impaired the Claimant’s investment	36
C. Angola has breached its obligation to provide FPS	38
1. The FPS standard.....	38
2. Angola has failed to accord FPS to Mr Machado’s investment.....	39
VI. The Respondent must compensate the Claimant for its breaches of the BIT	41
A. The applicable standard of compensation is that of full reparation	42
1. The standard of full reparation under international law	42
2. Full reparation must be ordered for all damages that would not have occurred <i>but for</i> the unlawful acts, with fair market value as the minimum compensation.....	44

3.	Compensation must be calculated as of the date of the expropriation or the date of the award, whichever is higher and puts the investor in the same position he would have been in <i>but for</i> the unlawful actions	45
B.	The Claimant must be put in the same position he would have been in had the Respondent not breached its obligations under the BIT	46
1.	The Respondent's actions caused the Claimant's damages	46
2.	The Claimant is entitled to be compensated with the fair market value of the Four Turbines	48
3.	Alternatively, the Claimant must be compensated for the loss in value of his shares in Aenergy	49
C.	Angola must pay interest	50
D.	Angola must bear the costs of the arbitration	52
VII.	The Claimant's request for relief	52

List of defined terms

Aenergy	Aenergy, S.A.
Angola	The Republic of Angola
BIT	Bilateral investment treaty between the Republic of Portugal and the Republic of Angola, dated 22 February 2008, entered into force on 24 April 2020, and amended on 16 July 2021, with the amendment entering into force on 22 December 2021 (Exhibit CLA-25)
Claimant	Ricardo Filomeno Duarte Ventura Leitão Machado
Contracts	Thirteen contracts awarded by MINEA to Aenergy for the supply of power generation equipment, turbines, generators, transformers, rotors, other accessory equipment, consumables and spare parts for a total of USD 1,148,531,741
CPC	Angolan Civil Procedure Code (Exhibit CLA-13)
Credit Facility	Loan Agreement between Angola and GE Capital for the financing of the Contracts signed on 21 August 2017 (Exhibit R-0001 [excerpt])
ENDE	<i>Empresa Nacional de Distribuição de Electricidade</i> – Angola’s National Electricity Distribution Company
FET	Fair and equitable treatment
Four Turbines	Four GE TM2500 GEN8 turbines, with manufacturer codes MNG #7266027, #7267025, #7267575, and #7267577, and related and additional equipment
FPS	Full protection and security
FWA	Framework Agreement between Aenergy and GE Packaged Power, Inc. executed in June 2016 (Exhibit C-38)
GE	General Electric Company

GE Capital	GE Capital EFS Financing, Inc.
IGAPE	<i>Instituto de Gestão de Activos e Participações do Estado</i> – Angola’s Institute for the Management of the State’s Assets and Shares
Lubango Power Plant	Thermal power plant located in the city of Lubango, Huíla Province, Angola
Malembo Power Plant	Thermal power plant located in the city of Malembo, Cabinda Province, Angola
MINEA	Ministry of Energy and Water of Angola
Mr Machado	Ricardo Filomeno Duarte Ventura Leitão Machado
Notice of Dispute	Notice of Dispute submitted by Mr Machado to Angola on 9 June 2022 (Exhibit C-26)
Ondjiva Power Plant	Thermal power plant located in the city of Ondjiva, Cunene Province, Angola
PIP	Public Investment Program
PRODEL	<i>Empresa Pública de Produção de Eletricidade</i> – Angola’s Public Electricity Production Company
Provincial Court of Luanda	Provincial Court of Luanda, Angola, Civil and Administrative Chamber, Second Division
Respondent	The Republic of Angola
State	The Republic of Angola
Statement of Claim	The Claimant’s statement of claim submitted on 11 September 2025
Supply Contracts	Four contracts signed between Aenergy and GE Global Parts & Products GmbH and GE Packaged Power, Inc. on 29 June 2016, 30 June 2016, 30 March 2017 and 2 June 2017, for the sale of equipment and services
VCLT	Vienna Convention on the Law of Treaties signed on 23 May 1969 (Exhibit RL-0011)

1. Mr Ricardo Filomeno Duarte Ventura Leitão Machado (“**Mr Machado**” or the “**Claimant**”) submits this statement of claim (the “**Statement of Claim**”) against the Republic of Angola (“**Angola**”, the “**Respondent**” or the “**State**”), pursuant to Rule 30 of the ICSID Arbitration Rules and to the procedural calendar annexed to Procedural Order No. 1, which was confirmed by the Tribunal’s Decision on the Respondent’s Rule 41 objection.

I. Introduction

2. This dispute arises from Angola’s arbitrary, unlawful, and persistent interference with Mr Machado’s indirect property rights in four GE TM2500 GEN8 turbines, with manufacturer codes MNG #7266027, #7267025, #7267575, and #7267577, and related¹ and additional² equipment (the “**Four Turbines**”), held through Aenergy, S.A. (“**Aenergy**”).
3. Angola’s unlawful interference with Mr Machado’s investment began in 2022 and continues to this day. Amongst other wrongful actions, Angola has removed the Four Turbines from judicial custody, installed them in Angolan state-owned power plants, and connected them to the national power grid.
4. These actions were taken with the complicity of Angola’s Institute for the Management of the State’s Assets and Shares (“**IGAPE**”) and the Provincial Court of Luanda, Civil and Administrative Chamber, Second Division (the “**Provincial Court of Luanda**”). Both authorities, responsible for the judicial custody of the Four Turbines, turned a blind eye or perhaps even participated in the misappropriation of the Claimant’s investment.
5. Their complicity became evident when they failed to take any action or to even respond to Aenergy’s requests for information regarding the whereabouts of the Four Turbines. This collusion was further confirmed when the Provincial Court of Luanda suddenly decided to revive the proceeding relating to the Four Turbines after five years of silence, just days before the Tribunal decided on Angola’s Rule 41 objection.
6. The State’s conduct is in violation of the bilateral investment treaty between the Republic of Portugal and the Republic of Angola, entered into on 22 February 2008 and amended on 16 July 2021 (the “**BIT**”). First, Angola’s acts constitute an expropriation. Second, Angola has breached its obligation to provide fair and equitable treatment (“**FET**”), having frustrated Mr Machado’s legitimate expectations, breached due process, and acted arbitrarily. Third, Angola has

¹ Such as stairs and platform, transport lifting set, field lift kit, and lube oil filtration kits.

² Including fuels and components.

breached its obligation to provide full protection and security (“FPS”) to Mr Machado’s investment.

7. Mr Machado is entitled to full reparation for the damage caused by Angola’s unlawful conduct. The Claimant’s experts – AlixPartners – have calculated that, as a result of Angola’s breaches of the BIT, Mr Machado has lost USD 171,065,808. These losses must be compensated by Angola.
8. The Claimant’s Statement of Claim is structured as follows: **Section II** sets out the facts underlying the dispute; **Section III** addresses the Tribunal’s jurisdiction; **Section IV** addresses Mr Machado’s standing to bring claims of expropriation, FET and FPS with respect to the Four Turbines; **Section V** sets out Angola’s breaches of the BIT; **Section VI** explains that Angola must compensate Mr Machado for the losses it has caused; and **Section VII** contains Mr Machado’s request for relief.

II. The facts

A. Background to the relevant facts

1. 2016-2019: the early years of the investment and the termination of the Contracts by Angola

9. Throughout the 2010s, the Government of Angola undertook a series of structural reforms aimed at improving the governance and reliability of its energy supply.³ In line with these reforms, the Government launched an ambitious energy and water action plan for 2018-2022, designed to modernise and expand the sector.⁴
10. As part of this plan, and pursuant to the Public Procurement Law of Angola, the Ministry of Energy and Water (“MINEA”) entered into a series of contracts with Aenergy to secure new generation capacity.
11. Mr Machado founded Aenergy in 2012, leveraging his extensive knowledge of the African market to provide reliable and competitive energy solutions to Angola and its neighbouring countries. To fulfil this mission, Aenergy formed a strategic commercial partnership with General Electric (“GE”), becoming GE’s exclusive distributor for power generation equipment and services in Angola and other African countries and working to expand energy and transportation solutions across Africa.
12. Aenergy was recognised as a GE commercial partner in Angola as early as 2013. This relationship was formally acknowledged in a memorandum of understanding

³ C-35, Action Plan of the Energy and Water Sector 2013-2017 (with informal translation into English), 1 April 2013.

⁴ C-36, Action Plan of the Energy and Water Sector 2018-2022, 1 July 2018, p. 4.

signed that same year between GE and the Government of Angola, which referred to the prospective “solid cooperation” between GE and Aenergy.⁵

13. Aenergy’s successful execution of energy projects in Angola between 2013 and 2016, in collaboration with GE, prompted MINEA to initiate discussions with Aenergy concerning a pipeline of major energy and water infrastructure projects that the Government was considering awarding to the company. These discussions occurred in Aenergy’s capacity as GE’s official channel partner and exclusive distributor of GE Packaged Power, Inc. technology in Angola, a status that was formally established through the Framework Agreement executed in June 2016 (the “FWA”), which defined the terms of exclusivity between Aenergy and GE Packaged Power and its affiliates.⁶
14. Pursuant to the FWA, and subject to its terms and conditions, GE granted Aenergy the exclusive right to distribute GE-manufactured TM2500, 6B, and 9E turbines in Angola. The agreement also conferred exclusivity with respect to all GE power turbines in the 25 MW to 400 MW range, as well as related parts and services, including the maintenance of customers’ turbines over their operational lifespans.
15. Recital 2 of the FWA recognised that, as of 2016, Aenergy was “*an established developer which has been working intensively for the last 3 years in several initiatives with the Angolan Government and main industry players to explore ways of reducing Capex per MW in Angola and the overall cost of energy production in Angola by using and consolidating GE technology in Angola*”.⁷ The recitals further recorded the Parties’ agreement for Aenergy to act as “*a channel partner for GE in Angola [who] wishes to benefit from advantageous pricing in light of those significant quantities to be purchased*”,⁸ and for GE to provide such pricing in exchange for Aenergy’s commitment to purchase certain equipment and services “*on an exclusive basis from GE and its Affiliates*”.⁹
16. The initial pipeline of projects that Aenergy was negotiating with the Government of Angola was outlined in Exhibit 1 to the FWA. In addition to the FWA itself, the commercial arrangements included (i) various contracts between Aenergy and GE and its affiliates for the purchase of GE equipment and services, (ii) various contracts between Aenergy, on the one hand, and MINEA, *Empresa Pública de Produção de Eletricidade* (“**PRODEL**”), and *Empresa Nacional de Distribuição de Electricidade* (“**ENDE**”), on the other, for the delivery of specified goods and services in Angola, and (iii) a financing facility structured by GE Capital EFS

⁵ C-37, Memorandum of Understanding between GE and the Government of Angola, 24 June 2013, recital F.

⁶ C-38, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016.

⁷ C-38, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, recital 2.

⁸ C-38, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, recital 3.

⁹ C-38, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, recital 5.

Financing, Inc. (“**GE Capital**”) to enable the Government of Angola to pay Aenergy (and thereby enable Aenergy to pay GE under the related supply contracts).

17. The FWA also contained a broad and explicit exclusivity clause, which prohibited GE and its affiliates from marketing, selling, offering for sale, leasing, packaging, or distributing to any party other than Aenergy – or responding to any solicitations involving the foregoing – “*any gas turbines or gas turbine generator sets in the 25 MW to 400 MW (ISO capacity) for power generation or Parts or maintenance services for those units range [...] within Angolan territory only*”.¹⁰ Given that turbines require ongoing maintenance over their service lives, the exclusivity granted to Aenergy over “parts” and “maintenance services” was a particularly meaningful concession.
18. In return, Aenergy agreed not to purchase, sell, or offer to sell any competing products manufactured by GE’s competitors.¹¹ While Aenergy was not contractually obligated to sell any specific quantity of GE products, the combination of exclusivity rights and restrictions on dealing with competitors ensured that Aenergy had a strong commercial incentive to develop the Angolan market for GE technology.
19. In 2017, as a direct result of Aenergy’s sustained efforts – particularly its success in reducing per-megawatt costs – Aenergy and Angola signed 13 contracts (the “**Contracts**”) with a combined value of USD 1,148,531,741. These Contracts were financed through a loan agreement (the “**Credit Facility**”) between the Government of Angola and GE Capital.¹² Among other obligations, Aenergy undertook to supply and install eight GE TM2500 turbines across various energy infrastructure projects in Angola.
20. In anticipation of continuing demand, and consistent with its broader commercial strategy, Aenergy purchased six additional GE turbines beyond the eight specified in the Contracts, bringing the total number of turbines purchased to 14. This decision was aimed at ensuring Aenergy’s readiness to meet future supply opportunities arising from Angola’s long-term energy development plans. The purchase was commercially reasonable in light of the ongoing expansion and diversification of Angola’s energy sector and the favourable terms of Aenergy’s supply agreements with GE (the “**Supply Contracts**”).
21. During the initial implementation phase, the Contracts progressed without incident. However, beginning in December 2018, the relationship between the Parties

¹⁰ **C-38**, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, article III.E.

¹¹ **C-38**, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, article III.D.

¹² **C-6**, Presidential Order No. 161/17 authorizing funding of USD 1,100,000,000 for the 13 Contracts between Aenergy and Angola (with informal translation into English), 5 July 2017.

deteriorated rapidly, and in 2019 the Government of Angola unilaterally terminated the Contracts, alleging that Aenergy had improperly used the Credit Facility to finance 12 turbines rather than the eight in the original scope of the Contracts.¹³

22. This allegation was based on information provided by GE representatives, including Mr Wilson da Costa, then-CEO of GE Power Angola and MINEA's principal interlocutor during the project. Subsequent investigations revealed that Mr da Costa had submitted forged documentation to GE Capital, consisting of fabricated correspondence on Angolan government letterhead, purporting to authorise the financing of four additional turbines. These documents were used to satisfy GE Capital's internal lending criteria and release funding to Angola. Mr da Costa has since been convicted in the United States on charges of fraud and identity theft in connection with these actions.¹⁴
23. The four additional turbines at the centre of this misrepresentation are the subject of the current dispute.

2. 2019-2022: the Four Turbines were held in preventive seizure

24. In November 2019, Angola initiated precautionary proceedings before the Provincial Court of Luanda, claiming ownership of the Four Turbines on the grounds that they had already been paid for through the Credit Facility.
25. As part of its submission, Angola alleged that Aenergy had manipulated the Credit Facility to finance the acquisition of these additional turbines, despite the fact that Aenergy was not a party to the financing agreement and had no control over its disbursement.¹⁵
26. Angola argued that, because the Four Turbines were not included in the scope of any executed contracts between Aenergy and the Government, and due to Aenergy's alleged involvement in the irregular use of funds from the Credit Facility – purportedly with the intent to sell the turbines to the Government – it had to be concluded that Aenergy had acquired them in the name of and on behalf of the Government.¹⁶ This assertion was made despite the fact that all funds received by Aenergy under the Credit Facility corresponded to invoices duly approved by Angolan authorities pursuant to valid contracts, and that Aenergy had acquired all 14 turbines from GE in the normal course of its commercial and operational

¹³ **C-11**, Presidential Order No. 155/19 on the unilateral termination of the 13 Contracts between Aenergy and Angola (with informal translation into English), 23 August 2019, p. 4; **C-12**, MINEA's Unilateral Termination Decision (with informal translation into English), 30 September 2019, ¶8.

¹⁴ **C-13**, SDNY Grand Jury Indictment against Wilson da Costa, 17 January 2023; **C-28**, "*Former GE Exec Guilty Of Faking Docs In \$1.1B Power Deal*", Law360, 18 November 2024.

¹⁵ **R-0001**, Facility Agreement (extract), 21 August 2017.

¹⁶ **C-15**, Request for preventive seizure of Aenergy's Four Turbines (with informal translation into English), 4 October 2019, ¶¶41-45. *See also* **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶¶46-52.

activities, even prior to the existence of the Credit Facility. Relying on this illogical and internally inconsistent legal theory – entirely unsupported by Angolan law – Angola claimed ownership of the Four Turbines. Based on these allegations, Angola requested the preventive seizure of the Four Turbines until the court determined their rightful ownership.¹⁷

27. Pursuant to article 403 of the Angolan Civil Procedure Code, a preventive seizure is a precautionary legal measure intended solely to secure a debtor's assets, with the purpose of safeguarding the enforceability of a credit claim that may be at risk of non-satisfaction.¹⁸ It is not a procedural mechanism designed to facilitate or guarantee the future transfer of ownership of the seized assets to the creditor, even in the event of a favourable judgment in the main proceedings.
28. A preventive seizure may be granted when there is a well-founded risk that the patrimonial guarantee securing the credit may be lost or frustrated. To obtain such a measure, the applicant must: (i) demonstrate the probable existence of the credit, and (ii) establish a concrete and substantiated risk that, without the seizure, the future recovery or enforcement of the credit may be seriously jeopardised.
29. The Provincial Court of Luanda granted the request the following month, ordering the preventive seizure of the Four Turbines and appointing IGAPE as trustee.¹⁹ Under the court's order, IGAPE²⁰ was tasked with safeguarding the Four Turbines and ensuring their preservation pending resolution of the principal claim,²¹ which Angola filed in March 2020.²²
30. Toward the end of 2020, Aenergy became aware that IGAPE was not holding the Four Turbines at its own premises but at a site owned by PRODEL, a public company under the supervision of MINEA.²³ Based on available information at the time, Aenergy suspected that the turbines might have been earmarked for

¹⁷ **C-15**, Request for preventive seizure of Aenergy's Four Turbines (with informal translation into English), 4 October 2019.

¹⁸ **CLA-13**, Civil Procedure Code of Angola (with informal translation into English), 28 December 1961, article 403.

¹⁹ **C-17**, Ruling of the Provincial Court of Luanda on the preventive seizure of Aenergy's Four Turbines (with informal translation into English), 5 December 2019, p. 31.

²⁰ IGAPE is a state agency under the authority and supervision of Angola's Ministry of Finance. It is responsible for managing and overseeing the State's financial holdings, supervising the administration of public funds and financial assets, and managing loans granted by the State. In addition, IGAPE is the sole shareholder of PRODEL and ENDE, the public utility companies operating in Angola's energy sector.

²¹ **C-17**, Ruling of the Provincial Court of Luanda on the preventive seizure of Aenergy's Four Turbines (with informal translation into English), 5 December 2019, p. 31; **C-18**, Order of the Provincial Court of Luanda for the preventive seizure of Aenergy's Four Turbines (with informal translation into English), 6 December 2019.

²² **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020.

²³ **C-29**, Letter on the transportation of the Four Turbines and Google Earth images, 30 November 2020, p. 5.

installation in state-owned power plants. However, it had no actual knowledge of the fate of the Four Turbines.

31. Meanwhile, the principal proceedings initiated by Angola showed no progress. As of 2022 – more than two years after the filing – the Provincial Court of Luanda had yet to take any further procedural steps in the case.

B. The facts giving rise to the dispute

1. 2022: Angola installed and deployed the Four Turbines in its power plants

32. A preventive seizure is a provisional measure designed solely to secure a debtor's assets to preserve the enforceability of a credit claim that may be at risk of non-fulfilment. The applicant must invoke and show a well-founded fear of losing the guarantee of asset recovery, presenting facts that make the existence of the credit claim plausible, substantiate the alleged risk and identify, where possible, the specific assets to be seized and provide an estimate of their value.²⁴
33. The appointed trustee is responsible for preserving these assets and preventing any damage, misappropriation, or unauthorised use. The general duties of a trustee are outlined in article 1187 of the Angolan Civil Code and include, in particular: safeguarding the deposited asset, promptly notifying the depositor if the trustee becomes aware of any danger threatening the asset, and returning the asset along with any yields or profits it may have generated.²⁵ In addition to these general obligations, a judicial trustee is specifically required to manage the entrusted assets with the diligence and zeal of a *bonus pater familias* and has a duty to render full accounts of their administration.²⁶
34. Despite a clear judicial order of preventive seizure, Angola proceeded in 2022 to install the Four Turbines in state-owned power plants without either a final decision in the underlying case or any authorisation from Aenergy. In allowing this, IGAPE failed to fulfil its role as court-appointed depositary,²⁷ and the Provincial Court of Luanda relinquished its judicial custodial responsibilities.

²⁴ **CLA-13**, Civil Procedure Code of Angola (with informal translation into English), 28 December 1961, article 403(1).

²⁵ **CLA-14**, Civil Code of Angola (with informal translation into English), 25 November 1966, article 1187.

²⁶ **CLA-13**, Civil Procedure Code of Angola (with informal translation into English), 28 December 1961, article 843(1).

²⁷ Under Angolan law, IGAPE's duties are to safeguard the seized assets, to immediately notify the depositor when it becomes aware of any danger threatening the asset, to manage it with the diligence and zeal of a good family man while bearing the obligation to provide proper accountability for them. **CLA-13**, Civil Procedure Code of Angola (with informal translation into English), 28 December 1961, article 843(1); **CLA-14**, Civil Code of Angola (with informal translation into English), 25 November 1966, article 1187; **C-17**, Ruling of the Provincial Court of Luanda on the preventive seizure of Aenergy's Four Turbines (with informal translation into English), 5 December 2019, p. 31.

35. As previously noted, Aenergy had purchased six turbines from GE outside the scope of the original Contracts.²⁸ The Four Turbines – subject of the seizure order – are among these six.²⁹
36. Based on publicly available and circumstantial information, Aenergy believes that in 2022 all six turbines were installed in three state-owned power plants located in the provinces of Lubango, Cunene, and Cabinda.³⁰ However, the exact timing of the installation and the assignment of specific turbines to each power plant remain unknown to the Claimant. Angola has yet to provide any clarification on these matters.
37. Since the Four Turbines were preventively seized, Mr Machado has had no access to them and has been unable to verify their condition or location. Nonetheless, the Claimant has gathered fragmentary evidence pointing to the Four Turbines having been installed and connected to the Angolan power grid during the spring and summer of 2022:
- (i) In October 2021, Angola authorised, by Presidential Order No. 177/21, the initiation of an emergency contracting procedure for the provision of services related to the installation and deployment of four turbines with the same characteristics as the Four Turbines, initially to be financed using PRODEL’s internal resources.³¹
 - (ii) On 16 March 2022, Presidential Order No. 60/22 amended this decision, replacing PRODEL’s financing with ordinary State funds and integrating the projects into the 2022 Public Investment Program (“**PIP**”).³² This change enabled the execution of the relevant contracts, which required prior budget approval.
 - (iii) On 18 March 2022, MINEA issued a press release documenting a ministerial visit to the Ondjiva thermal power plant in Cunene (the “**Ondjiva Power Plant**”), which was to be equipped with two 25 MW turbines, *i.e.*, with the same capacity as the Four Turbines.³³ Specifically, the public authorities announced that “*PRODEL’s thermal power plant, made up of two 25 MW*

²⁸ See ¶20 above.

²⁹ The other two turbines were seized in a different proceeding.

³⁰ See C-21, Presidential Order No. 177/21 authorising the opening of a public procurement procedure for various works at thermoelectric power plants (with informal translation into English), 26 October 2021, pp. 3-4; C-30, Press release announcing the installation of two turbines in the Malembo Power Plant (with informal translation into English), 15 August 2022; C-31, Extract from GRD website indicating installation of two turbines in the Odjiva Power Plant, 1 May 2022.

³¹ C-21, Presidential Order No. 177/21 authorising the opening of a public procurement procedure for various works at thermoelectric power plants (with informal translation into English), 26 October 2021.

³² C-22, Presidential Order No. 60/22 for the execution of projects with ordinary resources of the Angolan State and their inclusion in the Public Investment Program “PIP” (with informal translation into English), 16 March 2022.

³³ C-20, MINEA’s assessment of installation works in the Ondjiva Power Plant (with informal translation into English), 18 March 2022.

*turbines each, [...] after being complete, will mean that the towns of Ondjiva, Santa Clara and Namacunde will no longer be dependent on the supply contract with neighbour Namibia”.*³⁴

- (iv) GRD Services, the contractor responsible for the installation, later reported that two TM2500 GEN8 turbines were installed at the Ondjiva Power Plant in May 2022.³⁵
 - (v) On 15 August 2022, CIAM, an official government press outlet, published a release announcing the arrival and installation of two 25 MW turbines at the Malembo thermal power plant in Cabinda (the “**Malembo Power Plant**”).³⁶
38. Based on this information, Mr Machado reasonably infers that two of the Four Turbines were installed at the Ondjiva Power Plant in May 2022. This is consistent with the announcement made by MINEA on 18 March 2022, which described the future deployment of two 25 MW turbines at the site, and with GRD Services’s confirmation of completion in May 2022.³⁷
39. The other two turbines were likely installed in early August 2022 at the Malembo Power Plant, as reported by CIAM on 15 August 2022.³⁸ Angola has not denied or refuted these estimated dates.
40. Before gaining access to the information described above, Aenergy had already observed through Google Earth satellite imagery in November 2020 that Angola had undertaken preparatory construction works – namely, the laying of concrete platforms – at a power plant in Lubango (the “**Lubango Power Plant**”).³⁹ This led Mr Machado to initially suspect that two turbines might be installed there, but he was not able to confirm this.
41. As mentioned, Presidential Order No. 177/21, issued in October 2021, authorised the launch of emergency contracting procedures for the installation of turbines with the same specifications as the Four Turbines at the Ondjiva, Malembo, and Lubango power plants.⁴⁰ Given the typical time frames for public procurement, contracting,

³⁴ C-20, MINEA’s assessment of installation works in the Ondjiva Power Plant (with informal translation into English), 18 March 2022, p. 4 (emphasis added).

³⁵ C-31, Extract from GRD website indicating installation of two turbines in the Odjiva Power Plant, 1 May 2022.

³⁶ C-30, Press release announcing the installation of two turbines in the Malembo Power Plant (with informal translation into English), 15 August 2022.

³⁷ See C-20, MINEA’s assessment of installation works in the Ondjiva Power Plant (with informal translation into English), 18 March 2022; C-31, Extract from GRD website indicating installation of two turbines in the Odjiva Power Plant, 1 May 2022.

³⁸ C-30, Press release announcing the installation of two turbines in the Malembo Power Plant (with informal translation into English), 15 August 2022.

³⁹ C-29, Letter on the transportation of the Four Turbines and Google Earth images, 30 November 2020, p. 7.

⁴⁰ C-21, Presidential Order No. 177/21 authorising the opening of a public procurement procedure for various works at thermoelectric power plants (with informal translation into English), 26 October 2021.

and execution, it is highly likely that the installation in all three power plants occurred during 2022. While the installation at Ondjiva and Malembo are confirmed, the Lubango installation remains plausible but unverified.

42. Additionally, Presidential Order No. 60/22, issued in March 2022, stipulated that all works authorised under Presidential Order No. 177/21 would be financed by the State and included in the PIP.⁴¹ This restructuring of financing enabled the execution of the installation contracts, which could not have proceeded without proper budgeting and allocation of the associated expenses.
43. Notably, the order made no reference to services already rendered, and expenditures were classified as part of the 2022 investment plan. Therefore, the respective contracts for the installation of the Four Turbines in state-owned power plants could not have been executed before 2022, nor could the services and their corresponding payments have been completed at that time. Angola has recognised this.⁴²
44. Between 5 December 2019 – the date of the preventive seizure – and 26 October 2021 – the date of Presidential Order No. 177/21 – there is no record of any procurement process in Angola for the installation of GE TM2500 turbines matching the Four Turbines. Nor did any public information surface regarding their use or deployment.
45. Under Angolan procurement law, the installation of the Four Turbines without prior budgetary allocation – the approval of which was only granted by Presidential Order No. 60/22 on 16 March 2022 – would be both procedurally and substantively unlawful.
46. A contracting public entity may only proceed if the required funds are already allocated in its budget or if the contract explicitly stipulates that execution is contingent upon future budgetary approval. Therefore, PRODEL could only have executed the contracts for the installation of the Four Turbines – and undertaken their physical installation – after the issuance of Presidential Order No. 60/22 of 16 March 2022, as PRODEL did not have the necessary budgetary resources to contract for the installation beforehand. Without such prior approval, PRODEL was legally prohibited from entering into the contracts under Angolan procurement law.⁴³

⁴¹ **C-22**, Presidential Order No. 60/22 for the execution of projects with ordinary resources of the Angolan State and their inclusion in the Public Investment Program “PIP” (with informal translation into English), 16 March 2022.

⁴² Respondent’s Rule 41 Reply, ¶58.

⁴³ The Contracting Public Entity may only make the decision to contract if the corresponding funds are allocated in its budget, unless the notice, invitation, or procedural program specifies that the award is subject to approval of the corresponding budget allocation. *See CLA-63*, Public Procurement Law of Angola No. 41/20 (with informal translation into English), 23 December 2025, article 32 (2).

47. Neither presidential order acknowledged Aenergy's ownership of the turbines nor that they were placed under preventive seizure by the Provincial Court of Luanda. The presidential orders did not indicate that the installation had been preceded by any judicial authorisation either. All these actions were carried out as if the Four Turbines had been the undisputed property of the Angolan State.

2. 2022 to date: Angola concealed and keeps on concealing the taking of the Four Turbines

48. After learning of MINEA's announcement regarding the installation of several GE TM2500 turbines matching the specifications of the Four Turbines, and of the relevant presidential orders authorising their deployment, Aenergy's concerns that the turbines had been or were about to be installed intensified.
49. In light of this, on 22 April 2022, Aenergy submitted two formal requests for information concerning "*the current whereabouts of the seized assets, their storage conditions and their state of conservation and maintenance*".⁴⁴ These were addressed to both the Provincial Court of Luanda and the chairman of IGAPE's board of directors. Neither provided any response. A third request was filed with the Provincial Court of Luanda on 24 May 2022, which also went unanswered.⁴⁵ Three and a half years later, none of these requests have been answered by Angola.
50. Due to this persistent opaqueness, Mr Machado remains without any official explanation as to why the Four Turbines have been installed and are being used by PRODEL, rather than being held by IGAPE in judicial custody under proper preservation and maintenance conditions, as ordered by the court.
51. On 9 June 2022, Mr Machado delivered a formal notice of dispute to the Republic of Angola under the Angola-Portugal Bilateral Investment Treaty (the "**Notice of Dispute**"), reiterating the absence of information about the status and location of the Four Turbines.⁴⁶
52. In its response, Angola acknowledged for the first time that the Government, as "*legal depositary*" of the turbines, had "*decided [...] to deploy the turbines in a power producing plant*".⁴⁷ Angola offered several conflicting justifications, claiming, for instance, that deployment was necessary to prevent decay, that the turbines served a social function and should not remain inactive, and that the State

⁴⁴ C-23, Aenergy's request to the Provincial Court of Luanda (with informal translation into English), 22 April 2022; C-24, Letter from Aenergy to IGAPE (with informal translation into English), 22 April 2022.

⁴⁵ C-25, Aenergy's request to the Provincial Court of Luanda (with informal translation into English), 24 May 2022.

⁴⁶ C-26, Notification from Mr Machado to Angola for the amicable settlement of the dispute (with informal translation into English), 9 June 2022.

⁴⁷ C-16, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶26.

was entitled to use them because it had paid for them in full.⁴⁸ Yet, despite these assertions, Angola once again failed to provide any concrete information regarding the location, installation date, or current condition of the Four Turbines.

53. Considering Angola's actions and continued obscurantism, Mr Machado had no choice but to initiate this arbitration in order to obtain prompt, adequate, and effective compensation for Angola's unlawful conduct.
54. It bears mentioning that, shortly before the Tribunal issued its decision on Angola's Rule 41 objection, the Provincial Court of Luanda suddenly summoned Aenergy to a preliminary hearing in the local proceedings initiated by Angola.⁴⁹ The case had remained entirely dormant for more than five years, with no procedural activity whatsoever. This timing is not happenstance. Rather, the proceeding was revived with the aim of thwarting the present arbitration, which reinforces the already evident fact that the Angolan courts are not independent from the Government.
55. The preliminary hearing was convened to address the procedural exceptions and alleged nullities raised by the parties, including the supervening uselessness of the judicial process, due to the *de facto* expropriation of the Four Turbines.
56. During the preliminary hearing, finally held on 5 September 2025, Aenergy posed a direct question to the court: it requested clarification regarding the whereabouts of the Four Turbines placed under judicial seizure, which had been apprehended by order of the same court and were supposed to be under the formal custody of IGAPE, the judicially appointed depositary.
57. The court, rather than providing a substantiated response that might have evidenced some care in supervising the precautionary measure it had ordered, referred the question to the Angolan Public Prosecutor's Office, effectively shifting the responsibility for clarification. However, the Public Prosecutor was also unable to provide any information as to the location, condition, or use of the turbines.
58. This episode highlights not only a troubling lack of judicial control over the assets under judicial seizure, but also a clear failure by the court to fulfil its duty to supervise the enforcement of precautionary measures, particularly with regard to the role of the designated depositary (IGAPE). The Public Prosecutor's inability to offer a concrete response further reinforces the opacity and irregularity in the handling of the seized assets, in violation of the Claimant's property rights and due process, and undermines the credibility and effectiveness of the judicial process itself.

⁴⁸ C-16, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶¶25-26.

⁴⁹ C-39, Citation to a preparatory hearing in proceeding No. 34/20-D issued by the Provincial Court of Luanda (with informal translation into English), 15 May 2025.

59. In any event, this late procedural manoeuvre has no bearing on Mr Machado's claim. The inaction of the Provincial Court of Luanda – spanning more than five years – enabled and cemented the unlawful taking of the turbines. A hearing convened at this stage cannot retroactively cure the unlawful appropriation, use, and degradation of the Four Turbines.

III. The Tribunal has jurisdiction over the Claimant's claims under the BIT

60. As the Claimant explained in the Request for Arbitration,⁵⁰ the Tribunal has jurisdiction over this dispute. All jurisdictional requirements of the ICSID Convention and the BIT have been met. Each element is discussed below.

A. Angola has consented to ICSID arbitration

61. Article 25(1) of the ICSID Convention provides that jurisdiction shall extend to disputes that the parties "*consent in writing to submit to the Centre*".
62. Mr Machado expressed his consent to submit the present dispute to ICSID in his Request for Arbitration. Similarly, Angola expressed its consent to ICSID arbitration in writing through article 15(2) of the BIT, which provides that investors of the other party to the BIT may submit disputes to ICSID at their request, if such disputes cannot be settled amicably through negotiations within six months of them being raised by the investor.⁵¹
63. Mr Machado has complied with the above requirements. On 9 June 2022, Mr Machado sent Angola the Notice of Dispute, in which he requested negotiations with the State.⁵² Angola replied to Mr Machado's notice on 8 December 2022, rejecting any amicable solution to the dispute.⁵³ Consequently, Mr Machado filed his Request for Arbitration on 20 February 2024, *i.e.*, after the cooling-off period stipulated in article 15 of the BIT had elapsed.⁵⁴
64. Therefore, the Tribunal has jurisdiction *ratione voluntatis*.

⁵⁰ Request for Arbitration, section IV.C.1.

⁵¹ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 15(1) and (2).

⁵² **C-26**, Notification from Mr Machado to Angola for the amicable settlement of the dispute (with informal translation into English), 9 June 2022.

⁵³ **C-16**, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022.

⁵⁴ Request for Arbitration, ¶83.

B. Mr Machado has met the temporal requirements of the BIT

65. The original BIT was dated 22 February 2008, and it entered into force on 24 April 2020. It was then amended on 16 July 2021, with the amendment entering into force on 22 December 2021.
66. Article 2(1) of the BIT stipulates that “[t]his Agreement applies to all investments made by investors of one Party in the territory of the other Party, in accordance with the applicable law of the latter”.⁵⁵ Thus, the BIT applies to all investments, making no distinction between investments made before or after the BIT’s entry into force. The Claimant’s investments, lawfully made on 10 December 2012⁵⁶ and 31 March 2017,⁵⁷ fall within the temporal jurisdiction of the BIT.
67. Article 2(1) carves out “disputes and/or claims arising from facts that occurred before its entry into force”.⁵⁸ As explained in detail in previous pleadings, Mr Machado’s claims are grounded in facts that occurred from 2022 onwards, namely the installation of the Four Turbines in state owned power plants and the abdication of custodial responsibilities by the Provincial Court of Luanda and the legal depositary, IGAPE.
68. Accordingly, the Tribunal has jurisdiction *ratione temporis*.
69. In its Rule 41 objection, Angola requested that the Tribunal dismiss the Claimant’s claims for manifest lack of jurisdiction *ratione temporis*. Angola argued, among other things, that the Four Turbines were installed prior to the BIT’s entry into force.⁵⁹ However, in its Rule 41 Decision, the Tribunal found that “it is not clear nor obvious [...] that the Claimant’s claims fall outside the temporal protection of BIT”.⁶⁰
70. If Angola revives its jurisdictional objection in its Statement of Defence, it will bear the burden of proof for such an objection, including for any allegations on the timing of the installation and connection of the Four Turbines.⁶¹ Although Mr Machado does not need to address the arguments raised by Angola during the

⁵⁵ CLA-25, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 2(1).

⁵⁶ C-4, Certificate from the Commercial Registry of Luanda regarding Aenergy (with informal translation into English), 22 April 2022.

⁵⁷ C-8, GE notice of transfer of ownership to Aenergy, 31 March 2017.

⁵⁸ CLA-25, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 2(1).

⁵⁹ Respondent’s Rule 41 Submission, ¶15.

⁶⁰ Decision on the Respondent’s Rule 41 Objection, ¶86.

⁶¹ See CLA-17, *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013, ¶179 (“if the respondent chooses to put forward fresh allegations of its own in order to counter or undermine the claimant’s case, then by doing so the respondent takes upon itself the burden of proving what it has alleged”); CLA-23, *Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v. Albania)*, International Court of Justice, Judgement, 9 April 1949, p. 18 (stating that adverse inferences of fact should be permitted where a party best positioned to prove a certain fact fails to do so).

Rule 41 proceedings in this submission, Mr Machado refers to his Rule 41 Rejoinder on the proper interpretation of article 2(1) of the BIT.⁶²

C. Mr Machado is a protected investor

71. Mr Machado is a protected investor under article 25(1) of the ICSID Convention, which provides that the jurisdiction of the Centre extends to “*any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State*”.

72. In this case, the dispute has arisen between Mr Machado, a Portuguese national, and Angola. Since Portugal and Angola are both parties to the ICSID Convention, the present dispute is between a Contracting State of the ICSID Convention and a national of another Contracting State, thus satisfying the requirements of article 25 of the ICSID Convention.

73. Additionally, article 2(1) of the BIT provides that the “*Agreement applies to all investments made by investors of one Party in the territory of the other Party, in accordance with the applicable law of the latter*”.⁶³

74. Mr Machado is a protected investor under article 3(1)(a) of the BIT, which clarifies that the meaning of “investor” includes:⁶⁴

“[A]ny natural or legal person of a Party who invests in the territory of the other Party, in accordance with the law in force in the latter Party, whereby:

a) ‘Natural person’ means any natural person who has the nationality of one of the Parties under the terms of the respective law in force;

b) ‘Legal person’ means an organisation having legal personality, composed of a collection of persons or of a mass of assets, directed towards the achievement of common or collective interests, which has its registered office in the territory of one of the Parties and which has been constituted in accordance with the law in force in that Party, including associations, foundations, corporations and commercial companies”.

75. Again, the Claimant is a Portuguese national, that is, a natural person with the nationality of one of the Parties to the BIT.⁶⁵ He was a Portuguese national when Angola gave its consent to arbitration when the BIT entered into force.

76. Therefore, the Tribunal has jurisdiction *ratione personae*.

⁶² Claimant’s Rule 41 Rejoinder, ¶¶12-32.

⁶³ CLA-25, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 2(1).

⁶⁴ CLA-25, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 3(1)(a).

⁶⁵ C-1, Mr Machado’s Portuguese passport, 27 June 2019.

D. Aenergy and the Four Turbines are protected investments

77. Mr Machado has made protected investments in Angola. The term “investment” is not defined in the ICSID Convention. Thus, it should be interpreted by reference to the definition contained in the BIT, which constitutes *lex specialis*.⁶⁶

78. Under article 3(2) of the BIT, the term “investment” includes, but is not limited to, the following.⁶⁷

“a) Ownership of movable and immovable property, as well as other rights in rem such as mortgage, pledge, usufruct and similar rights;
b) Securities stocks, shares, quotas, or social parts, or other forms of participation in companies and/or economic interests resulting from their activity;
c) Credit rights or any other rights with economic value;
d) Intellectual property rights, including copyright, reproduction rights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets, know-how and clientele;
e) Concessions with economic value, granted by law, by contract or by administrative act of a competent public authority, including concessions for prospecting, cultivation, extraction or exploitation of natural resources;
f) Goods which, under and in accordance with the applicable law and the respective lease contracts, are placed at the disposal of a lessor in the territory of a Party”.

79. Aenergy is a company duly incorporated under the laws of Angola on 10 December 2012⁶⁸ and it is wholly owned and controlled by Mr Machado.⁶⁹ Therefore, Mr Machado’s shares in Aenergy qualify as protected investments by virtue of article 3(2)(b) of the BIT.

80. Moreover, the Four Turbines are protected investments pursuant to article 3(2)(a) of the BIT, as they are movable property, purchased on 31 March 2017 in pursuit of Aenergy’s commercial activity.⁷⁰

81. For these reasons, the Tribunal has jurisdiction *ratione materiae* with regard to Aenergy and the Four Turbines.

⁶⁶ **CLA-64**, *M.C.I Power Group L.C. and New Turbine, Inc. v. Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2025, ¶159 (“numerous arbitral precedents confirm the statement in the Report of the Executive Directors of the World Bank that the Convention does not define the term ‘investments’ because it wants to leave the parties free to decide what class of disputes they would submit to the ICSID”); **CLA-56**, *Generation Ukraine Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶8.2; **CLA-65**, *Fraport AG Frankfurt Airport Services Worldwide v. the Philippines*, ICSID Case No. ARB/03/25, Award, 16 August 2007, ¶305; **CLA-66**, *Philip Morris Brands Sarl et al. v. Uruguay*, ICSID Case No. ARB/10/7, Decision on Jurisdiction, 2 July 2013, ¶196.

⁶⁷ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 3(2).

⁶⁸ **C-4**, Certificate from the Commercial Registry of Luanda regarding Aenergy (with informal translation into English), 22 April 2022.

⁶⁹ **C-5**, Statement issued by Aenergy on the identity of its shareholders (with informal translation into English), 14 February 2024.

⁷⁰ **C-8**, GE notice of transfer of ownership to Aenergy, 31 March 2017.

IV. The Claimant has standing to bring claims of expropriation, FET and FPS in relation to the turbines

82. In this arbitration, Mr Machado claims that Angola has breached three different standards of protection contained in the BIT: expropriation, FET and FPS.
83. While the Four Turbines are not directly owned by Mr Machado, they are owned by his company, Aenergy. Even if the Tribunal finds that the Four Turbines do not constitute a protected investment of Mr Machado's under article 3(2)(a) of the BIT, he nonetheless has legal standing to bring a direct claim under the BIT for breaches relating to them.
84. Article 7(4) of the BIT specifies that the protection against unlawful expropriation extends to "*the assets of a company incorporated or constituted in accordance with [the] law in force and in which the investors [...] hold assets, bonds or other forms of participation*".⁷¹ In this case, the Four Turbines are assets of Aenergy,⁷² a company constituted in accordance with the law of Angola and wholly owned by the Claimant.⁷³ Therefore, the Four Turbines are covered by article 7 of the BIT.
85. Similarly, Mr Machado has legal standing to bring direct claims under article 4(2) of the BIT concerning FET and FPS obligations in relation to the Four Turbines, for the reasons set out below.
86. The general rule of treaty interpretation, as set out in article 31(1) of the Vienna Convention on the Law of Treaties ("VCLT"), provides that "[a] *treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*".⁷⁴
87. Pursuant to this rule, the BIT must be interpreted in good faith and in the light of its object and purpose, which is the "*mutual promotion and protection of investments made by investors of each Party in the territory of the other Party*".⁷⁵
88. The tribunals in *Mera v. Serbia* and *SGS v. Philippines* both held that when a treaty aims to create and maintain favourable conditions for investments, such as the Angola-Portugal BIT, any interpretative uncertainty should be resolved in a manner

⁷¹ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(4).

⁷² **C-8**, GE notice of transfer of ownership to Aenergy, 31 March 2017.

⁷³ **C-5**, Statement issued by Aenergy on the identity of its shareholders (with informal translation into English), 14 February 2024.

⁷⁴ **RL-0011**, Vienna Convention on the Law of Treaties, 23 May 1969, article 31(1).

⁷⁵ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 1.

that favours the protection of covered investments.⁷⁶ Therefore, in line with those tribunals' reasoning, if the purpose of the BIT is to promote and protect the investments, then it must be interpreted in a way that extends protection, rather than restricts it.

89. Article 7(4) of the BIT on expropriation reflects the commercial reality that an investor is not always the direct titleholder of the assets of the company in which it has invested, a reality that should not limit the protection of those assets under the BIT. Otherwise, states may expropriate the assets of a company, rather than the company itself, leaving the investor without any means of redress. This reasoning also applies to article 4(2) on FET and FPS.
90. Although article 4(2) of the BIT does not explicitly refer to the assets of a protected company, as article 7(4) does in the context of expropriation, this silence cannot be interpreted as an exclusion of those assets from the protection of the FET and FPS standards. This conclusion stems from a good faith interpretation of the treaty, in light of its object and purpose, as required by the VCLT.
91. If the contracting parties explicitly chose to extend the BIT's protection to the assets of a protected company in the expropriation provision, it stands to reason – absent any indication to the contrary – that they intended those same assets to benefit from the other substantive protections afforded by the BIT, including FET and FPS.
92. Moreover, the principle that controlling shareholders may bring a direct claim in respect of the assets of a company they control was affirmed by the ICJ in the *ELSI* case.⁷⁷ This principle has since been widely accepted by scholars and investment tribunals alike.
93. For instance, Rudolf Dolzer and Christoph Schreuer explain that, where shareholding in a company is protected, such protection extends not only to ownership in shares, but also to the assets of the company.⁷⁸ In a similar vein, Stanimir Alexandrov notes that tribunals considering shareholder claims “*all considered it to be beyond doubt that a shareholder's interest in a company includes an interest in the assets of that company*”.⁷⁹

⁷⁶ **CLA-60**, *Mera Investment Fund Limited v. Serbia*, ICSID Case No. ARB/17/2, Decision on Jurisdiction, 20 November 2018, ¶¶121-123; **CLA-67**, *SGS Société Générale de Surveillance S.A. v. the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004, ¶116.

⁷⁷ **CLA-68**, *Elettronica Sicula S.P.A. (ELSI)*, Judgment, I.C.J. Reports 1989, 20 July 1989, ¶132.

⁷⁸ **CLA-69**, *Principles of International Investment Law* (Second edition), Rudolf Dolzer and Christoph Schreuer, Oxford University Press, 2012 (excerpts), p. 60.

⁷⁹ **CLA-70**, The “Baby Boom” of Treaty-Based Arbitrations and the Jurisdiction of ICSID Tribunals: Shareholders as “Investors” and Jurisdiction Ratione Temporis, Stanimir Alexandrov, *The Law & Practice of International Courts and Tribunals*, 4(1), 19-59, 2005, p. 406.

94. This approach has been replicated by different investment tribunals. For example, the *Arif v. Moldova* tribunal found that “shareholder protection is not restricted to ownership in the shares, it extends to the assets of the company”.⁸⁰
95. Similarly, the *Mera v. Serbia* tribunal determined that “where a company is controlled, legally or factually, by a certain shareholder or group of shareholders, the latter may be entitled to a direct claim in respect of the assets of the former”.⁸¹ In that case, the tribunal found that the assets held by the local company constituted protected investments pursuant to the BIT, and therefore, the claimant as shareholder of the local company was entitled to bring claims not only for the impairment of the value of its shares, but also for the impairment of the local company’s assets.⁸²
96. Of particular relevance is *von Pezold v. Zimbabwe*, which closely mirrors the circumstances of the present case. The tribunal in that case upheld the claimants’ submission that they had legal standing to bring direct claims in respect of the underlying assets held by the locally incorporated companies they controlled.⁸³ The Switzerland-Zimbabwe BIT, applicable in that case, contained a provision similar to article 7(4) of the Angola-Portugal BIT.⁸⁴ The tribunal did not consider the absence of an explicit reference to asset protection in the FET and FPS provision of the Switzerland-Zimbabwe BIT as an obstacle to bringing direct claims concerning company assets under the FET and FPS standards. As expressed by that tribunal, “[t]he fact that the BITs do not expressly anticipate such a claim does not suggest that such claims should be excluded”.⁸⁵
97. Therefore, Mr Machado has legal standing to bring a direct claim for breaches of the expropriation, FET and FPS standards affecting the Four Turbines. This is consistent with the BIT’s object and purpose – as interpreted in accordance with the VCLT – and the well-established principle that recognises the controlling shareholders’ right to bring direct claims for the assets of the company they control.

⁸⁰ **CLA-71**, *Franck Charles Arif v. Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013, ¶380.

⁸¹ **CLA-60**, *Mera Investment Fund Limited v. Serbia*, ICSID Case No. ARB/17/2, Decision on Jurisdiction, 20 November 2018, ¶130.

⁸² **CLA-60**, *Mera Investment Fund Limited v. Serbia*, ICSID Case No. ARB/17/2, Decision on Jurisdiction, 20 November 2018, ¶130.

⁸³ **CLA-58**, *von Pezold and others v. Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, ¶326.

⁸⁴ **CLA-72**, Switzerland-Zimbabwe BIT (1996), 9 February 2001, article 6(2) (“Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which investors of the other Contracting Party own shares, it shall, to the extent necessary and subject to its laws, ensure that compensation according to paragraph (1) of this Article will be made available to such investors”).

⁸⁵ **CLA-58**, *von Pezold and others v. Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, ¶322.

V. The Respondent has breached its obligations under the BIT

A. Angola has unlawfully expropriated Mr Machado's investments

98. The Claimant's case is straightforward: the installation of the Four Turbines in Angolan state-owned power plants and their connection to the national power grid, coupled with the Angolan authorities' complicity, constitutes an unlawful expropriation, be it direct or indirect.
99. Article 7(1) of the BIT prohibits expropriation, unless it (i) serves purposes of public interest, (ii) is made against prompt, adequate and effective compensation and (iii) is carried out on a non-discriminatory basis and in accordance with legal procedures.⁸⁶
100. The requirements in article 7(1) of the BIT are cumulative.⁸⁷ This means that Angola's failure to comply with any of them will render an expropriation unlawful.
101. We shall now (i) set out the legal standard for expropriation, (ii) explain that Angola's actions fall within such standard, and (iii) show that they were unlawful, pursuant to the BIT and international law.

1. The standard for expropriation

102. Both direct expropriations and "*measure[s] having equivalent effect*", or indirect expropriations, are covered by the BIT:⁸⁸

"The investments of investors of a Party shall not be nationalised, expropriated or otherwise subject to any other measure having equivalent effect to nationalisation or expropriation (hereinafter referred to as 'expropriation') in the territory of the other Party, except for purposes of public interest and against prompt, adequate and effective compensation. Expropriation shall be carried out on a non-discriminatory basis and in accordance with legal procedures".

103. Expropriation has been traditionally understood as a direct taking or deprivation of an investor's property by state authorities.⁸⁹ UNCTAD defines direct expropriation

⁸⁶ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).

⁸⁷ See **CLA-69**, Principles of International Investment Law (Second edition), Rudolf Dolzer and Christoph Schreuer, Oxford University Press, 2012 (excerpts), pp. 99-100; **CLA-21**, *Waguih Elie George Siag and Clorinda Vecchi v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶428; **CLA-40**, *OI European Group B.V. v. Venezuela*, ICSID Case No. ARB/11/25, Award (with informal translation into English), 10 March 2015, ¶362; **CLA-47**, *Compañía de Aguas del Aconquija S.A. v. Argentina (I)*, ICSID Case No. ARB/97/3, Award II, 20 August 2007, ¶7.5.21.

⁸⁸ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).

⁸⁹ **CLA-26**, International Investment Arbitration Substantive Principles (Second Edition), Oxford International Arbitration Series, Campbell McLachlan, Laurence Shore and Matthew Weiniger, 2017, Chapter 8, ¶8.68.

as “a mandatory legal transfer of the title to the property or its outright physical seizure”.⁹⁰

104. In turn, indirect expropriations may, in some cases, be short of physical takings, but their effect nevertheless “destroy[s] the economic value of the investment or deprive[s] the owner of its ability to manage, use or control its property in a meaningful way”.⁹¹
105. Campbell McLachlan, Laurence Shore and Matthew Weiniger note that investment tribunals have considered direct expropriation to be relatively easy to identify. For example, “government authorities take over a mine or factory, depriving the investor of all meaningful benefits of ownership and control”.⁹² Conversely, indirect expropriations can take a variety of forms, “which do not explicitly express the purpose of depriving one of rights or assets, but actually have that effect”.⁹³
106. Investment tribunals have provided guidance regarding the characteristics of direct expropriation. For instance, they have observed that direct expropriation “includes [...] open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favor of the host State”;⁹⁴ “[d]irect expropriation involves the seizure of the investor’s property”;⁹⁵ and “a direct expropriation involves the transfer of the title to the property or its outright physical seizure, usually to the benefit of the state itself”.⁹⁶ Therefore, it is widely recognised that direct takings, or outright physical seizures of property, amount to direct expropriation.
107. Likewise, investment tribunals have held that indirect expropriation includes “covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be expected economic benefit of property”,⁹⁷ “measures that do not involve an overt taking but that effectively neutralize the benefit of the property to the foreign

⁹⁰ CLA-73, UNCTAD, Expropriation: A Sequel, 2012, p. 21.

⁹¹ CLA-73, UNCTAD, Expropriation: A Sequel, 2012, p. 21.

⁹² CLA-26, International Investment Arbitration Substantive Principles (Second Edition), Oxford International Arbitration Series, Campbell McLachlan, Laurence Shore and Matthew Weiniger, 2017, Chapter 8, ¶8.68 (citing *Marvin Feldman Karpa v. Mexico*, ICSID Case No ARB(AF)/99/1, Award, 16 December 2002, ¶100).

⁹³ CLA-26, International Investment Arbitration Substantive Principles (Second Edition), Oxford International Arbitration Series, Campbell McLachlan, Laurence Shore and Matthew Weiniger, 2017, Chapter 8, ¶8.75 (citing CLA-54, *Técnicas Medioambientales Tecmed, S.A. v. Mexico*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶114).

⁹⁴ CLA-74, *Metalclad Corporation v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶103.

⁹⁵ CLA-75, *Telenor Mobile Communications v. Hungary*, ICSID Case No. ARB/04/15, Award, 13 September 2006, ¶63.

⁹⁶ CLA-76, *Caratube v. Kazakhstan*, ICSID Case No. ARB/13/13, Award, 27 September 2017, ¶822.

⁹⁷ CLA-74, *Metalclad Corporation v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶103.

owner”,⁹⁸ and the “total or near-total deprivation of an investment, but without the formal transfer of the title or outright seizure”.⁹⁹ Thus, it is well established that the substantial deprivation of use or economic benefit of property amounts to an indirect expropriation.

108. The award in *Smurfit v. Venezuela* is illustrative. In this case, Venezuela had initiated recovery proceedings to transfer private land titles to the state. While these proceedings were pending, the state took possession of landholdings owned by the claimant’s local subsidiary. The tribunal considered that “the Claimant was completely deprived of any possible control over the property”.¹⁰⁰ On this basis, the tribunal concluded that “[t]his outright seizure constituted an expropriation”.¹⁰¹ Such an expropriation was unlawful, as it was not accompanied by compensation, made in the public interest, or compliant with due process of law.¹⁰²
109. As stated in the explanatory note to article 10(3) of the Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens (1961), whether an interference constitutes expropriation will depend on its extent and duration.¹⁰³ However, “there obviously comes a stage at which an objective observer would conclude that there is no immediate prospect that the owner will be able to resume the enjoyment of his property”.¹⁰⁴ It was on these grounds that, in a number of cases, the Iran-United States Claims Tribunals found that the appointment of ostensibly “temporary” managers amounted to a deprivation or taking of property.¹⁰⁵
110. Similarly, in *Wena Hotels v. Egypt*, the tribunal was concerned with the seizure of the investor’s hotel, which lasted for nearly a year. The tribunal held that the investor was deprived of its fundamental rights of ownership, and it appeared that this deprivation was not merely ephemeral. Therefore, the seizure was deemed an expropriation.¹⁰⁶

⁹⁸ **CLA-77**, *CME Czech Republic B.V. (The Netherlands) v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, ¶604.

⁹⁹ **CLA-76**, *Caratube v. Kazakhstan*, ICSID Case No. ARB/13/13, Award, 27 September 2017, ¶822.

¹⁰⁰ **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶412.

¹⁰¹ **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶412.

¹⁰² **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶¶413-414.

¹⁰³ **CLA-79**, Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens and explanatory notes, 1961, p. 13.

¹⁰⁴ **CLA-79**, Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens and explanatory notes, 1961, p. 13; **CLA-73**, UNCTAD, Expropriation: A Sequel, 2012, p. 85.

¹⁰⁵ See, e.g., **CLA-80**, *Tippetts, Abbott, McCarthy, and Stratton v. TAMS-AFFA Consulting Engineers of Iran and others*, Iran-United States Claims Tribunal, Award, 22 June 1984, ¶¶22-23; **CLA-81**, *Sedco, Inc. v. National Iranian Oil Company and Iran*, Iran-United States Claims Tribunal, Interlocutory Award, 17 September 1985, ¶¶98-99; **CLA-82**, *Thomas Earl Payne v. Iran*, Iran-United States Claims Tribunal, Award, 8 August 1986, ¶¶22-25.

¹⁰⁶ **CLA-83**, *Wena Hotels v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶99.

“Whether or not it authorized or participated in the actual seizures of the hotels, Egypt deprived Wena of its ‘fundamental rights of ownership’ by allowing EHC forcibly to seize the hotels, to possess them illegally for nearly a year, and to return the hotels stripped of much of their furniture and fixtures. [...] Putting aside various other improper actions, allowing an entity (over which Egypt could exert effective control) to seize and illegally possess the hotels for nearly a year is more than an ephemeral interference ‘in the use of that property or with the enjoyment of its benefits’”.

111. In sum, expropriation requires (i) taking or deprivation of an investor’s property by state authorities (ii) without immediate prospect of recovery.

2. Angola’s actions constitute an expropriation of the Four Turbines

112. During 2022, Angola finalised the contracting procedure for installing the Four Turbines, installed them, and connected them to the national grid. These actions removed the Four Turbines from judicial custody, defeating the purpose of the preventive seizure. All the while, IGAPE failed to fulfil its court-mandated custodial duties and the Provincial Court of Luanda abdicated its judicial custodial responsibilities, eliminating any prospect of restoring the Four Turbines to judicial custody. This situation is comparable to that in *Smurfit v. Venezuela*, described above,¹⁰⁷ where the State bypassed its own procedural laws and used the investor’s property for its own benefit despite pending judicial proceedings.
113. These actions constitute expropriation of the Four Turbines by Angola, *i.e.*, taking or deprivation of an investor’s property by state authorities without immediate prospect of recovery.
114. Whether Angola’s actions are labelled as an outright taking or as an equivalent measure (*i.e.*, direct or indirect expropriation) makes no difference since the ultimate effect is the same: the loss of the Four Turbines by Mr Machado.
115. In contrast to the previous situation of the Four Turbines being held in preventive seizure, this loss was no longer temporary; rather, the installation was intended as a final and definitive measure. Moreover, Mr. Machado was effectively stripped of any reasonable prospect of having the Four Turbines restored to judicial custody.
116. Angola’s intent to appropriate the Four Turbines permanently rather than temporarily is evidenced by the following:
 - (i) The complexities and logistics of connecting these turbines to the power grid and the high installation costs confirm that this was not a temporary measure. Installing the Four Turbines requires not only their transportation to power plants – complex given poor roads between cities like Luanda and Lubango – but also pre-installation civil works. The installation itself is costly. For example, Presidential Order No. 177/21 included costs of Kz

¹⁰⁷ See ¶108 above.

6,714,397,724.88 (approx. USD 10,400,000) for installing two turbines in Lubango, Kz 10,984,814,028.30 (approx. USD 15,600,000) for two turbines in Ondjiva, and Kz 4,068,967,066.56 (approx. USD 5,778,512.60) for one turbine in Malembo.¹⁰⁸

- (ii) Consistent therewith, the company that installed the two turbines in the Ondjiva Power Plant published in its website that “[t]he *aforementioned Thermal Power Plant is equipped with (2) two aeroderivative turbines, model TM2500 GEN8 functional in permanent regime to meet the demand of the region*”.¹⁰⁹
- (iii) Indeed, more than three years have passed since the turbines were installed, during which Angola has been using them – and wearing them out¹¹⁰ – as planned, as if they were State property.

117. There are no reasonable prospects of the Four Turbines being restored to judicial custody. Any such hopes Mr Machado might have nurtured were crushed when the depositary IGAPE and the Provincial Court of Luanda – *i.e.*, precisely the Angolan authorities that could have taken action to restore the Four Turbines to judicial custody – ignored Aenergy’s requests for information and in doing so signalled their complicity with the taking in progress.¹¹¹ Specifically, on 22 April 2022, Aenergy filed two requests for information concerning the “*whereabouts of the seized assets, their storage conditions and their state of conservation and maintenance*” with the Provincial Court of Luanda¹¹² and the chairman of IGAPE’s board of directors;¹¹³ further, on 24 May 2022, Aenergy submitted an additional request for information to the Provincial Court of Luanda.¹¹⁴ None of these requests were answered. Under Angolan law, Angola was required to respond within five days.¹¹⁵ Angola has disregarded this legal obligation, as neither Aenergy nor Mr Machado have received any response to date – including recently.¹¹⁶

¹⁰⁸ C-21, Presidential Order No. 177/21 authorising the opening of a public procurement procedure for various works at thermoelectric power plants (with informal translation into English), 26 October 2021, ¶¶1(b), (d) and (f).

¹⁰⁹ C-31, Extract from GRD website indicating installation of two turbines in the Odjiva Power Plant, 1 May 2022 (emphasis added).

¹¹⁰ See section V.C.2 below.

¹¹¹ C-23, Aenergy’s request to the Provincial Court of Luanda (with informal translation into English), 22 April 2022; C-24, Letter from Aenergy to IGAPE (with informal translation into English), 22 April 2022; C-25, Aenergy’s request to the Provincial Court of Luanda (with informal translation into English), 24 May 2022.

¹¹² C-23, Aenergy’s request to the Provincial Court of Luanda (with informal translation into English), 22 April 2022.

¹¹³ C-24, Letter from Aenergy to IGAPE (with informal translation into English), 22 April 2022.

¹¹⁴ C-25, Aenergy’s request to the Provincial Court of Luanda (with informal translation into English), 24 May 2022.

¹¹⁵ CLA-13, Civil Procedure Code of Angola (with informal translation into English), 28 December 1961, article 159(2).

¹¹⁶ See ¶¶56-57 above.

118. In conclusion, Angola's actions amount to taking the Four Turbines without an immediate prospect of recovery for Mr Machado, *i.e.*, an expropriation.

3. Angola's expropriation of the turbines was unlawful

119. The expropriation of the Claimant's investment by Angola was unlawful because it (i) did not serve purposes of public interest, (ii) was not made against prompt, adequate and effective compensation, and (iii) was not carried out in accordance with legal procedures.

a. Angola has not acted for purposes of public interest

120. Angola has not expropriated the Claimant's Four Turbines "*for purposes of public interest*".¹¹⁷

121. A state cannot merely purport to act for purposes of public interest¹¹⁸ but must identify the public purpose and demonstrate a reasonable nexus between the expropriatory act and the alleged public purpose. The alleged public interest grounds must exist at the time of the taking.¹¹⁹ That the turbines are capable of fulfilling a social function cannot automatically mean that they were expropriated "for" that purpose. Otherwise, any expropriation would meet the public purpose requirement.

122. Here, there is no evidence reflecting Angola's reasoning at the time of the expropriation. It was only *ex post facto* that Angola put forward several contradictory excuses, none of which demonstrate that the expropriation was made for purposes of public interest. Specifically, in its response to Mr Machado's Notice of Dispute, Angola made the following representations:

- (i) Angola claimed that "*the turbines, due to the social function that they may perform in producing electricity and providing it for a population in need of such a basic resource, must not remain inactive*".¹²⁰ However, Angola never declared this as the purpose of the taking prior to the expropriation. The social function of the turbines was only referenced in passing in Angola's response

¹¹⁷ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).

¹¹⁸ See **CLA-37**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶¶430-432 ("*If mere reference to 'public interest' can magically put such interest into existence [...], then this requirement would be rendered meaningless since the Tribunal can imagine no situation where this requirement would not have been met*").

¹¹⁹ See **CLA-21**, *Waguih Elie George Siag and Clorinda Vecchi v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶432 ("*The Tribunal does not accept that because an investment was eventually put to public use, the expropriation of that investment must necessarily be said to have been 'for' a public purpose*").

¹²⁰ **C-16**, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶25.

to Mr Machado, as an incidental upside of taking the turbines. Angola has not shown or proved that the Four Turbines were taken “for” that purpose.

- (ii) Angola stated that the turbines were installed because they had “*already been wholly paid for by the Government*”.¹²¹ This argument, which Angola advances in the proceedings before the Provincial Court of Luanda, does not render the expropriation made for purposes of public interest.
- (iii) Finally, and strikingly, Angola argued that the deployment of the turbines “*contributes to avoid the decay that would result should said turbines remain inactive*”.¹²² This is manifestly not so and in fact the opposite is true.¹²³ Even if this argument were plausible, this, again, does not prove that the expropriation was made for purposes of public interest.

b. Angola has not provided compensation

123. Angola has not provided “*prompt, adequate and effective compensation*”¹²⁴ to Aenergy or the Claimant for the expropriation of their investment. Angola has never suggested otherwise. That, by itself, is sufficient to render the expropriation unlawful.¹²⁵

c. Angola has not acted in accordance with legal procedures

124. The expropriation was not “*carried out [...] in accordance with legal procedures*”.¹²⁶ Indeed, Angola has failed to act in accordance with international due process and with its domestic legal procedures.

125. International law guarantees both procedural and substantive due process, including reasonable advance notice and a fair hearing.¹²⁷ In the present case, Aenergy was

¹²¹ C-16, Angola’s response to Mr Machado’s notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶26.

¹²² C-16, Angola’s response to Mr Machado’s notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶25.

¹²³ See ¶¶176-180 below.

¹²⁴ CLA-25, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).

¹²⁵ See CLA-84, *UP and C.D Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, ¶411. See also CLA-69, *Principles of International Investment Law* (Second edition), Rudolf Dolzer and Christoph Schreuer, Oxford University Press, 2012 (excerpts), pp. 99-100; CLA-21, *Waguih Elie George Siag and Clorinda Vecchi v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶428; CLA-40, *OI European Group B.V. v. Venezuela*, ICSID Case No. ARB/11/25, Award (with informal translation into English), 10 March 2015, ¶362; CLA-47, *Compañía de Aguas del Aconquija S.A. v. Argentina (I)*, ICSID Case No. ARB/97/3, Award II, 20 August 2007, ¶7.5.21.

¹²⁶ CLA-25, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).

¹²⁷ CLA-37, *ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶435; CLA-21, *Waguih Elie George Siag and Clorinda Vecchi v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶¶440-442; CLA-85, *Kardassopoulos v. Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010, ¶396.

never notified of Angola's appropriation of the turbines. Nor, to Mr Machado's knowledge, was this measure subject to any request, procedure or hearing. Consequently, Mr Machado did not have any opportunity to challenge the decision or defend his rights and interests. It was a unilateral and covert action by the State.

126. The expropriation also violated the Angolan Civil Procedure Code ("CPC"), which is stringent regarding the use of seized property by a judicial depositary.¹²⁸ In removing the Four Turbines from official custody, installing them, and connecting them to the national grid (or being complicit in these actions), IGAPE breached its fiduciary duty to safeguard the integrity of the assets. Thus, Angola acted in violation of due process guaranteed both by international law and by its own domestic law.
127. Moreover, Angola entirely disregarded its laws on expropriation. Two laws could potentially apply – Law No. 3/76 or Law No. 13/22 – depending on whether the expropriation took place before or after the latter's entry into force. Since the Claimant has been kept in the dark about the exact timing of the expropriation, both laws will be considered:
 - (i) According to Law No. 3/76, which entered into force on 3 March 1976, the nationalisation of company assets must be based on "*a proposal from the Council of Ministers*".¹²⁹ Additionally, the State must negotiate "*conditions for compensation*" with interested parties.¹³⁰
 - (ii) Law No. 13/22, which entered into force on 25 May 2022 and repealed Law No. 3/76, provides that the decision to expropriate "*shall be exceptional*"¹³¹ and based on reasons of "*national interest*" or "*fraudulent use of public assets or resources, with significant damage to the State*".¹³² The competent authority is under a "*dever de fundamentação*", i.e., a duty to state the reasons for the expropriation.¹³³ Also, the law requires, among other things, that the expropriation be ordered by the President of the Republic¹³⁴ or the Public

¹²⁸ **CLA-13**, Civil Procedure Code of Angola (with informal translation into English), 28 December 1961, article 852(1).

¹²⁹ **CLA-86**, Nationalisation Law of Angola No. 3/76 (with informal translation into English), 3 March 1976, article 1. *See also* **CLA-87**, Nationalisation Law of Angola No. 1/82 (with informal translation into English), 2 February 1982, article 1 (transferring powers of the Revolutionary Council to the Council of Ministers).

¹³⁰ **CLA-86**, Nationalisation Law of Angola No. 3/76 (with informal translation into English), 3 March 1976, article 9.

¹³¹ **CLA-88**, Public Appropriation Law of Angola No. 13/22 (with informal translation into English), 25 May 2022, article 7.

¹³² **CLA-88**, Public Appropriation Law of Angola No. 13/22 (with informal translation into English), 25 May 2022, articles 5, 7.

¹³³ **CLA-88**, Public Appropriation Law of Angola No. 13/22 (with informal translation into English), 25 May 2022, article 10.

¹³⁴ **CLA-88**, Public Appropriation Law of Angola No. 13/22 (with informal translation into English), 25 May 2022 **CLA-88**, Public Appropriation Law of Angola No. 13/22 (with informal translation into English), 25 May 2022, article 11.

Prosecutor's Office,¹³⁵ be proportionate to the aims pursued,¹³⁶ and be accompanied by compensation.¹³⁷

128. Regardless of which law applies to the extant facts, none of the requirements established under either law have been met. Much the opposite, Angola's expropriation of the Four Turbines has been concealed and denied by the State, in violation of its own laws on expropriation.
129. Therefore, the installation of the Four Turbines in Angola's state-owned power plants and their connection to the national power grid, together with the dereliction of custodial responsibilities by the Provincial Court of Luanda and IGAPE, constitutes an unlawful expropriation in violation of article 7 of the BIT and Angola's own laws.

B. Angola has breached its obligation to provide FET

130. Angola breached the FET standard by frustrating Mr Machado's legitimate expectations, denying him due process and failing to act transparently, and impairing his investment arbitrarily.

1. The FET standard

131. Article 4 of the BIT requires Angola to accord the Claimant's investments "*fair and equitable treatment*"¹³⁸ and to refrain from impairing their "*management, maintenance, use, enjoyment, or disposal*" by "*arbitrary or discriminatory measures*".¹³⁹
132. While the BIT does not define "*fair and equitable treatment*", it is generally accepted that this standard cannot be summarised in a precise statement of legal obligation.¹⁴⁰ As explained by Christoph Schreuer, "[t]he principle of fair and equitable treatment allows for independent and objective third-party determination

¹³⁵ **CLA-88**, Public Appropriation Law of Angola No. 13/22 (with informal translation into English), 25 May 2022, article 21.

¹³⁶ **CLA-88**, Public Appropriation Law of Angola No. 13/22 (with informal translation into English), 25 May 2022, article 8.

¹³⁷ **CLA-88**, Public Appropriation Law of Angola No. 13/22 (with informal translation into English), 25 May 2022, articles 12, 22.

¹³⁸ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 4(2).

¹³⁹ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 4(3).

¹⁴⁰ See **CLA-30**, Fair and Equitable Treatment in Arbitral Practice, Christoph Schreuer, The Journal of World Investment & Trade, 2005, p. 11.

of this type of behaviour on the basis of a flexible standard’ and, like any broad principle of law, “*it is susceptible of specification through judicial practice*”.¹⁴¹

133. Rudolf Dolzer has expressed that this standard of protection is “*directly linked to the fundamental moral and legal grounding of the notion of fairness, anchored in a universally accepted sense of justice, but also in classic rules of customary law governing the protection of foreign nationals and companies*”.¹⁴²
134. While the FET standard unquestionably requires the state to refrain from conduct that would disincentivise foreign investment,¹⁴³ it must also be understood as encompassing a positive obligation to act in a manner conducive to the promotion and encouragement of foreign investment.¹⁴⁴
135. As expressed by the *MTD v. Mexico* tribunal:¹⁴⁵

“[F]air and equitable treatment should be understood to be treatment in an even-handed and just manner, conducive to fostering the promotion of foreign investment. Its terms are framed as a pro-active statement – ‘to promote’, ‘to create’, ‘to stimulate’ – rather than prescriptions for a passive behavior of the State or avoidance of prejudicial conduct to the investors”.

136. Tribunals have identified conduct constituting unfair and inequitable treatment,¹⁴⁶ including, but not limited to, (i) frustration of the investor’s legitimate expectations, (ii) violations of due process, (iii) lack of transparency and (iv) arbitrary or discriminatory measures. However, FET is a non-exhaustive and evolving standard whose application is ultimately specific to the facts of any given case.¹⁴⁷
137. As will be demonstrated, through a series of actions and omissions by its public authorities, the Respondent has breached the standard of FET,¹⁴⁸ as well as the

¹⁴¹ **CLA-30**, Fair and Equitable Treatment in Arbitral Practice, Christoph Schreuer, The Journal of World Investment & Trade, 2005, p. 11 (emphasis added).

¹⁴² **CLA-32**, Fair and Equitable Treatment: Today’s Contours, Rudolf Dolzer, 12 Santa Clara J. Int’l L. 7-33, 17 January 2014, p. 7.

¹⁴³ **CLA-35**, *Saluka Investments BV v. Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶309.

¹⁴⁴ **CLA-89**, *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, ¶113; **CLA-46**, *Azurix Corp. v. Argentina (I)*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶360; **CLA-90**, *Siemens v. Argentina*, ICSID Case No. ARB/02/8, Award, 17 January 2007, ¶290.

¹⁴⁵ **CLA-89**, *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, ¶113.

¹⁴⁶ **CLA-51**, *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶609; **CLA-36**, *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010, ¶284; **CLA-91**, *Deutsche Telekom AG v. India*, PCA Case No. 2014-10, Interim Award, 13 December 2017, ¶336; **CLA-92**, *Mobil Exploration v. Argentina*, ICSID Case No. ARB/04/16, Decision on Jurisdiction and Liability, 10 April 2013, ¶914.

¹⁴⁷ **CLA-93**, *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentina*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶123.

¹⁴⁸ See, e.g., **CLA-94**, *B3 Croatia Courier Coöperatief U.A. v. Croatia*, ICSID Case No. ARB/15/5, Excerpts of Award, 5 April 2019, ¶840 (“[A] breach can be established not only by means of a single act, but also by a series of acts or omissions which over time cumulatively result in a violation of the FET standard, even if each individual measure would not constitute by itself a breach”).

prohibition against arbitrary treatment, both established in article 4 of the BIT. Such actions and omissions were carried out by organs of the State, as well as by entities exercising elements of governmental authority and are therefore attributable to the Respondent under public international law.¹⁴⁹

2. Angola has frustrated Mr Machado's legitimate expectations

138. The notion of legitimate expectations is one of the dominant elements of the FET standard. As explained by the *Saluka v. Czech Republic* tribunal “[a] foreign investor whose interests are protected under the Treaty is entitled to expect that the [state] will not act in a way that is manifestly inconsistent, non-transparent, unreasonable”.¹⁵⁰

139. In a similar vein, the *UAB Garsu Pasaulis v. Kyrgyzstan* tribunal concluded that:¹⁵¹

“Legitimate expectations are made up of the treatment by the host State that a prudent and reasonable investor would have anticipated, given the specific circumstances of the individual case. Such expectations can be based on the host State’s legal framework and regulations - and that they are applied in a predictable, consistent and non-discriminatory manner [...]”.

140. In determining whether the claimant’s legitimate expectations were frustrated, the *UAB Garsu Pasaulis* tribunal emphasised that a key aspect of the analysis was assessing the state’s actions or omissions in light of its own law.¹⁵² On that basis, the tribunal determined that the claimant had, at a minimum, legitimate expectations that the tender that gave rise to its legally recognised rights would be conducted fairly and in accordance with the relevant Kyrgyz law.

141. Accordingly, in that case the tribunal found that the claimant had legitimate expectations that its legally recognised rights, arising from the tender, would not be taken away otherwise than in accordance with appropriate due process.¹⁵³ Ultimately, the tribunal concluded that these expectations had been frustrated because the tender was not carried out in compliance with Kyrgyz law.¹⁵⁴

142. Legitimate expectations are most associated with cases involving regulatory or legislative changes. That is not the case in this arbitration, since the dispute at hand does not arise from regulatory or legislative changes, but rather, from the State’s noncompliance with its own laws.

¹⁴⁹ **RL-0012**, International Law Commission’s 2001 Articles on the Responsibility of States for Internationally Wrongful Acts, 12 December 2001, articles 4-5.

¹⁵⁰ **CLA-35**, *Saluka Investments BV v. Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶309.

¹⁵¹ **CLA-95**, *UAB Garsu Pasaulis v. Kyrgyzstan*, UNCITRAL, Award, 8 April 2024, ¶248 (emphasis added).

¹⁵² **CLA-95**, *UAB Garsu Pasaulis v. Kyrgyzstan*, UNCITRAL, Award, 8 April 2024, ¶250.

¹⁵³ **CLA-95**, *UAB Garsu Pasaulis v. Kyrgyzstan*, UNCITRAL, Award, 8 April 2024, ¶252.

¹⁵⁴ **CLA-95**, *UAB Garsu Pasaulis v. Kyrgyzstan*, UNCITRAL, Award, 8 April 2024, ¶251.

143. In cases like the present one – and as recognised in *UAB Garsu Pasaulis* – an investor may be entitled to expect that the state will apply its own laws in a predictable, consistent and non-discriminatory manner. Still, even in cases involving regulatory changes, tribunals have acknowledged that legitimate expectations may also arise from an objective assessment of the legal and regulatory framework, even in the absence of specific assurances or representations made by the state to the investor.¹⁵⁵
144. The *UAB Garsu Pasaulis* tribunal’s reasoning is perfectly applicable to the present case. When Mr Machado invested in Angola in 2017, he was entitled to expect that Angola’s executive and judiciary would abide by their own substantive and procedural laws in a consistent, reasonable and transparent manner, and that, consequently, his rights would not be affected without due process.
145. The CPC requires that a judicial depositary hold the assets in trust with the diligence and zeal of a *bonus pater familias*. This includes a fiduciary duty to safeguard the integrity of the assets.¹⁵⁶
146. IGAPE breached its fiduciary duty as trustee of the Four Turbines by allowing them to be removed from judicial custody and permitting their installation and connection to the national power grid. As will be further detailed below,¹⁵⁷ the continuous operation of the turbines, which were brand new and unused when they were seized, has significantly deteriorated them.
147. This deterioration also frustrates the purpose of the court-mandated temporary seizure, which was to ensure their value is preserved until a decision was reached in the underlying procedure.¹⁵⁸
148. Notably, there is no provision in the CPC that authorises the use of movable seized assets, such as turbines. Exceptionally, the CPC allows for the use of seized vessels only where both the party seeking enforcement and the enforcement debtor agree beforehand, and judicial authorisation is obtained.¹⁵⁹
149. Even if one were to draw an analogy between the use of the turbines and the use of vessels, Angola would have still required, at a minimum, Aenergy’s prior consent as well as judicial authorisation by the Provincial Court of Luanda to install, start-

¹⁵⁵ **CLA-96**, *Murphy Exploration & Production Company v. Ecuador*, UNCITRAL, Partial Award, 6 May 2016, ¶248.

¹⁵⁶ **CLA-13**, Civil Procedure Code of Angola (with informal translation into English), 28 December 1961, article 843(1).

¹⁵⁷ See section V.C.2 below.

¹⁵⁸ **C-17**, Ruling of the Provincial Court of Luanda on the preventive seizure of Aenergy’s Four Turbines (with informal translation into English), 5 December 2019, p. 30.

¹⁵⁹ **CLA-13**, Civil Procedure Code of Angola (with informal translation into English), 28 December 1961, article 852.

up and use the turbines. Neither were granted and Angola has not alleged or proven otherwise.

150. Moreover, Aenergy sent, on two different occasions, information requests to the Provincial Court of Luanda.¹⁶⁰ Pursuant to the CPC, the court had five days to answer these requests.¹⁶¹ After more than three years, the court has yet to provide a response.
151. Angola has manifestly disregarded all legal safeguards governing the seizure and handling of the Four Turbines. By failing to apply its substantive and procedural laws in a consistent, reasonable and transparent manner, Angola effectively deprived Mr Machado of his legally recognised rights without due process. These actions and omission by Angola frustrated Mr Machado’s legitimate expectations and constitute a breach of the FET standard.

3. Angola has failed to grant the Claimant due process and to act transparently

152. Due process and transparency are further core elements of the FET standard.¹⁶² The tribunal in *Lemire v. Ukraine* highlighted that “*whether due process has been denied to the investor*” and “*whether there is an absence of transparency in the legal procedure or in the actions of the State*” are two relevant factors to determine a breach of the FET obligation.¹⁶³ In the present case, the two elements are linked.
153. Different tribunals have recognised that due process breaches include:¹⁶⁴
- (i) not notifying the investor of hearings or decisions;

¹⁶⁰ **C-23**, Aenergy’s request to the Provincial Court of Luanda (with informal translation into English), 22 April 2022; **C-25**, Aenergy’s request to the Provincial Court of Luanda (with informal translation into English), 24 May 2022

¹⁶¹ **CLA-13**, Civil Procedure Code of Angola (with informal translation into English), 28 December 1961, article 159(2).

¹⁶² **CLA-32**, Fair and Equitable Treatment: Today’s Contours, Rudolf Dolzer, 12 Santa Clara J. Int’l L. 7-33, 17 January 2014, pp. 24-25; **CLA-97**, *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Award, 2 July 2018, ¶¶436-437; **CLA-98**, *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009, ¶178; **CLA-41**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶289.

¹⁶³ **CLA-36**, *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010, ¶284.

¹⁶⁴ **CLA-38**, *Lion Mexico Consolidated L.P. v. Mexico*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021, ¶228; **CLA-99**, *Mohammad Ammar Al-Bahloul v. Tajikistan*, SCC Case No. V (064/2008), Partial Award on Jurisdiction and Liability, 2 September 2009, ¶221; **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶479; **CLA-39**, *Serafin García Armas and Karina García Gruber v. Venezuela*, PCA Case No. 2013-03, Final Award, 26 April 2019, ¶347; **CLA-51**, *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶¶617-618; **CLA-100**, *Deutsche Bank AG v. Sri Lanka*, ICSID Case No. ARB/09/02, Award, 13 October 2012, ¶¶485-489.

- (ii) deciding in the investor's absence;
- (iii) unjustified delays;
- (iv) unjustified lack of response;
- (v) denying the investor the opportunity to present its case;
- (vi) governmental influence in court proceedings.

154. Tribunals have also identified an absence of transparency in the opaqueness and lack of candour in the conduct of legal or administrative proceedings by state organs, including failures to provide clear reasoning, or access to evidence or decision-making criteria.¹⁶⁵

155. For instance, in *Deutsche Bank v. Sri Lanka*, the tribunal concluded that a compliance investigation conducted by the central bank of Sri Lanka against the claimant, Deutsche Bank, lacked transparency and due process. The determining factors in reaching this conclusion were: (i) absence of a documentary record, (ii) the claimant was notified of the investigation against it once the investigation report had already been issued, (iii) the report was sent to the claimant almost a month after it was issued, and (iv) the claimant was not granted the opportunity to respond to the report.¹⁶⁶

156. In a similar vein, in *Rumeli v. Kazakhstan*, the tribunal found that the process by which a state organ reviewed and confirmed the termination of the claimant's investment contract lacked transparency and due process. The decision in question (i) had been summarily reasoned, (ii) relied on grounds that were different from those relied on for the initial termination of the contract, and (iii) was adopted through a proceeding in which the claimants were not afforded a genuine opportunity to present their case.¹⁶⁷

157. Failure to provide reasons for decisions by governmental authorities that impact investors' rights has also been held to violate both due process and transparency obligations, thereby amounting to a breach of the FET standard.¹⁶⁸

¹⁶⁵ **CLA-51**, *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶617; **CLA-100**, *Deutsche Bank AG v. Sri Lanka*, ICSID Case No. ARB/09/02, Award, 13 October 2012, ¶485; **CLA-101**, *Cargill Incorporated v. Poland*, UNCITRAL, Award, 5 March 2008, ¶517; **CLA-90**, *Siemens v. Argentina*, ICSID Case No. ARB/02/8, Award, 17 January 2007, ¶308.

¹⁶⁶ **CLA-100**, *Deutsche Bank AG v. Sri Lanka*, ICSID Case No. ARB/09/02, Award, 13 October 2012, ¶¶485-489.

¹⁶⁷ **CLA-51**, *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶¶617-618.

¹⁶⁸ **CLA-101**, *Cargill Incorporated v. Poland*, UNCITRAL, Award, 5 March 2008, ¶517; **CLA-102**, *Teco Guatemala Holdings LLC v. Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013, ¶457.

158. Venezuela’s conduct in *García Armas and García Gruber v. Venezuela* and *Smurfit v. Venezuela* is also illustrative of what constitutes breaches of due process, and thus violations of the FET standard.
159. In *García Armas*, the tribunal found that the lack of response by Venezuela to submissions made by the claimants in the proceedings that confirmed the preventive seizure of their investment, coupled with the permanent occupation of their investment, constituted a serious breach of due process, and consequently, a breach of the FET standard.¹⁶⁹
160. In *Smurfit*, Venezuela – much like Angola in the present case – initiated “recovery proceedings” to transfer private land titles to the state, asserting that the claimant’s lands were public property.¹⁷⁰ However, while those proceedings were pending, Venezuela took possession of the land and publicly referred to it as “of the people”, effectively treating it as state-owned.¹⁷¹ The tribunal found that this *de facto* taking, carried out in the absence of a final decision in the recovery proceedings, was inconsistent with due process.¹⁷² Furthermore, the tribunal held that the notification of the final decision to the claimant four years after it had been issued constituted an additional breach of due process.¹⁷³
161. The tribunals’ reasoning in the decisions analysed above are perfectly applicable to the facts of the present case. Angola’s conduct in relation to the taking of the Four Turbines lacked both transparency and due process, thereby breaching the FET standard. In particular:
- (i) Angola removed the turbines from judicial custody and installed them in state-owned power plants, in a process to which Mr Machado was not made privy. Neither the Provincial Court of Luanda nor any other State organ ever summoned Aenergy or Mr Machado to a hearing, thus depriving them of the opportunity to object to the measure.
 - (ii) Angola never issued a formal decision authorising the removal of the Four Turbines from judicial custody, their installation or their connection to the power grid. There is no documentary evidence indicating which State organ adopted the decision, the reasons for it, when it was made, or how it was executed. The absence of a formal decision also deprived Mr Machado of the

¹⁶⁹ **CLA-39**, *Serafín García Armas and Karina García Gruber v. Venezuela*, PCA Case No. 2013-03, Final Award, 26 April 2019, ¶347.

¹⁷⁰ See ¶108 above.

¹⁷¹ **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶412.

¹⁷² **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶479.

¹⁷³ **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶479.

opportunity to challenge the measure(s) and seek redress before the local courts.

- (iii) The Provincial Court of Luanda and IGAPE unjustifiably ignored Aenergy's information requests and, to this day, have not provided any information regarding the whereabouts of the Four Turbines, their condition, or the reasons for their removal from custody.¹⁷⁴
- (iv) Angola never notified Mr Machado or Aenergy of the installation and connection of the Four Turbines. Mr Machado had to piece together the information, relying on very limited public sources. Angola only acknowledged the installation and connection of the turbines in its power plants after Mr Machado raised the issue in his Notice of Dispute.¹⁷⁵
- (v) Angola has *de facto* appropriated the turbines and used them as if they were public property in the absence of a decision in the court proceedings initiated by Angola in Luanda.
- (vi) The Angolan courts are not independent from governmental influence. Without the collusion of the Provincial Court of Luanda, the Angolan Government could not have removed the Four Turbines from judicial custody. Moreover, as previously explained, the Provincial Court of Luanda recently summoned Aenergy to a hearing in the local proceedings, specifically in May 2025, *i.e.*, more than five years after the last activity in the case.¹⁷⁶ Notably, this sudden development occurred only after Mr Machado initiated this arbitration and shortly before the Tribunal's decision on the Respondent's Rule 41 objection.
- (vii) The Provincial Court of Luanda has unjustifiably delayed the local proceedings, allowing more than five years of inactivity to pass and taking action only when it appeared to serve the Government's interests.

162. Consequently, Angola has failed to act in a transparent manner and grant Mr Machado due process of law. These failures by Angola, in turn, violate the FET standard provided in article 4(2) of the BIT.

¹⁷⁴ C-23, Aenergy's request to the Provincial Court of Luanda (with informal translation into English), 22 April 2022; C-24, Letter from Aenergy to IGAPE (with informal translation into English), 22 April 2022; C-25, Aenergy's request to the Provincial Court of Luanda (with informal translation into English), 24 May 2022.

¹⁷⁵ C-16, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶¶26-27.

¹⁷⁶ See ¶¶54-59 above.

4. Angola has arbitrarily impaired the Claimant's investment

163. In addition to the general FET standard, article 4(3) of the BIT includes a standalone provision requiring Angola to refrain from impairing the “*management, maintenance, use, enjoyment, or disposal*” of investments by “*arbitrary or discriminatory measures*”.¹⁷⁷
164. The removal from judicial custody, installation and connection of the Four Turbines to the Angolan national grid have impaired Mr Machado's investment in an arbitrary manner, in contravention of article 4(3) of the BIT.
165. The *Plama v. Bulgaria* tribunal determined that arbitrary measures are “*those which are not founded in reason or fact but on caprice, prejudice or personal preference*”.¹⁷⁸ In line with this definition, the *B3 v. Croatia* tribunal found that “[a] State's conduct will be arbitrary when the State acts capriciously, without a legitimate purpose, when it repudiates its own laws and regulations or when it shows preference or bias, as opposed to even-handedness”.¹⁷⁹
166. Moreover, as defined by Christoph Schreuer, a measure is arbitrary if “*taken in willful disregard of due process and proper procedure*” or “*taken for reasons that are different from those put forward by the decision maker*”.¹⁸⁰
167. The removal of the Four Turbines from judicial custody along with their installation and connection to the national power grid constitute arbitrary measures for the following reasons:
- (i) These actions are not founded on any legitimate reason or fact but rather on Angola's whims. As noted above, Angola's decision to remove the Four Turbines from judicial custody by installing and connecting them thwarts the purpose of the preventive seizure.¹⁸¹
 - (ii) Angola's measures do not pursue a legitimate purpose. As explained above, Angola chose to bypass the very procedure it had initiated and went on to *de facto* appropriate the turbines despite the absence of a final decision in the local proceedings.¹⁸²

¹⁷⁷ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 4(3).

¹⁷⁸ **CLA-103**, *Plama Consortium Limited v. Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008, ¶184.

¹⁷⁹ **CLA-94**, *B3 Croatia Courier Coöperatief U.A. v. Croatia*, ICSID Case No. ARB/15/5, Excerpts of Award, 5 April 2019, ¶839.

¹⁸⁰ **CLA-40**, *OI European Group B.V. v. Venezuela*, ICSID Case No. ARB/11/25, Award (with informal translation into English), 10 March 2015, ¶494.

¹⁸¹ See ¶147 above.

¹⁸² See ¶161(v) above.

- (iii) Angola's actions are contrary to its own legal provisions and were carried out in violation of due process, as noted above.¹⁸³
- (iv) As explained, Angola never responded to Aenergy's repeated information requests and has never provided any explanation for its lack of response.¹⁸⁴ A government authority's prolonged silence towards a defendant, without any reasonable basis or explanation, has also been found to be relevant in assessing whether there has been arbitrary treatment.¹⁸⁵
- (v) Angola's measures were taken for reasons different from those put forward by the State. Angola's contradictions show that it has not been forthright regarding its real motivations for the expropriation of the Four Turbines.¹⁸⁶
 - (a) Despite having expressly acknowledged that the turbines had to be properly stored to ensure their conservation in good condition until a decision was reached in the main proceedings in Luanda,¹⁸⁷ Angola suddenly claimed that it was rather their deployment that is necessary to avoid decay,¹⁸⁸ a contradiction of both its previous statements and logic.¹⁸⁹
 - (b) Angola claimed the turbines were installed because they have "*already been wholly paid for by the Government*", while simultaneously maintaining that their deployment was merely temporary.¹⁹⁰

As mentioned, the court proceedings in Luanda are still pending and aim to determine whether Angola has, in fact, paid for the turbines.¹⁹¹ Angola's assertion is therefore particularly troubling, as it presupposes a favourable outcome in judicial proceedings that are still ongoing. If Angola is acting on the basis that it has full and permanent rights over the turbines, the taking cannot be deemed temporary.

¹⁸³ See sections V.B.2 and V.B.3 above.

¹⁸⁴ See ¶161(iii) above.

¹⁸⁵ **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶480.

¹⁸⁶ See **CLA-40**, *OI European Group B.V. v. Venezuela*, ICSID Case No. ARB/11/25, Award (with informal translation into English), 10 March 2015, ¶512.

¹⁸⁷ Respondent's Rule 41 Submission, ¶69; **C-15**, Request for preventive seizure of Aenergy's Four Turbines (with informal translation into English), 4 October 2019, ¶75; **C-16**, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶23.

¹⁸⁸ **C-16**, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶25.

¹⁸⁹ See section V.C.2 below.

¹⁹⁰ **C-16**, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶26.

¹⁹¹ See ¶¶24-31 above.

- (c) Angola also vaguely claimed that “*due to the social function that they may perform*” the turbines must not remain inactive.¹⁹² The variety of inconsistent explanations shows that Angola is attempting to justify its conduct by any pretexts available.
- (d) Moreover, in an effort to cover up the expropriation, the Respondent suddenly claimed to have “*always acknowledged that the turbines in question are of Aenergy S.A.’s property*”.¹⁹³ This is untenable given Angola’s repeated affirmations that ownership of the turbines has already been transferred to the State.¹⁹⁴

168. The Respondent’s multiple contradictions show that it has not been forthright about the real reasons for the installation of the Four Turbines. As shown, Angola already considers the turbines to be its property. The various excuses put forward in these proceedings serve only to distract from this underlying assumption, which is the true reason for the taking.

169. Thus, for the reasons stated above, the Respondent has arbitrarily impaired the management, maintenance, use, enjoyment, and disposal of the Claimant’s investment, in breach of article 4(3) of the BIT.

C. Angola has breached its obligation to provide FPS

170. Angola has failed to uphold the FPS standard in relation to Mr Machado’s investment.

1. The FPS standard

171. The Respondent has also breached its duty to provide FPS to the Claimant’s investment, in accordance with article 4(2) of the BIT:¹⁹⁵

“Investments made by investors of each Party [...] shall enjoy full protection and security in the territory of the other Party”.

172. The FPS standard of protection entails an obligation of result; such obligation requires the State and its organs to abstain from directly causing physical harm to

¹⁹² **C-16**, Angola’s response to Mr Machado’s notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶25.

¹⁹³ **C-16**, Angola’s response to Mr Machado’s notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶23.

¹⁹⁴ See Respondent’s Rule 41 Submission, ¶¶58, 69; **C-15**, Request for preventive seizure of Aenergy’s Four Turbines (with informal translation into English), 4 October 2019, ¶47; **C-19**, Angola’s lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶¶46-52.

¹⁹⁵ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 4(2).

protected investments.¹⁹⁶ Rudolf Dolzer and Christoph Schreuer explain that “[w]hen ever state organs themselves act in violation of the standard, or significantly contribute to such action, no such issues of attribution or due diligence will arise because the state will then be held directly responsible”.¹⁹⁷

173. Tribunals have also found that this protection extends beyond the physical security of an investment, and encompasses its legal security as well.¹⁹⁸ In this sense, the *Frontier Petroleum v. Czech Republic* tribunal determined that “it is apparent that the duty of protection and security extends to providing a legal framework that offers legal protection to investors – including both substantive provisions to protect investments and appropriate procedures that enable investors to vindicate their rights”.¹⁹⁹
174. For the *National Grid v. Argentina* tribunal, this conclusion was reinforced by “the inclusion of this commitment in the same article of the Treaty as the language on fair and equitable treatment”.²⁰⁰ Such is the case of the present BIT, where both the FET and FPS standards are included in article 4(2).

2. Angola has failed to accord FPS to Mr Machado’s investment

175. The Respondent, by its acts and omissions, has breached the FPS standard for the following reasons.
176. First, Angola has breached the FPS standard by physically damaging Mr Machado’s investment through the installation and continuous operation of the Four Turbines in state-owned power plants. Even if operated under ideal conditions, the mere use of gas turbines causes normal wear and tear. The deterioration of the Four Turbines is very much exacerbated by their use under the conditions prevalent in Angola (*i.e.*, high dust levels, humidity, extreme heat and coastal conditions with salt-laden air).

¹⁹⁶ **CLA-43**, *Cengiz İnşaat Sanayi ve Ticaret A.Ş v. Libya*, ICC Case No. 21537/ZF/AYZ, Final Award, 7 November 2018, ¶405.

¹⁹⁷ **CLA-69**, *Principles of International Investment Law* (Second edition), Rudolf Dolzer and Christoph Schreuer, Oxford University Press, 2012 (excerpts), p. 10.

¹⁹⁸ See **CLA-42**, *Biwater Gauff (Tanzania) Limited v. Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶¶729-730; **CLA-104**, *Glencore Finance (Bermuda) Limited v. Bolivia*, PCA Case No. 2016-39, Award, 8 September 2023, ¶240; **CLA-105**, *Anglo American PLC v. Venezuela*, ICSID Case No. ARB(AF)/14/1, Award, 18 January 2019, ¶482; **CLA-46**, *Azurix Corp. v. Argentina (I)*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶408; **CLA-77**, *CME Czech Republic B.V. (The Netherlands) v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, ¶613; **CLA-106**, *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Award, 27 March 2020, ¶664. The State’s responsibility extends to actions perpetrated by its organs as well as their omissions. See **RL-0012**, *International Law Commission’s 2001 Articles on the Responsibility of States for Internationally Wrongful Acts*, 12 December 2001, articles 2 and 4.

¹⁹⁹ **CLA-41**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶263.

²⁰⁰ **CLA-45**, *National Grid PLC v. Argentina*, UNCITRAL, Award, 3 November 2008, ¶189.

177. TM2500 GE turbines, such as the Four Turbines, convert mechanical motion into electricity by burning fuel or gas. Fuel quality is a critical factor impacting the turbines' lifespan. Poor-quality fuels, commonly used in Angola,²⁰¹ contain particulates, alkali metals, and other contaminants that erode and corrode turbine components. Using off-specification fuels accelerates wear and increases the need for frequent repairs, thereby reducing the overall lifespan of the turbine.
178. Moreover, the environmental conditions in Angola further impact turbine durability. High dust levels, humidity, extreme heat and coastal conditions with salt-laden air can exacerbate wear and tear on components. Turbines operating under these conditions require enhanced filtration systems and anti-corrosion measures to mitigate damage and sustain performance. To extend the lifespan of TM2500 GE turbines in Angola, it is essential to use fuel that meets the manufacturer's specifications, invest in preventative maintenance, and implement advanced filtration systems to manage environmental contaminants.
179. Failure to meet GE's technical fuel specifications exposes the turbines to significant risks, including material degradation, reduced performance, increased emissions, and shortened equipment lifespan. In fact, GE does not provide a warranty for the equipment or for any repaired or replacement parts against wear and tear resulting from environmental or operational conditions, fuel type or quality, adverse air inlet conditions, erosion, corrosion, or material deposits from fluids.²⁰²
180. Aenergy alerted Angola on three separate occasions that, in the absence of proper maintenance, the turbines faced a significant risk of deterioration.²⁰³ Nevertheless, Angola ignored these warnings and proceeded with the installation, causing severe physical harm to otherwise unblemished turbines. This constitutes a breach of the FPS standard by Angola.
181. *Second*, Angola has breached its FPS obligation by failing to provide legal protection and security to Mr Machado's investment.
182. The *A.M.F v. Czech Republic* tribunal explained that "[o]ne particular application of the FPS standard [...] is the host State's duty to maintain a functioning judicial

²⁰¹ C-40, Gas Turbines Contractual Service Agreement between Aenergy, General Electric International and GE Packaged Power, Exhibit K, 31 March 2017 ("The Parties jointly accept and recognize that they are fully aware of the current constraints and problems regarding the monitoring and testing of the diesel quality records in Angola. Both Parties agree to cooperate jointly with best efforts, within 6 months from the Contract Effective Date, to overcome and minimize these constraints and problems by adopting alternative control procedures, to be agreed by the Parties, in order to realistically and effectively prevent any Assumption Deviation related to the diesel fuel quality").

²⁰² See C-41, Contract for Sale of Equipment and Services No. 1049882 between Aenergy and GE Global Parts & Products GmbH, 30 March 2017, clause 9(e) of the General Terms and Conditions (Attachment 2), p. 71.

²⁰³ C-23, Aenergy's request to the Provincial Court of Luanda (with informal translation into English), 22 April 2022; C-24, Letter from Aenergy to IGAPE (with informal translation into English), 22 April 2022; C-25, Aenergy's request to the Provincial Court of Luanda (with informal translation into English), 24 May 2022.

system and make it available to foreign investors seeking redress”.²⁰⁴ In the same vein, the *Frontier Petroleum* tribunal determined that the duty to provide legal protection to investors includes “*both substantive provisions to protect investments and appropriate procedures that enable investors to vindicate their rights*”.²⁰⁵

183. Angola, far from providing an appropriate procedure for Mr Machado to vindicate his rights, has been unresponsive and opaque in its conduct. As explained above, Angola acted unilaterally and covertly without issuing notifications or formal decisions.²⁰⁶
184. The lack of a formal decision regarding the taking and installation of the turbines deprived Mr Machado of the opportunity to appeal it before the local courts, therefore rendering the Angolan judicial system effectively useless for Mr Machado to vindicate his rights.²⁰⁷
185. Angola not only failed to provide an appropriate procedure for the Claimant to vindicate its rights, but it also actively impeded it by deliberately ignoring the repeated requests for information on the turbines’ whereabouts and conditions.²⁰⁸
186. These unjustifiable omissions enabled the unlawful taking and eliminated any prospect of local redress, forcing Mr Machado to pursue international arbitration in order to obtain some remedy for the harm inflicted on his investment.
187. As explained above, if State organs themselves act in violation of the standard, the State must be held directly responsible for the breach.²⁰⁹ Such is the case here.
188. Accordingly, Angola has breached its obligation to provide FPS under article 4(2) of the BIT (i) by actively participating in the physical deterioration of the Four Turbines through their unlawful installation and operation in state-owned power plants, and (ii) by failing to provide Mr Machado’s investment with adequate legal protection and security.

VI. The Respondent must compensate the Claimant for its breaches of the BIT

189. Under customary international law, Angola must provide full reparation for all damages caused by its breaches of the BIT. This requires that Mr Machado be placed in the same position he would be in had the breaches not occurred. The compensation shall be calculated as of the date of expropriation or the date the

²⁰⁴ **CLA-107**, *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic*, PCA Case No. 2017-15, Final Award, 11 May 2020, ¶648.

²⁰⁵ **CLA-41**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶263.

²⁰⁶ See ¶¶161(i)-(ii) above.

²⁰⁷ See ¶161(ii) above.

²⁰⁸ See ¶¶49, 117, 150, 161(iii) above.

²⁰⁹ See ¶172 above.

award is issued, whichever is higher and provides full reparation for Mr Machado's damages. The applicable compensation must be monetary and must include both pre-award and post-award interest at a commercially reasonable rate.

A. The applicable standard of compensation is that of full reparation

190. As will be explained in the following subsections, (i) pursuant to international law, the applicable compensation standard is full reparation, (ii) Angola must provide full reparation for any damages that would not have occurred *but for* its unlawful actions, and (iii) compensation must be calculated either on the date the expropriation materialised or the date of the award, whichever provides full reparation to Mr Machado.

1. The standard of full reparation under international law

191. The applicable legal standard depends on whether an expropriation is lawful or unlawful. A lawful expropriation gives rise to an obligation to compensate under the treaty,²¹⁰ while an unlawful expropriation constitutes a breach of international obligations giving rise to a duty to pay damages under customary international law.²¹¹ The distinction between lawful and unlawful expropriations is necessary because, otherwise, there would be no need to distinguish between the financial consequences of lawful and unlawful actions by states.²¹²

192. As stated in *ADC v. Hungary*:²¹³

“The BIT only stipulates the standard of compensation that is payable in the case of a lawful expropriation, and these cannot be used to determine the issue of damages payable in the case of an unlawful expropriation since this would be to conflate compensation of a lawful expropriation with damages for an unlawful expropriation”.

193. Article 7(3) of the BIT establishes fair market value as the standard for compensation for a lawful expropriation:²¹⁴

²¹⁰ **CLA-108**, Calculation of compensation and damages in international arbitration (Second edition), Irmgard Marboe, Oxford International Arbitration Series, 2017, Chapter 2, ¶¶2.24-2.25; **CLA-109**, Calculation of compensation and damages in international arbitration (Second edition), Irmgard Marboe, Oxford International Arbitration Series, 2017, Chapter 3, ¶3.102.

²¹¹ **CLA-108**, Calculation of compensation and damages in international arbitration (Second edition), Irmgard Marboe, Oxford International Arbitration Series, 2017, Chapter 2, ¶¶2.32-2.33; **CLA-109**, Calculation of compensation and damages in international arbitration (Second edition), Irmgard Marboe, Oxford International Arbitration Series, 2017, Chapter 3, ¶3.102.

²¹² **CLA-109**, Calculation of compensation and damages in international arbitration (Second edition), Irmgard Marboe, Oxford International Arbitration Series, 2017, Chapter 3, ¶3.81.

²¹³ **CLA-37**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶481.

²¹⁴ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(3).

“Compensation must be equal to the real market value of the expropriated investments on the date immediately prior to the expropriation or the date on which it becomes public knowledge, whichever is the earlier, regardless of the previous value of the investment. The compensation will include interest at the commercial rate applicable from the date of expropriation until the date of payment, and must be effectively realisable.”

194. If the applicable bilateral investment treaty does not stipulate an applicable standard of compensation for unlawful expropriations or other treaty breaches – as in this case – the state must provide full reparation in accordance with customary international law, following the standard established in the *Chorzów Factory* case.²¹⁵
195. Pursuant to *Chorzów Factory*, the injured party must be restored to the position it would have occupied had the wrongful act not occurred.²¹⁶ The principle of full reparation, as set out in *Chorzów Factory*, is widely accepted as the authoritative measure for compensation arising from internationally wrongful conduct.²¹⁷ This principle is further enshrined in article 31 of the ILC Articles on State Responsibility for Internationally Wrongful Acts.²¹⁸
196. In addition, damages awarded for unlawful expropriation must not fall below those available for lawful takings.²¹⁹ Doing so would result in a perverse incentive structure whereby states could benefit from non-compliance with treaty obligations.
197. Accordingly, where an expropriation is unlawful, or where an investor’s treaty-protected rights – such as FET or FPS – have been breached, the investor is entitled to full reparation pursuant to the standard set forth in *Chorzów Factory* and customary international law, with fair market value as the minimum compensation.

²¹⁵ **CLA-110**, Compensation, Damages, and Restitution, Borzu Sabahi, Noah Rubins, and Don Wallace Jr., Investor-State Arbitration (Second edition), 2019, Chapter XXI, 1 September 2019, ¶¶21.04-21.05.

²¹⁶ **CLA-111**, *Factory at Chorzów (Germany v. Poland)*, PCIJ Series A. No 17, Judgement, 13 September 1928, ¶125 (“*The essential principle contained in the actual notion of an illegal act – a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish 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 due for an act contrary to international law*”).

²¹⁷ **CLA-112**, *Gold Reserve v. Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, ¶678.

²¹⁸ **RL-0012**, International Law Commission’s 2001 Articles on the Responsibility of States for Internationally Wrongful Acts, 12 December 2001, article 31 (“*1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act. 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State*”).

²¹⁹ See **CLA-55**, *Ascom Group S.A., Anatolie Stati, Gabriel Stati and Terra Raf Trans Trading Ltd. v. Kazakhstan (I)*, SCC Case No. 116/2010, Award, 19 December 2024, ¶¶1460-1461; **CLA-47**, *Compañía de Aguas del Aconquija S.A. v. Argentina (I)*, ICSID Case No. ARB/97/3, Award II, 20 August 2007, ¶¶8.2.3-8.2.5.

2. Full reparation must be ordered for all damages that would not have occurred *but for* the unlawful acts, with fair market value as the minimum compensation

198. Under article 31 of the ILC Articles on State Responsibility, reparation is owed only for injuries directly resulting from an internationally wrongful act.²²⁰ This reflects the general legal principle that compensation requires a demonstrable causal connection between the breach and the harm suffered.²²¹
199. In practical terms, a claimant must establish that the injury would not have occurred *but for* the wrongful conduct, raising the question of how far the causal chain can reasonably extend. However, the assessment of causality is deeply fact-specific, and tribunals have approached it in varying ways depending on the circumstances of each case.²²²
200. The standard articulated in the *Chorzów Factory* case underpins modern compensation analysis, requiring the construction of a counterfactual scenario – an assessment of what would likely have happened *but for* the wrongful act.²²³ This requires a reasoned projection of how the investment would have evolved in legitimate circumstances.
201. In *Lemire v. Ukraine*, for instance, the tribunal found a violation of the FET standard where the claimant was prevented from participating in a tender process for broadcasting licenses. The tribunal articulated a three-part test to assess causation: there must be a cause, an effect, and a logical connection between them.²²⁴ The tribunal held that the element of causation was proven because the damages suffered by the investor were inflicted “*through a foreseeable and proximate chain of events*” caused by wrongful acts of Ukraine.²²⁵
202. Accordingly, the determination of compensation requires a factual link between the allegedly unlawful conduct and the compensation requested, which must be determined on a case-by-case basis.
203. In any case, fair market value constitutes the minimum standard of compensation.

²²⁰ **RL-0012**, International Law Commission’s 2001 Articles on the Responsibility of States for Internationally Wrongful Acts, 12 December 2001, article 31.

²²¹ **CLA-110**, Compensation, Damages, and Restitution, Borzu Sabahi, Noah Rubins, and Don Wallace Jr., Investor-State Arbitration (Second edition), 2019, Chapter XXI, 1 September 2019, ¶¶21.31.

²²² **CLA-110**, Compensation, Damages, and Restitution, Borzu Sabahi, Noah Rubins, and Don Wallace Jr., Investor-State Arbitration (Second edition), 2019, Chapter XXI, 1 September 2019, ¶¶21.33.

²²³ **CLA-111**, *Factory at Chorzów (Germany v. Poland)*, PCIJ Series A. No 17, Judgement, 13 September 1928, ¶125.

²²⁴ **CLA-113**, *Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, ¶157.

²²⁵ **CLA-113**, *Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, ¶252.

3. Compensation must be calculated as of the date of the expropriation or the date of the award, whichever is higher and puts the investor in the same position he would have been in *but for* the unlawful actions

204. When the value of expropriated property increases between the date of expropriation and the date of the award, investment tribunals have held that an expropriating state cannot benefit from this differential in cases of unlawful expropriation by merely paying the property's value at the time of expropriation.²²⁶
205. This principle was established in the *Chorzów Factory* case.²²⁷ It is therefore necessary to ascertain both the value of the expropriated property at the time of expropriation and the value of the property at the time the award is issued. The Tribunal must award whichever amount is higher in cases of unlawful expropriation, in order to provide full reparation to the investor.²²⁸
206. In *ADC v. Hungary*, for example, the tribunal held that the case was distinguishable from others because the value of the investment had risen considerably after the expropriation.²²⁹ Consequently, the tribunal decided that, in order for the investor to be placed in the same position as if the expropriation had not occurred, the date of valuation had to be the date of the award.²³⁰

“[T]he application of the *Chorzów Factory* standard requires that the date of valuation should be the date of the Award and not the date of expropriation, since this is what is necessary to put the Claimants in the same position as if the expropriation had not been committed. This kind of approach is not without support”.

207. A similar conclusion was reached in *Unglaube v. Costa Rica*, where the tribunal awarded compensation reflecting the rising value of beachfront property in the region, emphasising that legitimate market developments unrelated to the breach must be considered when quantifying damages.²³¹

²²⁶ **CLA-109**, Calculation of compensation and damages in international arbitration (Second edition), Irmgard Marboe, Oxford International Arbitration Series, 2017, Chapter 3, ¶3.107.

²²⁷ **CLA-111**, *Factory at Chorzów (Germany v. Poland)*, PCIJ Series A. No 17, Judgement, 13 September 1928, ¶124 (“It follows that the compensation due to the German government is not necessarily limited to the value of the undertaking at the moment of dispossession, plus interest to the date of payment. This limitation would only be admissible if the Polish Government had had the right to expropriate, and if the wrongful act consisted merely in not having paid to the two Companies the just price of what was expropriated; in the present case, such a limitation [...] would be tantamount to rendering lawful liquidation and unlawful dispossession indistinguishable in so far as their financial results are concerned”).

²²⁸ **CLA-109**, Calculation of compensation and damages in international arbitration (Second edition), Irmgard Marboe, Oxford International Arbitration Series, 2017, Chapter 3, ¶3.108.

²²⁹ **CLA-37**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶496.

²³⁰ **CLA-37**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶497.

²³¹ **CLA-114**, *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1-ARB/09/20, Award, 16 May 2012, ¶¶313-318.

208. In *ConocoPhillips v. Venezuela*, the claimants requested that the valuation date be the date of the award, rather than the date of the taking, because of improved market conditions.²³² The tribunal held that, since there was an unlawful expropriation, it was not bound by the respondent's cited cases using the expropriation date for valuation.²³³ The tribunal consequently determined that "*if the taking was unlawful, the date of valuation is in general the date of the award*".²³⁴
209. Accordingly, in cases of unlawful expropriation, investors are entitled to compensation based on the higher of two valuations – either on the date of the taking or on the date of the award – to ensure they are placed in the same position they would have been in had the expropriation not occurred.

B. The Claimant must be put in the same position he would have been in had the Respondent not breached its obligations under the BIT

210. Angola's breaches of the BIT set out in sections V.A, V.B and V.C above have directly resulted in the damages now claimed by Mr Machado. Consequently, Mr Machado must be put in the same position he would have been in had the unlawful actions not taken place. If the Tribunal determines that Mr Machado lacks standing to bring direct claims for breaches of FET and FPS affecting the Four Turbines, then, alternatively, Mr Machado claims that he is entitled to recover the loss in value of his shares in Aenergy.

1. The Respondent's actions caused the Claimant's damages

211. There is a causal link between Angola's actions and Mr Machado's damages: the latter are a direct consequence of the former. Obviously, *but for* Angola's unlawful actions, Mr Machado would not have been deprived of the Four Turbines. It was the installation and connection of the Four Turbines, coupled with the Angolan authorities' complicity, that removed the Four Turbines from judicial custody and deprived Mr Machado of them.
212. The Four Turbines were under the custody of IGAPE, an Angolan public agency, while the Provincial Court of Luanda, an Angolan court, decided their fate. Both authorities stood by as the turbines were taken out of judicial custody and connected to the power grid, making them directly responsible for the expropriation of the Four Turbines. Both authorities also ignored Mr Machado's requests for information, thereby confirming their complicity in the taking of the turbines.

²³² **CLA-115**, *ConocoPhillips v. Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and Merits, 3 September 2013, ¶337.

²³³ **CLA-115**, *ConocoPhillips v. Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and Merits, 3 September 2013, ¶342.

²³⁴ **CLA-115**, *ConocoPhillips v. Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and Merits, 3 September 2013, ¶343.

213. The Four Turbines were in judicial custody, which meant that they had to be preserved until a final resolution of the pending proceeding before the Provincial Court of Luanda was reached.²³⁵ By installing them and connecting them to the national grid, Angola removed them from judicial custody, thus defeating the purpose of the preventive seizure and consummating the treaty breaches.
214. Angola may try to dispute this by arguing that the Provincial Court of Luanda has not yet issued a final decision regarding the ownership of the Four Turbines, and that it might eventually decide in favour of Angola. Angola may also try to seek support in the fact that the Provincial Court of Luanda has recently decided to reactivate the case after five years of inactivity.²³⁶ Nonetheless, if Angola decides to go in this direction, its arguments must fail for the following reasons.
215. *First*, the preventive seizure was not requested nor ordered to protect Angola's supposed property rights over the Four Turbines but to protect the prospect of enforcement of a supposed credit right by Angola against Aenergy.²³⁷ The expropriation was already consummated when Angola installed and connected the Four Turbines to the national power grid in 2022, with the complicity of the Angolan authorities, including the Provincial Court of Luanda.²³⁸ Even if the Provincial Court of Luanda were to now declare that the turbines rightfully belong to Angola (*quod non*), this would not undo the damages already inflicted on Mr Machado. The wrongful acts consisted not merely in the ultimate determination of ownership, but in the manner by which Angola deprived Mr Machado of his property rights. Angola bypassed due process and acted without transparency in the taking, installation and connection of the turbines, and thereby violated Mr Machado's rights under the BIT.
216. *Second*, the timing of any decision by the Provincial Court of Luanda is highly suspect and undermines its legitimacy. As noted above, the case remained entirely dormant for more than five years, with no procedural activity whatsoever.²³⁹ The sudden resuming of proceedings in May 2025 – shortly before the Tribunal's decision on Angola's Rule 41 objection – strongly suggests that the court is not acting independently, but rather in coordination with the Government's litigation strategy in this arbitration.
217. *Third*, any court decision purporting to legitimise Angola's conduct would be abusive and would violate basic principles of justice. The Provincial Court of Luanda enabled the unlawful taking by failing to maintain proper judicial custody of the Four Turbines and by ignoring Aenergy's repeated requests for information. A court that has been complicit in the very conduct it is now asked to legitimise

²³⁵ See ¶¶24-31 above.

²³⁶ C-39, Citation to a preparatory hearing in proceeding No. 34/20-D issued by the Provincial Court of Luanda (with informal translation into English), 15 May 2025.

²³⁷ See ¶26 above.

²³⁸ See section V.A.2 above.

²³⁹ See ¶¶54-59 above.

cannot render a decision that cures the underlying violations of international law. Allowing Angola to retroactively cure its wrongful actions through its domestic courts would set a dangerous precedent, creating perverse incentives for states to act unlawfully, knowing that they can later seek a sham approval by its domestic courts to retroactively legitimise their conduct.

218. For these reasons, any potential argument by Angola relying on the proceeding before the Provincial Court of Luanda having been recently resumed must fail.

2. The Claimant is entitled to be compensated with the fair market value of the Four Turbines

219. All breaches of the BIT (unlawful expropriation, breach of FET and breach of FPS) deprived Mr Machado of his investment. Thus, in this case, there is no need to differentiate between treaty breaches for the purposes of compensation: they have all resulted in the same loss.²⁴⁰
220. As explained above, the full reparation principle stipulated in the widely adopted *Chorzów Factory* case must apply.²⁴¹
221. In this case, Mr Machado is not claiming lost profits or any other damages that would require a but-for analysis. Mr Machado is simply requesting compensation for the fair market value of the Four Turbines.²⁴² Compensating for the fair market value of an investment can fulfil the requirements of the full reparation principle in certain cases.²⁴³ As explained above,²⁴⁴ in the present case, the fair market value, established in the BIT as the standard of compensation for lawful expropriations, constitutes the minimum compensation.

²⁴⁰ See **CLA-47**, *Compañía de Aguas del Aconquija S.A. v. Argentina (I)*, ICSID Case No. ARB/97/3, Award II, 20 August 2007, ¶8.2.8 (“the level of damages necessary to compensate for a breach of the fair and equitable treatment standard could be different from a case where the same government expropriates the foreign investment. [...] Here, however, we are not faced with a need to so differentiate, given our earlier finding that the same state measures infringed both relevant Articles of the BIT and that these measures emasculated the Concession Agreement, rendering it valueless. Put differently, the breaches of Articles 3 and 5 caused more or less equivalent harm”). See also **CLA-116**, *Valores Mundiales, S.L. y Consorcio Andino, S.L. v. Venezuela*, ICSID Case No. ARB/13/11, Award, 25 July 2017, ¶523 (“[T]ribunals have accepted that the same facts that constitute an expropriation may entail breaches of other standards of protection under the respective treaty”).

²⁴¹ See section VI.A above.

²⁴² First Quantum Expert Report by AlixPartners, 11 September 2025, section IV.

²⁴³ **CLA-112**, *Gold Reserve v. Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, ¶680 (“[T]he serious nature of the breach in the present circumstances and the fact that the breach has resulted in the total deprivation of mining rights suggests that, under the principles of full reparation and wiping-out the consequences of the breach, a fair market value methodology is also appropriate in the present circumstances”).

²⁴⁴ See ¶196 above.

222. As explained by AlixPartners in their report, the fair market value of the Four Turbines is USD 128,421,326, as of the estimated dates of their expropriation,²⁴⁵ and USD 157,657,552, as of 31 July 2025 (the most recent month for which the necessary data is available).²⁴⁶ Mr Machado's compensation should be either the former plus applicable interest or the latter, whichever is higher in total.

3. Alternatively, the Claimant must be compensated for the loss in value of his shares in Aenergy

223. If the Tribunal considers that Mr Machado lacks standing to claim that the taking of the Four Turbines also constituted breaches of FET and/or FPS (*quod non*), then, alternatively, Mr Machado claims that the measures that constitute breaches of the FET and/or FPS standards also resulted in a loss in value of the shares in Aenergy, which are a protected investment of Mr Machado.

224. As explained above, both the Four Turbines and Aenergy are protected investments under the BIT.²⁴⁷ Mr Machado's main claim is that Angola's unlawful actions constitute an expropriation of the Four Turbines, as well as breaches of the FET and FPS standards under the BIT.²⁴⁸ However, Angola has put into question Mr Machado's standing to bring direct claims for breaches of the FET and FPS standards affecting the Four Turbines.²⁴⁹

225. Under both the BIT and international law, Mr Machado is entitled to recovery for the loss of assets of his investment.²⁵⁰ If the Tribunal were to be persuaded by the Respondent's argument, the result remains the same because these same unlawful actions by Angola resulted in the total loss of Aenergy's assets, and, consequently, in the loss in value of the shares in Aenergy, which undisputedly belong to Mr Machado.²⁵¹

226. Indeed, the installation and connection of the Four Turbines, as well as the Angolan authorities' complicity in the taking, have caused Aenergy the loss of its assets, *i.e.*, the Four Turbines. This, in turn, has depreciated the value of the shares in Aenergy by the same amount as their fair market value. The loss of a marketable asset by a company results in a loss of value of the company of at least the fair market value of the lost asset.

²⁴⁵ First Quantum Expert Report by AlixPartners, 11 September 2025, ¶¶73-74: USD 64,605,542 for the First Set, as of 31 May 2022, and USD 63,815,784 for the Second Set, as of 15 August 2022.

²⁴⁶ First Quantum Expert Report by AlixPartners, 11 September 2025, ¶¶78-79.

²⁴⁷ See section III.D above.

²⁴⁸ See sections V.A, V.B and V.C above.

²⁴⁹ Respondent's Rule 41 Reply, section 5.

²⁵⁰ See section IV above.

²⁵¹ C-5, Statement issued by Aenergy on the identity of its shareholders (with informal translation into English), 14 February 2024.

227. Consequently, if the Tribunal finds that Mr Machado does not have standing to bring FET and/or FPS claims for the expropriation of the Four Turbines, the Claimant alternatively claims the loss in value of the shares in Aenergy as a result of Angola's unlawful actions.

C. Angola must pay interest

228. Article 38 of the ILC Articles on State Responsibility establishes that:²⁵²

“1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled”.

229. Thus, Mr Machado is entitled to both pre-award and post-award interest in order to be fully restored to the position he would have been in *but for* Angola's unlawful actions. Moreover, investment tribunals have consistently held that interest should be calculated on a compound basis rather than simple interest, as this better reflects commercial reality and ensures full reparation.²⁵³

230. Article 7(3) of the BIT provides some guidance on the applicable interest rate, stating that, in cases of lawful expropriations, compensation shall *“include interest at the commercial rate applicable from the date of expropriation until the date of payment”*.²⁵⁴ However, the BIT does not specify the interest rate for claims for unlawful expropriation, FET, or FPS.

231. The Tribunal can support its analysis of the applicable interest rate on article 7(3) of the BIT, since this article shows an interest rate that the Parties agree to be acceptable under the scenario of lawful expropriations. However, in cases involving unlawful breaches of the BIT – as this one – the applicable interest rate cannot fall short of that applicable to lawful expropriations. This would create perverse incentives for states to conduct unlawful actions.

232. The BIT's reference to “the commercial rate”, without further specification, allows two possible interpretations. In Mr Machado's view, this refers to the commercial rate applicable to the host country, *i.e.*, Angola's borrowing rate. Alternatively, it might refer to a reasonable commercial rate determined by international market standards.

²⁵² **RL-0012**, International Law Commission's 2001 Articles on the Responsibility of States for Internationally Wrongful Acts, 12 December 2001, article 38.

²⁵³ **CLA-117**, Calculation of compensation and damages in international arbitration (Second edition), Irmgard Marboe, Oxford International Arbitration Series, 2017, Chapter 6, ¶6.248.

²⁵⁴ **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(3).

233. The first alternative, *i.e.*, Angola’s borrowing rate, is consistent with the “coerced loan” approach, under which the damages owed to the investor are regarded as a coerced loan by the investor to the State.²⁵⁵ This approach reflects the risks involved in the current dispute most accurately. Accordingly, the applicable rate should correspond to Angola’s short-term borrowing rate, which AlixPartners has identified as the one-year yield on Angola’s USD denominated government bond, compounded annually.²⁵⁶
234. Applying this rate, AlixPartners has calculated the principal plus interest as of 11 September 2025 at USD 171,065,808:²⁵⁷

First Set			Second Set			Total
Beginning Date	Yield	Amount as of	Beginning Date	Yield	Amount as of	Amount as of
31-May-22	7.33%	64,605,542	15-Aug-22	9.44%	63,815,784	128,421,326
31-May-23	10.70%	69,340,482	15-Aug-23	10.93%	69,838,080	
31-May-24	8.47%	76,761,301	15-Aug-24	8.65%	77,467,890	
31-May-25	12.83%	83,259,912	15-Aug-25	10.00%	84,168,088	
11-Sep-25		86,275,294	11-Sep-25		84,790,514	171,065,808

235. Alternatively, Mr Machado claims that the applicable rate could be an interbank rate plus an appropriate margin. Historically, LIBOR was commonly used as an international commercial benchmark.²⁵⁸ However, since LIBOR was discontinued in 2023, financial institutions have referred to the secured overnight financing rate (“SOFR”) in its stead.²⁵⁹ Because SOFR is an interbank rate, nearly risk-free, a premium must be added to make it a commercial rate. Thus, the applicable interest rate could be the one-year term SOFR, plus a margin of 4% to reflect commercial risk, compounded annually.
236. Applying this rate, AlixPartners has calculated the accumulated principal plus interest as of 11 September 2025 at USD 165,306,299:²⁶⁰

²⁵⁵ **CLA-118**, *Telefónica, S.A. v. Colombia*, ICSID Case No. ARB/18/3, Award (with informal translation into English), 12 November 2024, ¶511; **CLA-119**, *Eurus Energy Holdings Corporation v. Spain*, ICSID Case No. ARB/16/4, Award, 14 November 2022, ¶132; **CLA-120**, *Infracapital v. Spain*, ICSID Case No. ARB/16/18, Award, 2 May 2023, ¶58.

²⁵⁶ First Quantum Expert Report by AlixPartners, 11 September 2025, ¶¶90-91.

²⁵⁷ First Quantum Expert Report by AlixPartners, 11 September 2025, Table 10, at ¶93.

²⁵⁸ **CLA-121**, *Rusoro Mining v. Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, ¶¶836-838 (“the best approach for establishing ‘a normal commercial rate’ is to select LIBOR plus an appropriate margin”; “a margin of 4% is appropriate”); **CLA-122**, *Flughafen Zürich A.G. and Gestión e Ingeniería IDC SA v. Venezuela*, ICSID Case No. ARB/10/19, Award (with informal translation into English), 18 November 2014, ¶¶962-965 (LIBOR “is universally accepted as a benchmark”; “a LIBOR rate for USD for one-year deposits plus 4% is a reasonable rate and ensures full reparation”).

²⁵⁹ First Quantum Expert Report by AlixPartners, 11 September 2025, ¶92.

²⁶⁰ First Quantum Expert Report by AlixPartners, 11 September 2025, Table 11, at ¶94.

First Set			Second Set			Total
Beginning Date	Yield	Amount as of	Beginning Date	Yield	Amount as of	Amount as of
31-May-22	6.26%	64,605,542	15-Aug-22	7.37%	63,815,784	128,421,326
31-May-23	9.14%	68,648,789	15-Aug-23	9.38%	68,520,028	
31-May-24	9.20%	74,922,259	15-Aug-24	8.29%	74,948,550	
31-May-25	8.07%	81,816,583	15-Aug-25	7.80%	81,159,244	
11-Sep-25		83,678,759	11-Sep-25		81,627,540	165,306,299

D. Angola must bear the costs of the arbitration

237. In order to make Mr Machado whole, Angola must pay the entire costs and expenses of this arbitration, including Mr Machado’s legal fees, the fees and expenses of the experts, the fees and expenses of the Tribunal, and ICSID’s costs, plus pre-award and post-award interest.
238. The Tribunal’s authority to award costs is established in article 61(2) of the ICSID Convention.²⁶¹ This provision confers broad discretion on tribunals. However, it is generally recognised that the “costs follow the event” approach is consistent with the general damages principle articulated in *Chorzów Factory*.²⁶²
239. Therefore, should the Tribunal find that Angola has breached its obligations under the BIT, Mr Machado is entitled to recover all costs incurred in these proceedings. Accordingly, Mr Machado reserves the right to quantify these costs at the appropriate phase of these proceedings.

VII. The Claimant’s request for relief

240. The Claimant respectfully requests the Arbitral Tribunal to:
- (i) declare that Angola expropriated Mr Machado’s investment in breach of article 7 of the BIT;
 - (ii) declare that Angola failed to accord fair and equitable treatment to Mr Machado’s investment in breach of article 4(2) and (3) of the BIT;

²⁶¹ ICSID Convention, article 61(2) (“In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award”).

²⁶² **CLA-123**, *Karkey Karadeniz Elektrik Uretim A.S. v. Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017, ¶1060.

- (iii) declare that Angola failed to accord full protection and security to Mr Machado's investment in breach of article 4(2) of the BIT;
- (iv) order Angola to pay compensation to Mr Machado for the losses resulting from Angola's breaches of the BIT, in the amount of either (a) USD 128,421,326 plus pre-award interest on USD 64,605,542 from 31 May 2022 and on USD 63,815,784 from 15 August 2022 at the rate of the one-year yield on Angola's U.S. dollar denominated government bond, compounded annually, or at another rate the Tribunal considers appropriate (the total being currently quantified at USD 171,065,808), or (b) the fair market value of the Four Turbines at the date of the final award (currently quantified at USD 157,657,552), whichever is higher;
- (v) order Angola to pay all costs of the arbitration, including the legal fees and expenses of the Claimant's legal representation, the fees and expenses of the Tribunal, Tribunal assistants and Tribunal-appointed experts, and the administrative charges and direct costs of the Centre;
- (vi) order Angola to pay post-award interest on all sums due, at the rate of the one-year yield on Angola's U.S. dollar denominated government bond, compounded annually, or at another rate the Tribunal considers appropriate; and
- (vii) grant any further relief to Mr Machado that the Tribunal deems just and proper under the circumstances.

Respectfully submitted,



Luis Capiel

On behalf of Mr Ricardo Filomeno Duarte Ventura Leitão Machado