INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
(ICSID)

Corona Materials, LLC
v.
Dominican Republic

ICSID Case No. ARB(AF)/14/3

EXPERT REPORT

Professor Eduardo Jorge Prats

Expert in Dominican Administrative Law and Constitutional Law

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1. The Dominican State, through the Ministry of Industry and Commerce and its legal representatives, the law firm Arnold & Porter LLP, has asked me to provide a report wherein I present my specialized legal opinion on issues related to Dominican Administrative Law and Constitutional Law as they relate to the arbitral dispute referred to in the caption of this document.

2. I have organized the present report in the following parts. *First,* for introductory purposes I refer to my professional experience, academic work and studies as an expert in Dominican Administrative and Constitutional Law. *Second,* I explain the legal framework that applies to the preparation of the present report. *Third*, I specify the questions that the Dominican Republic's outside counsel have asked me to address. *Fourth*, as a summary, in order to provide specific answers, I provide an overview of the answers to the questions I was presented. Such answers are also the conclusions of my expert report. *Fifth*, I present the analysis of the legal issues that were presented in the following parts: (1) preliminary considerations regarding the Request for Arbitration and Corona Materials LLC's (hereinafter "Corona") Counter-Memorial to the Dominican Republic's Preliminary Objections; (2) introduction to Dominican Administrative Law: origin, evolution and basis; (3) nature of communication of August 18, 2010, issued by the Ministry of Environment and Natural Resources through which the request for an environmental license presented by Walvis/Corona was rejected (hereinafter "Rejection of the Environmental License") as an administrative act; (4) untimeliness of the reconsideration request; (5) effect of the administrative silence with regard to the reconsideration request; and (6) conformity of the negative administrative silence with due process under the law and Constitution of the Dominican Republic.

I. Professional Experience, Academic Work And Studies As An Expert In Dominican Administrative And Constitutional Law.

3. My name is Eduardo Jorge Prats, I am a Dominican citizen and lawyer specialized in public, administrative and constitutional law, in practice for more than 25 years. During my professional career I have practiced law in private practice, founding the firm Jorge Prats Abogados & Consultores in the year 2003, I was also Legal Consultant for the Central Bank of the Dominican Republic (2000-2003). I have acted as advisor and member of several commissions charged with the drafting of laws, among which my participation as Member of the Commission of Jurists appointed by the President of the Republic for the preparation of the Bill for the Constitutional Reform (2006-2009) and Member of the Commission of Jurists appointed by the President of the Republic to revise the laws to develop the Constitution of 2010 stand out. Since the year 1991, I have been a university professor, having taught the subjects "Constitutional Law", "Administrative Law", "Introduction to Law", "Philosophy of Law" and "Monetary and Financial Regulation Law" at the Pontificia Universidad Catolica Madre y Maestra (PUCMM) at the bachelor's degree level. At the graduate level I have taught the subjects "Theory of International Relations" at Facultad Latinoamericana de Ciencias Sociales, at Universidad Autonoma de Santo Domingo and at Instituto Militar de Educación Superior, and "Theory of the Constitution" for the Master in Constitutional Law program of Universidad Iberoamericana (UNIBE). Also, I was Coordinator of the Master in Constitutional Law program which conferred a dual degree from Universidad Castilla-La Mancha and Pontificia Universidad Catolica Madre y Maestra (PUCMM) in the period 2006-2015, and Coordinator of the Master in Administrative Law program of Pontificia Universidad Catolica Madre y Maestra (PUCMM) in the period 2012-2013. Currently I am President of the Center for the Study of Public Law and Economic-Financial Regulation (*Centro de Estudios de Derecho Público y de la Regulación Económico-Financiera, CEDEPREF* per its acronym in Spanish), President of the Dominican Institute of Constitutional Law (*Instituto Dominicano de Derecho Constitucional, IDDEC* per its acronym in Spanish), Member of the Dominican Association of Administrative Law (*Asociación Dominicana de Derecho Adminsitrativo, ADDA* per its acronym in Spanish) and Member of the Iberian - American Forum on Administrative Law (*Foro Iberoamericano de Derecho Administrativo, FIDA* per its acronym in Spanish). Furthermore, I have published several works related to Dominican Constitutional Law, among them the manual "Constitutional Law" volumes I (Santo Domingo: Ius Novum, 2010) and II (Santo Domingo: Gaceta Judicial, 2005). I obtained by Bachelor's in Law, *magna cum laude*, from the Pontificia Universidad Catolica Madre y Maestra, Santiago, in 1987 and a Master's in International Affairs from the New School for Social Research, New York, in 1991. I am currently the Public Law Delegate for Pontificia Universidad Catolica Madre y Maestra, in charge of all of the masters programs in Public Law offered by said university.

II. Applicable Legal Framework And Facts Considered For The Present Expert Report.

4. For the present expert opinion the Dominican Republic's outside counsel has asked me to consider a series of questions that are copied below.

5. In order for me to analyze the legal issues that arise under Dominican Administrative and Constitutional Law from the questions presented, the Dominican Republic's outside counsel made available to me the documents listed in the Appendix I of the present report. I declare that I have not had prior participation in the case between Corona and the Dominican Republic, nor had I issued any profession opinion related to the facts of this case prior to the present report.

6. The legal framework of the present report is Dominican legislation, including, among others, the following sources: a) the Constitution of the Dominican Republic, proclaimed in January 26, 2010; b) Law No. 1494, that creates the Contentious-Administrative Jurisdiction in the Dominican Republic, of August 9, 1947 (hereinafter "Law No. 1494"); c) Law No. 13-07, on the Superior Administrative Tribunal, of February 5, 2007 (hereinafter "Law No. 13-07"); and, d) Law No. 64-00, General Law on Environment and Natural Resources, of August 18, 2000 (hereinafter "Law No. 64-00").

III. Legal Questions Addressed In The Present Expert Report.

7. The questions that I was called to answer are the following:

    a. Is Communication No. DEA-3867-10 dated August 18, 2010, issued by the Ministry of Environment and Natural Resources, which rejects the environmental license requested by Walvis Investment, S.A., (hereinafter "Walvis") Corona's subsidiary, the administrative act that ends the process of environmental license request? If so, what was the latest date to challenge such administrative act according to the applicable Dominican legislation in force? If it should be understood that Walvis did not challenge that decision in a timely fashion, what is the consequence of Walvis not having presented the challenges within the allotted time?

    b. Regarding the communication dated October 5, 2010, through which Walvis filed its request for reconsideration, was the Ministry of Environment and Natural Resources obligated to reconsider such request? What effect, if any, could that request have on the Rejection of the Environmental License of August 18, 2010?

    c. In the hypothetical case that Walvis' request for reconsideration required a response, can one conclude that due to the administrative silence there was a response by virtue of the application of the principle of administrative silence? What does negative administrative silence mean and how does it generate a presumptive administrative act (presumptive act)? What are the effects of the presumptive act that is created through administrative silence? At what point is it understood that Walvis, by not exercising its procedural rights in due time, lost all opportunity to raise any objection it might have had under Dominican law to the Rejection of the Environmental License? What is the consequence of the expiration of the time limit to present the administrative (before the Administration) and the contentious-administrative (before the judicial tribunals) motions in regard to the Rejection of the Environmental License?

d. Do the relevant administrative acts — that is, the Rejection of the Environmental License and the presumptive act that implies a negative response by the Administration to the reconsideration request — precede by more than three (3) years July 28, 2011 (to be considered as "the Critical Date" for the purposes of this process)?

e. Considering that the Rejection of the Environmental License had become final and was not subject to challenge through administrative (before the Administration) or contentious-administrative (before the judicial tribunals) means, what effect, if any, could the alleged meetings between representatives of Corona/Walvis with the administration have in regard to the Rejection dated August 18, 2010, of the Environmental License?

f. Are strict time limits to present motions, including the motion that becomes available when the administration keeps silent before a request for reconsideration, consistent with due process in light of Dominican law and its Constitution?

IV. Summary of the answers to the legal questions presented.

8. After carrying out the analysis in light of the facts presented and under Dominican Administrative and Constitutional law, as detailed in Section V of the present report, I have reached the following conclusions:

a. The Rejection of the Environmental License (Communication No. DEA-3867-10) dated August 18, 2010, constitutes an express administrative act through which the Ministry of Environment and Natural Resources denied the request for an environmental license filed by Walvis/Corona for the exploitation of the Joama project. The legal consequence of this administrative act is that the condition for the exploitation of the project was not met, given that it was not environmentally viable.

b. The latest date to challenge such act, through administrative (before the Administration) or contentious-administrative (before a judge) means, was on September 17, 2010. This [is] on the understanding that Law 13-07 establishes a strict time limit of thirty (30) days to challenge the effects of the act to be counted from the day that the Claimant receives the notification of the administrative act.

c. Given that Walvis/Corona did not file a motion before September 18, 2010, the administrative act of Rejection of the Environmental License became final and its effects unchallengeable. That is to say, Communication DEA-3867-10 is unchallengeable as from that date, so it cannot be challenged either before the Administration or before the Contentious-Administrative Jurisdiction. This date precedes by more than three (3) years the filing of the Request for Arbitration the Critical Date, which, as explained in this report, is July 28, 2011.

d. The fact that Walvis/Corona filed a request for reconsideration on October 5, 2010, concerning the Rejection of the Environmental License of August, 18 2010, does

not affect the analysis under Dominican Law for two essential reasons: (i) the Rejection of the Environmental License had become final because the strict time limits for challenging it had passed, so that administrative act was no longer challengeable administratively or judicially; and (ii) the Ministry of Environment and Natural Resources was not obligated to rule the reconsideration motion under the legal provisions in force, because the inadmissibility of the motion was presumed given that it was filed after the legal deadline.

e. Even in the hypothetical case where the request for reconsideration is considered to have required a response, one cannot speak of an absence of response per se, given that, under the provisions of article 2 of the Law No. 1494, after two (2) months had passed without an express ruling by the Ministry of Environment and Natural Resources, by virtue of the principle of administrative silence a presumptive act of rejection of the motion for reconsideration was generated on December 5, 2010.

f. That being the case, it is evident that the deadline for Walvis/Corona to file a contentious-administrative motion (before a judge) regarding the presumptive act that rejected its reconsideration request ended on January 5, 2011 — that is, thirty (30) days after the expiration of the two (2) months without receiving an express ruling (article 5 of the Law No. 13-07). In that sense, as from January 5, 2011 the presumptive act of rejection of the reconsideration generated by the Administration's silence became final and, hence, the Communication No. DEA-3867-10 became unchallengeable. This date also precedes the Critical Date by more than three (3) years.

g. Considering that due to the lapse of the legal time limits, the Rejection of the Environmental License was firm and no longer challengeable administratively or judicially, no subsequent answer from the Administration could be different than the confirmation of the administrative act through which the request for an environmental license was rejected. In that sense, none of the subsequent acts referred to by Corona — including the alleged meetings in June 2011 and the alleged promise of an official that the Rejection of the Environmental License would be annulled — constitute new administrative acts nor are they capable of having any effect on the Rejection of the Environmental License.

h. Finally, it is important to highlight that formalities do not constitute a procedural obstacle for the exercise of the individuals' rights to file their claims before the Administration or before judges, on the contrary, the procedure, requirements and time limits under Dominican law are limits which have been enacted to guarantee legal certainty for the parties.

9. Next, the analysis leading to the conclusions set out above is presented.

V. Analysis.

1. Preliminary Considerations Regarding The Request For Arbitration And The Counter-Memorial To The Preliminary Objections.

10. With the purpose of answering the questions on Administrative and Constitutional Law that I have been asked in the context of the present case, I have examined the documents cited in Appendix I, including the briefs exchanged by the parties before the Arbitral Tribunal. Next, I refer to the context that I have considered to prepare the present expert report.

11. The dispute arises from the rejection by the Ministry of Environment and Natural Resources of the request made by Walvis for the exploitation of the sections of Majagual and Arroyo Barril, Municipality of Sánchez, in the Dominican Republic. According to Communication No. DEA-3867-10 dated August 18, 2010, project "Exploitation Concession Joama", the Ministry declared that the Joama Project was not environmentally viable.

12. In Corona's understanding, the Dominican Republic approved several resolutions that harm the exploitation concession which was preliminarily approved by means of Resolution No. XII-09 dated June 1, 2009, issued by the Ministry of Industry and Commerce. However, upon analyzing annex 4 of the Request for Arbitration I have found that the resolution grants the exploration of the sections indicated above, but conditions their exploitation upon the positive result of the environmental impact assessment of the Joama project (second article of such resolution).

13. For its part, I understand that the Dominican Republic has presented a preliminary objection because of the untimeliness of the Request for Arbitration due to more than three years having passed since the moment that Corona had knowledge of the violation alleged. Concretely, I understand that the Dominican Republic contends that Corona had knowledge of the violations alleged at least 3 years, 5 months and 6 days prior to the filing of the Request for Arbitration, so, according to the Dominican Republic, Corona's claims are barred in accordance with article 10.18.1 of the DR-CAFTA.[1]

14. On January 29, 2016, Corona answered the preliminary objection filed by the Dominican Republic, claiming, in summary, that the Dominican State cannot benefit from the obscurity and deficiency of its domestic administrative proceedings,[2] including the doctrine of negative administrative silence. This, because, according to Corona, at that time Administrative Law was not codified,[3] so there was no legal basis for the application of said concept.

[1] Preliminary Objections in conformity with article 10.20.5 of DR-CAFTA filed by the Dominican Republic on December 3, 2015, Paras. 57, 115 y 130.
[2] Counter-Memorial to the Preliminary Objections filed by Corona Materials on January 29, 2016, Para. 189 (a).
[3] Counter-Memorial to the Preliminary Objections filed by Corona Materials on January 29, 2016, Para. 191.

15. Based on the parties' briefs, it is evident that the initial discussion between the parties is centered on the moment in which an administrative act occurred, if it occurred at all, that definitively resolved the application process for an environmental license as regards Walvis/Corona.

16. The law and legal procedures of the Dominican Republic apply to Walvis/Corona, when [it was] in the Dominican Republic and acting there. Dominican legislation not only determines at what moment Walvis/Corona could have appealed to the administrative authorities or to the contentious-administrative tribunal, but also shows the time from which it could have chosen international arbitration before ICSID under the DR-CAFTA.

17. Considering the prior observations, next we will stop to analyze the questions presented within the framework of Dominican Administrative and Constitutional law.

2. Introduction to Dominican Administrative Law: origin, evolution and basis.

18. Dominican Administrative law has two important moments: the legal provisions regulating everything regarding the contentious-administrative process before the promulgation of the Law No. 107-13 in August 2013; and, the administrative procedure established with the entry into force of the said Law.[4]

19. Before Law No. 107-13, Administrative Law was governed essentially by the general principles of continental European Administrative Law, of French origin.[5]

20. In the year 1947, Law No. 1494 was adopted which regulated everything concerning judicial control of the Administration, determining the object of the contentious-administrative process, the obligations of the parties during this process, the powers of this jurisdiction, the administrative acts capable of being challenged and the formalities required for the

[4] In August 2013, the Dominican State promulgated Law No. 107-13 that regulates all of the rights and duties of individuals in their dealings with the Public Administration (see **R-16**). Given that the Law No. 107-13 was not in force at the times in which the facts on which this report turns occurred, we have not included an analysis of such provisions. Law No. 107-13 particularly modifies regime for challenges before the Contentious-Administrative Jurisdiction of the presumptive act generated by the inactivity of the Administration in the face of an administrative motion, eliminating the strict time limitations to exercise other motions. However, this does not mean that the provisions of Law 107-13 were applicable to the relationship that existed between Corona Materials and the Dominican state. And that is because, according to article 110 of the Dominican Constitution, "*the law only provides for and is applied for the future",* so *"In no case may the public powers or the law affect or alter the legal certainty derived from situations established in accordance with previous legislation*." From this article it follows that the provisions of Law No. 107-13 only apply to actions that arise after the month of February of the year 2015, given that said Law contained a *vacatio legis* of eighteen (18) months after its promulgation.

[5] **R-20,** RODRÍGUEZ HUERTAS, Olivo. *El Acto Administrativo en la República Dominicana: su tratamiento en el Proyecto de Ley de Derechos de las Personas en sus relaciones con la Administración y de Procedimiento Administrativo*. Presentation prepared for the meeting of the XI Iberian-American Forum on Administrative Law held on September 10 and 11, 2012, at Santo Domingo, Dominican Republic, Para. 2.

presentation of a contentious-administrative motion against the Administration. Before the adoption of this instrument, Dominican Administrative Law was characterized for having a system of concentrated jurisdiction. That is to say that control of the legality of administrative actions was exercised by a body of the same Administration, particularly the Chamber of Accounts of the Dominican Republic.

21. In the year 2007, Law No. 1494 was modified by the provisions of Law No. 13-07 which established the Superior Administrative Tribunal. Among the most important changes introduced by this law are the extension of the time limits required to file a contentious administrative motion,[6] as well as the granting of the power to individuals so that they may go directly before the contentious-administrative judge without needing to first present administrative motions before the bodies of the State.[7]

22. However, given that events related to the rejection of an environmental license will be analyzed in this report, I must stress that in the year 2000, Law No. 64-00, the General Environmental and Natural Resources law, was promulgated, the object of which is to establish the norms for the conservation, protection, improvement and restructuring of the environment and the natural resources ensuring their sustainable use (article 1). That being the case, we must ask ourselves, does Law No. 64-00 repeal the provisions of Law No. 1494? Or, on the contrary, does Law No. 13-07 modify the general norms established in Law 64-00?

23. To answer these questions I must distinguish between general laws and those laws which are considered to be special laws. "A legal norm is considered special when it expands, deepens and goes into the details in the regulation of a subject which is being regulated in general by other norms of general character, meaning those that without going into details purport to regulate in whole the subject in question."[8] Starting from this statement, I must clarify that Laws No. 1494 and 64-00 constitute general laws that regulate in whole the subjects that each of them deals with. In the case of Law No. 1494 the contentious-administrative proceeding, and, on the other hand, in the case of Law No. 64-00 the general norms that guarantee the sustainable use of the natural resources. Conversely, Law No. 13-07 constitutes a special law which expands on aspects previously regulated by Law No. 1494.

24. In Law No. 13-07 the legislator uses an implicit terminology which expresses its will to abrogate certain provisions of the Law No. 1494 but without expressly indicating the text that is repealed. This [is done] by establishing in its article 11 that "*any law or part of a law that is contrary to*

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[6] According to article 5 of Law No. 13-07 (**R-17**), "*the time limit to challenge before the Tax and Administrative Contentious Tribunal, will be thirty (30) days to be counted from the day in which the petitioner receives the notification of the challenged act, or of the day of the official publication of the challenged act by the authority that issued it or from the day of the expiration of the time limits that have been set in case of a motion because of undue delay or Administrative silence (…)*".

[7] Article 4 of said Law establishes that "*the exhaustion of the administrative avenue will be optional for filing contentious-administrative and contentious-tax motions, against the administrative acts issued by the bodies and entities of the public administration, except in that which concerns civil service and administrative career."*

[8] **R-13,** GERÓNIMO, Félix. *Teoría General de Introducción al Derecho Dominicano.* 1st Edition. Amazon Digital Service. Year 2013. p. 302.

this law is hereby repealed." Hence, in order to determine the will of the legislator it is necessary to take into account two rules of interpretation: (a) "*specialia generalibus derogant*", the special law derogates the general law; and, (b) "*generalia specialibus non derogan*", the general law does not derogate the special law. These rules are clearly explained by the French Henri Roland y Laurent Boyer when stating that:

> "*[Q]uand une loi nouvelle n'édicte qu'une disposition spéciale alors que la loi ancienne avait une portée plus générale, la loi ancienne survit, sauf dans le domaine particulier où s'est manifesté la loi nouvelle: specialia generalibus derogant, la loi spéciale déroge á une loi générale. . . . Dans l'hypothèse inverse, celle d'une loi nouvelle générale succédant á une loi ancienne spéciale, on est plus hésitant. Il est permis d'estimer que la législateur, ayant pris une disposition d'ensemble, n'a pas entendu toucher le secteur particulier réglé précédemment; au contraire, on peut considérer que la loi nouvelle, á raison même de sa généralité, absorbe l'ancienne et la fait disparaitre. En règle, la tendance est de dire que la loi spéciale, en ce qu'elle traite l'espèce et non le genre, l'emporte sur la loi générale: generalia specialibus non derogant [] la loi générale ne déroge pas á la loi spéciale. C'est ainsi que la loi de 1901 sur les associations n'a pas supprimé la loi de 1884 sur les syndicats, les deux textes pouvant s'appliquer cumulativement, le premier gouvernant les associations en général, le second cette variété d'association que constitue le syndicat.*"[9]
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> "[W]hen a new law does not enact but a special provision about a matter in which the old law had a more general application, the old law survives, except in the particular area which is addressed by the new law: *specialia generalibus derogant*, the special law repeals the general law….In the inverse hypothesis, that of a new general law succeeding a prior special law, we are more cautious. It is possible to consider that the legislator, having adapted an overall provision, did not believe to be affecting the particular area which was already subject to regulation; on the contrary, it may be considered that the new law, by virtue of its general nature, absorbs the old law and makes it disappear. By general rule, the norm is to consider that the special law, in that which relates its specialty and not in general, shall prevail over the general law: *generalia specialibus non derogan* [] the general law does not repeal the special law. Thus the 1901 law on associations did not repeal the 1884 law on unions, the two texts can apply jointly, the first will govern associations in general, the second the type of association that constitutes a union."

25. On its part, François Terré has said that "*when the new law establishes a special rule, it is admitted that the old law continues to apply, except in what is specially covered by the new law (...). Therefore, in the event that an old law affects a category of persons with a general incapacity to approve certain legal acts and a new law confers to them the capacity to approve*

[9] **R-21,** ROLAND, Henri y Laurent Boyer. *Introduction au droit*. París: Litec. Year 2002. p. 188.

a certain category of acts, the old law shall subsists, except to the extent of the exceptions created by the new law."[10]

26. In that sense, it is clear that Law No. 64-00 does not repeal the provisions of Law No. 1494, because both laws constitute general norms that regulate different subjects and, consequently, they apply at different moments during the administrative process. And it is that the provisions of Law No. 1494 only regulate the remedies available to question the acts resulting from the procedure outlined in Law No. 64-00.

27. On the other hand, it is appropriate to clarify that Law No. 1494 subsists in the Dominican legal system except in the particular realm that is modified by Law No. 13-07, that is, in the time limit available to challenge the acts of the Administration and the optional exhaustion of the administrative avenue. Therefore, both laws will apply cumulatively to question administrative acts before the Administration (through administrative motions) or before the Contentious-Administrative Jurisdiction.

28. **Thus, on the relevant dates for this report, the administrative procedure related to the issuance of environmental licenses was found in Law No. 64-00, as well as its regulations and complementary norms. However, the regime of the motions that could be filed regarding the administrative acts issued as a result of said administrative process was regulated by the general principles of Administrative Law and by the provisions of Laws No. 1494 and 13-07 referred to above.** Because of this, I can state that all public acts, without regard to the body involved in the administrative process, are subject to challenge in accordance with the provisions of Laws No. 1494 and 13-07, including the acts issued by the Ministry of Environment and Natural Resources.

29. As we will see below, the acknowledgment of the concept of administrative silence and the administrative avenue for challenging the acts of the Administration is derived from these laws. Such texts also establish the strict time limits for the individual to exercise motions before the Administration, in order to guarantee the legal certainty of the parties during the processes. Next, I explain the relevant provisions and principles of Administrative Law.

3. Nature of the Communication No. DEA-3867-10 of August 18, 2010 (Rejection of the Environmental License) As An Administrative Act.

30. Dominican case law defines an administrative act as "*a general or special decision that is taken by an administrative authority, in the exercise of its functions, and that affects the rights, duties and interests of individuals or public entities.*"[11] There are presumptive acts and express acts,[12] we will talk more about this distinction later on.

31. According to article 18 of the Law No. 64-00, the Ministry of Environment and Natural Resources is responsible for "*ensuring that the exploration and exploitation of mining*

[10] **R-24,** TERRE, François. *Introduction générale au droit*. París: Dalloz. 8th edition. p. 391.
[11] **R-26,** TSA, Judgment of June 22, 2006, No. 048-2006, Consideration No. 11.
[12] **R-7,** Articles 1 and 2 of Law No. 1494 of 1947.

resources is carried out without causing irreparable harm to the environment and human health,"[13] consequently the Ministry has the power to "*halt the execution of any mining activity when it considers (…) that such activity may endanger human health or cause irreparable damage to the environment, or of unique or essential ecosystems for the normal development of human life.*"[14] Thus the Ministry of Environment and Natural Resources has the power to reject a request for mining exploitation that it deems harmful to the sustainable development of the environment, and did so in the present case, under the procedure established by Law No. 64-00 when it rejected the license request filed by Walvis/Corona.

32. Therefore, the Rejection of the Environmental License (Communication No. DEA-3867-10) dated August 18, 2010, which Corona claims has violated the DR-CAFTA,[15] constitutes an express administrative act for it clearly contains the will of the Ministry of Environment and Natural Resources to deny the request because it is environmentally unviable.

33. Likewise, it must be noted that this act finalizes the procedure of obtaining the licenses for the development of the Joama Project. In that sense, I must highlight that article 14 of the Rules on the Systems of Environmental Permits and Licenses acknowledges that once the evaluation process was completed, the license or permit having been denied, the same Project could not be presented again.[16]

34. I caution that one must not mistake the Rejection of the Environmental License (Communication No. DEA-3867-10) with the Aide Mémoire No. 14-2010 issued by the Technical Evaluation Committee of the Ministry of Environment and Natural Resources on July 28, 2010, named "Resolution 737-2010". And this is because the document issued by the Technical Evaluation Committee constitutes a preparatory act that does not generate legal consequences for the individual. Indeed, preparatory acts are commonly produced during the course of an administrative process and have no effect on the legal situation. This is acknowledged by José Esteve Pardo when he states that "*the deciding act is the one that finalizes, that resolves, the administrative process. Conversely, preparatory acts are the ones that are produced in the course of the process and only have sense, functionality and effect as pieces of the same*."

35. Because of this, the author continues to point out that "*during the course of a proceeding one may perfectly allege that there has been a defect in a preparatory act, but this is a mere allegation, for which a challenge procedure is not available. One may challenge the final, deciding, act of the proceeding claiming that there has been a defect in one of the preparatory acts that precede and comprise it.*"[17]

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[13] **R-18,** Law No. 64-00, General Law on Environment and Natural Resources, dated August 18, 2000, Art. 18 number 6.
[14] *Ibid*
[15] Request for Arbitration filed by Corona Materials on June 10, 2014, Paras. 78 y 91.
[16] **R-19,** Regulation on the System of Environmental Permits and Licenses, created by Resolution 6-2004 adopted by the Ministry of Environment and Natural Resources, on May 27, 2004.
[17] **R-11,** ESTEVE PARDO, José. *Lecciones de Derecho administrativo*. Madrid: Marcial Pons, Year 2011. p. 228.

36. This doctrine has been endorsed by comparative jurisprudence, which has asserted that "*the general theory on administrative preparatory acts attributes this characterization to those that prepare and contribute to the adoption of the definitive decision. They are designed, therefore, to promote the greatest success of such decision, the definitive act, which ends the proceeding and resolves the issues presented. According with such configuration, preparatory acts cannot be challenged before the contentious-administrative jurisdiction in an autonomous fashion, separated from the definitive administrative act.*"[18]

37. In this case, the deciding act in the process of obtaining the environmental license - that is to say, the act that determines whether or not the request would be granted - was Communication No. DEA-3867-10 of August 18, 2010, which rejected the environmental license request made by Walvis/Corona. Accordingly, the document issued by the Technical Evaluation Committee did not create, modify or extinguish any legal situation, instead it only contributed with the adoption of the deciding act during an administrative process. Because of this, the Administration did not have any obligation to notify Aide Mémoire No. 14-2010. Consequently, the challenge before the Administration or before the Contentious-Administrative Jurisdiction should have been made starting from the Rejection of the Environmental License (Communication No. DEA-3867-10).

38. On the other hand, it is pertinent to note that it has been a constant criterion of the Dominican Constitutional Court that "*the acts issued by the Public Administration are valid and comport a presumption of legality which is what allows the individual to carry out acts and investments based on the rights acknowledged, granted and protected by such acts. Such permanence is what, ultimately, provides confidence and legal certainty to the individual regarding an act which is executive, has legal efficacy, obligatory force and that, finally, must be carried out in the way it was issued.* Thus, **for an administrative act to stop having the effects that by its nature accompany it, it must be expelled from the legal system in the constitutional and legally allowed forms and reasons, as this tribunal has previously stated, for example, by being revoked by the administration in question or being declared null by the contentious-administrative jurisdiction.**"[19]

39. The presumptions of validity and legality of administrative acts mean that there is a duty to proceed as if the act was valid, to comply with what it sets out so long as the contrary is not declared as a result of legal remedies exercised by individuals.

40. Given that the Rejection of the Environmental License (Communication No. DEA-3867-10) was issued in exercise of an administrative function and that it has not been declared invalid by any administrative or jurisdictional authority, its effects are executory and enforceable.[20] In that

[18] **R-25,** Spanish Supreme Court, Contentious Chamber, Judgment dated December 11, 2013, No. STS6472/2013. Citing the precedents established in judgments dated June 25 and 30, 2010 (RC 4513/2009 and RC 4614/2009).

[19] **R-23,** DCC, Judgment dated September 23, 2014, No. TC/0226/14.

[20] The principles of execution and enforceability recognize that the effects of administrative acts must occur without the need of judicial assistance.

sense, it was up to Walvis/Corona to establish the invalidity of such administrative act abiding by the requirements, time limitations and formalities established in Dominican legislation.

41. As I will explain below, this is the relevant administrative act to determine the moment in which the condition required by the Concession to exploit the Joama project — that is, the condition to obtain the environmental license — has not been met.

4. Untimeliness Of The Reconsideration Request.

42. Having established that the Rejection of the Environmental License (Communication No. DEA-3867-10) constitutes the relevant administrative act, it becomes necessary to analyze if the reconsideration request filed by Walvis/Corona had any effect with regard to said rejection.

43. Before addressing the facts of the case, it is important to identify the motions that Walvis/Corona could have presented, the conditions to do so and their effects.

44. As was previously explained, in accordance with Laws No. 1494 and 13-07, in Dominican Administrative Law there is an administrative avenue — which is exercised through filing of a motion for reconsideration and a hierarchical motion[21] — to challenge administrative acts before the Administration.[22] Although before the adoption of the Law No. 107-13 these motions where not defined in general written Law,[23] and instead their conceptualization was derived from general principles, as will be seen next, Laws No. 1494 and 13-07 did establish the precise moment in which the right of an individual to exercise the administrative route vanished.

45. The reconsideration motion is a motion that the individual files before the same authority that authored the administrative act that the individual challenges, so that it is revoked. Such has been acknowledged by legal scholars when pointing out that "*it is the administrative motion that is filed before the same body that issued the act so that it proceeds to revoke it, substitute it or modify it by ruling to the contrary*."[24]

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[21] The hierarchical motion is another administrative remedy to challenge an administrative act before the hierarchical superior of the body that issued the act. Because it is not applicable to the facts of the case for the act to be challenged in this case was issued by a State Ministry, we will not address the subject of hierarchical motions in this report.

[22] See for example Article 4 of Law 13-07 (**R-17**) which established that the exhaustion of the administrative avenue was optional "*Art. 4.- the exhaustion of the administrative avenue will be optional for filing contentious-administrative and contentious-tax motions, against the administrative acts issued by the bodies and entities of the public administration, except in that which concerns civil service and administrative career*." See for example Article 1 of Law 1494 (**R-7**) which acknowledges the hierarchical motion "*Art. 1.- Any natural or legal person, vested with a legitimate interest, may file a contentious administrative motion, as described herein, in the cases, time limits and forms provided by this law … against any administrative act that violates the law, regulations or decrees, and meets the following requirements: An Act against which all hierarchical claims within the same administration, or autonomous administrative bodies, have been exhausted*."

[23] Certain laws for specific sectors dealt with these motions.

[24] **R-14,** GORDILLO, Agustín. *Tratado de derecho administrativo*. Volume IV. p. IX-2.

46. Article 4 of the Law 13-07 establishes that "*the exhaustion of the administrative avenue will be optional for filing contentious-administrative and contentious-tax motions, against the administrative acts issued by the bodies and entities of the public administration, except in that which concerns civil service and administrative career*."

47. In that sense, by virtue of Law 13-07 individuals may challenge any act of the Administration, be it through the administrative avenue (motion for reconsideration or hierarchical motion) or directly before the judge of the contentious administrative.

48. In accordance with article 5 of Law No. 13-07, the time limit to file a motion before the Superior Administrative Tribunal (meaning, before the contentious-administrative judge) is thirty (30) days, starting from the notification of the administrative act. The same article 5 of Law No. 13-07 also determines the time limit for presentation of an administrative motion before the Administration, given that, once the thirty (30) day time limit to challenge the administrative act has lapsed, the act gains finality, and becomes unchallengeable, so not only is the inadmissibility of the contentious-administrative motion (before the judge) produced, but also the impossibility of presenting any motion before the Administration.

49. In light of the foregoing, it is clear that under Dominican law **the reconsideration motion had to be presented to the Administration before the thirty (30) day time limit for the presentation of the motion to the contentious-administrative judge lapsed**,[25] otherwise [sic] the legal certainty that characterizes administrative processes would not allow the possibility of voiding the act to be maintained indefinitely, [and so] the finality of the act, and consequently, the extinction of the right to articulate motions, is produced.

50. Regarding this matter, legal scholars caution us that "*one must differentiate between the mandatory nature and the peremptory nature of time limitations.* ***The time limitation is peremptory when it is not extendable and is characterized by the fact that, when it has lapsed, the right that was not used within the available term must be considered inevitably lost.*** *These concepts are of the utmost importance when dealing with administrative motions given that they are, by definition, the challenge of an administrative act within the time limits, so one must conclude that once the time limits established to file administrative motions have lapsed the right to articulate such motions will be lost.*"[26]

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[25] It is necessary to highlight that starting from the promulgation of the Constitution of the Dominican Republic that is in force, proclaimed on January 26, 2010, (see **R-10**), the creation of a law that regulated, in a consolidated fashion, the procedure through which administrative resolutions and acts should be produced was mandated (article 138.2 of the Constitution). For this reason, on August 2013, the Dominican State promulgated Law No. 107-13 which regulates the rights and duties of individuals in their dealings with the Public Administration. This legislation reaffirmed the time limitation to exhaust the administrative avenue, indicating that "*administrative acts may be challenged before the bodies that issued them in the same time limits that are available for persons to challenge them through the contentious-administrative avenue*." (Article 53).

[26] **R-9,** CANOSA, Armando. *Procedimiento administrativo: recursos y reclamos*. Buenos Aires: Astrea. Year 2014. p. 378.

51. From there I must note that the time limitation consecrated in article 5 of Law No 13-07 is peremptory, so that, once this time limitation has lapsed, individuals lose the right to question the validity of the administrative act. Because of this, under the provisions of the Laws No. 1494 and 13-07, once the administrative act is notified, the individuals possess a peremptory time limitation of thirty (30) days to overturn the presumption of validity of such act, failing which its effects are unchallengeable.

52. Thus, starting from the fact that the Rejection of the Environmental License (Communication No. DEA-3867-10) was notified on August 18, 2010, the possibility to question its validity was extended through September 17 of that year.

53. In that sense, given that under Dominican Law the administrative avenue is optional, Corona had a maximum time limit of thirty (30) days to present an administrative motion before the Ministry of Environment and Natural Resources or, alternatively, to go before the contentious-administrative judge. Either of the two courses of action would have allowed Corona to question the legality of the Rejection of the Environmental License (Communication No. DEA-3867-10) and, consequently, to suspend the effects of said administrative act.

54. However, according to the Request for Arbitration filed by Corona,[27] it was not until October 5, 2010, that Walvis/Corona filed a motion for reconsideration before the Ministry of Environment and Natural Resources. Consequently, given that Walvis/Corona did not challenge the Rejection of the Environmental License (Communication No. DEA-3867-10) before September 18, 2010, said administrative act became final, turning definitive and no longer susceptible to challenge before the contentious-administrative jurisdiction.[28] Because of this, **the Ministry of Environment and Natural Resources was not obligated to resolve the motion for reconsideration that was filed by such entity on October 5, 2010.**

55. Likewise, since September 18, 2010, Walvis/Corona could have also gone before the international jurisdiction under DR-CAFTA and claimed that the Dominican State affected its rights as investors as a consequence of the act that had become final — that is the Rejection of the Environmental License.

5. Effect Of The Administrative Silence With Regard To The Reconsideration Request.

56. Notwithstanding what is laid out above, for purposes of this report, I have been asked to analyze the "absence of a response" by the Ministry of Environment and Natural Resources as if Walvis/Corona had in fact presented the reconsideration request in a timely fashion (although

[27] Request for Arbitration filed by Corona Materials on June 10, 2014, Para. 80.

[28] The finality of the administrative act is closely linked with the legal certainty in which legitimate interests and rights are themselves based. And it is that, legal certainty requires that the act which is not challenged within the terms and time limits established for such purpose, gains finality and, consequently, becomes unchallengeable since then.

it did not). To analyze this situation I refer to our previous discussion about express acts and presumptive acts of the Administration.

57. Law No. 1494 contains an implicit division of the decisions of the Administration when noting that the contentious-administrative motion (before the judge) can be filed against administrative acts that violate the law, its regulations and decrees (article 1) and, likewise, **against an omission by an administrative body when it fails to issue a final ruling within a two month time limit,** there being nothing pending for the process (article 2). From these articles it follows that the contentious-administrative motion (before the judicial courts) is admissible both against the express acts and the presumptive acts of the Administration.

58. **In Dominican Administrative Law, in accordance with article 2 of Law No. 1494, the administrative process is subject to a time limit of two months:** *"a motion may also be brought when the administration, or an autonomous administrative body, does not issue a final decision within two months of the proceeding having been exhausted or, if pending, when the proceeding is suspended for an equal amount of time without the appellant being liable for the suspension."* Consequently, **once the term lapses without an express ruling from the Administration, its silence generates a presumptive act. This means that once two months go by without express ruling by the Administration regarding any administrative motion, such motion is considered rejected. As such, in Dominican law the general principle is to attribute a negative answer to the Administration when it is silent.**

59. Administrative silence is a mechanism established for the protection of the constitutional right of the individual to present petitions before the administrative authorities and obtain timely and adequate answers, especially in cases of absence of response during the legally established period. The figure of administrative silence, when confronted with the inaction of the Administration, allows the individual to challenge the negative answer of the Administration (presumptive act) before the Administration or before the contentious-administrative judge.

60. However, I must note that the presumptive act generated by the Administration's silence is a true administrative act, so it is subject to the same formalities, requirements and time limits as express acts.

61. It is appropriate to ask, does administrative silence apply in context of a motion for reconsideration? By virtue of article 2 of Law 1494, administrative silence not only does operate in case of the issuance of an administrative act, but also applies even when an administrative motion is not answered by the Administration. Such has been acknowledged by legal scholars when stating that "*the competent body shall issue its ruling in the term established for each type of motion. If the ruling is not produced in that term, the motion will be considered rejected by virtue of the silence, thus negative silence.*"[29]

62. In the foregoing sense, because the inaction of the Administration generates a rejection of the individual's request, it is able to challenge the Administration's negative response. It is appropriate to remember that presumptive acts produce the same legal consequences as

[29] **R-11,** ESTEVE PARDO, José. *op. cit.* p. 236.

express administrative acts, so in order to challenge them the 30 day time limit set in article 5 of Law No. 13-07 applies. And it is that, in Administrative Law, formalities and time limits are closely related to legal certainty. Consequently, once the term for challenging the presumptive act has lapsed the unchallengeable legal situation is consolidated.

63. In brief, this means that once the two months referred to in article 2 of Law No. 1494 for the Administration to issue a ruling regarding the motion for reconsideration have passed, the time limit of thirty (30) days to challenge the legality of the presumptive act — that is, the rejection of the motion for reconsideration — before the Administration or before the contentious-administrative judge starts running in accordance with article 5 of the Law No. 13-07.

64. Starting from said article, it is appropriate to ask, what happens when the time limits of article 5 of the Law No. 13-07 for challenging a presumptive act of the Administration lapse? To answer this question we must reiterate that the **presumptive act as per Law No. 1494 constitutes an administrative act, consequently, as such, it is subject to the same administrative law principles and norms that govern the administration's actions, even those related to the requirements and time limits to challenge it.** So **not challenging the presumptive act within the thirty (30) day term to be calculated as from the expiry of the two month term set in Law No. 1494 is sanctioned with the inadmissibility of the motion, with which the act acquires finality, turning definitive and no longer subject to challenge**. Such is acknowledged by the Superior Administrative Tribunal when stating that:

> "[T]he provisions regarding administrative procedure are of public order and of strict interpretation and as such the appellants are required to comply with them for the filing of their motions, because those requirements are of the essence for determining whether they are admissible or not." [And it is that,] "according to the principle of legality of the form, the time, the place and the form of a procedural act must be those established by the law and as such must be rigorously followed, those acts, if not made in an appropriate fashion, will lack legal efficacy. Such has been established by the Supreme Court of Justice, through judgment No. 16 dated August 245 [sic], 1990, when it states that the formalities required by the law to file motions are substantial and nor [sic] be substituted for others, failure to comply with the same is penalized with the nullity of the motion."[30]

65. To summarize, according to the applicable Dominican Administrative Law, if the motions were not resolved expressly in the term of two months their rejection is presumed. Starting from such time, the interested party has thirty (30) days to file an administrative motion (before the Administration) or a contentious-administrative motion (before the judge). In case the individual omits to observe this term, any express ruling issued after the presumptive act has been generated can only confirm the content of the presumptive act.[31] In a similar fashion, the

[30] **R-27,** TSA, Juedgment January 28, 2016, No. 34-2016.

[31] See **R-12,** BREWER-CARÍAS, Allan. "Algunos Principios Generales del Derecho Administrativo en Venezuela, en particular, sobre el Procedimiento Administrativo y los efectos del Silencio

presumptive administrative act generated by the negative administrative silence — that is to say the rejection of the request for reconsideration — becomes final, turning definitive and no longer subject to challenge.

66. By virtue of the foregoing, if we start from the hypothetical fact that the reconsideration motion was made by Corona/Walvis in a timely fashion, it is evident that such motion should be considered as resolved — by operation of the administrative silence — on December 5, 2010, after two months had passed without Walvis/Corona having received an express response from the Ministry of the Environment and Natural Resources.

67. Indeed, given that a negative administrative silence was generated by the Ministry of Environment and Natural Resources it is presumed that the motion was rejected in accordance with article 2 of Law No. 1494, so the thirty (30) day term for presenting a contentious-administrative motion regarding such rejection started to run from December 5, 2010. That being the case, we can state that the presumptive act that rejected the reconsideration motion had become final on January 5, 2010. There is no evidence or claim that Walvis/Corona filed any contentious-administrative motion regarding this presumptive act.

68. As has been previously explained, the provisions established in Laws No. 1494 and 13-07 are of public order and individuals are obligated to comply with them for presenting their motions. In that sense, under Dominican Law Walvis/Corona was negligent by not challenging the Rejection of the Environmental License (Communication No. DEA-3867-10) within the peremptory term established in the Dominican legal system.

69. In light of the foregoing— without taking into account that the motion for reconsideration was untimely and hence did not generate consequences — from January 5, 2011, at the latest, no subsequent answer from the Administration could have been different from the confirmation of the administrative act through which the environmental license was rejected. In such sense, as of that date it was also possible for Corona to go before the international jurisdiction under DR-CAFTA to claim that the Dominican State had affected its rights because of the Rejection of the Environmental License and the presumptive act rejecting the reconsideration request, which had been rendered final (assuming hypothetically that it had been presented in a timely fashion although it was not).

70. Finally, I must note that the Administration may revoke its acts that sanction or are unfavorable to individuals, as is the case of the Rejection of the Environmental License, at any point as long as such revocation does not affect public interest. That said, the revocation of administrative

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Administrativo". Presentation to the IV National Convention and V Mexican Convention on Administrative Law, held under the auspices of the Law and Social Sciences Faculty of Benemérita Universidad Autónoma de Puebla, of Instituto de Investigaciones Jurídicas and the Program Coordinator of Postgraduate Law at Universidad Nacional Autónoma de México, Puebla, October 23 and 24, 2011. Citing GARCÍA DE ENTERRÍA, Eduardo and Tomás-Ramón Fernández. *Curso de Derecho Administrativo*. Volume I. Madrid: Civitas. Year 2006. p. 607: "administrative silence constitutes, then, an authentic presumptive administrative act, in all equivalent to an express act, because of this, once the time limits established in the norms that organize the process for each case have lapsed, the express ruling that follows the generation of the act can only be issued if it confirms the same".

acts must be made through the issuance of a new administrative act that expressly states the reasons why the challenged act is being revoked. The foregoing is recognized by the Dominican Constitutional Court, when it indicates that "*when it comes to administrative acts that affect rights or sanction the individual, they may be, in principle, overturned directly by the Public Administration which issued them, with the issuance of a new revocation act, as long as such revocation does not go against public interest or is contrary to the legal system.*"[32]

71. That being the case, it is evident that the alleged meetings held with public officials in any case could not have been sufficient to modify the effects of the Rejection of the Environmental License (Communication No. DEA-3867-10), for which purpose an express act of revocation would have been required — which has not happened in this case — because of this such act became final and, consequently, became unchallengeable. In that sense, any defect that the administrative act could have had was rectified by the expiration of the terms to present the motions available. And it is that the administrative act acts as a wound that heals naturally without any care, by the mere lapse of time.

72. Such is acknowledged by legal scholars when affirming that "*the basic demands of legal certainty do not allow that a situation of voidability is indefinitely maintained: once the time limits awarded to individuals to present particular motions, or for the administration to revise the act, lapse, the act, even if it contains an infringement of the legal framework, becomes unchallengeable, gains finality, and the defect is in fact rectified."*[33]

6. Conformity Of The Negative Administrative Silence With Due Process Under The Law And Constitution Of The Dominican Republic.

73. Finally, it is appropriate to note that administrative silence seeks to ensure due process during administrative processes, since it constitutes a guarantee of the individual's right of defense. Such has been stated by the judge Katia Miguelina Jiménez Martínez, Justice of the Dominican Constitutional Court, when affirming that negative administrative silence is a "*legal fiction that grants legal consequences with the purpose of resolving a situation of vulnerability or helplessness that an individual might find himself in when the administrative body does not expressly rule on the petition or claim presented by him within the established time limit.*"[34]

74. For its part, due process has been conceived as "*the set of minimum guarantees to ensure that the right of defense is a substantive right, not merely a formal one.*"[35] Because of this, in order for there to be due process "*the administrative proceeding must allow the citizen to argue on its favor and promote the evidentiary means that it deems appropriate.*"[36] Based on this definition, it is evident that the figure of administrative silence does not contravene constitutional provisions, particularly article 69 of the Dominican Constitution, because its purpose is to

[32] **R-23,** TCD, Judgment of September 23, 2014, No. TC/0226/14.
[33] **R-11,** ESTEVE PARDO, José. *op. cit.* p. 197.
[34] **R-22,** TCD, Judgment of August 15, 2012, TC/0031/12.
[35] **R-15,** HERNÁNDEZ, José Ignacio. *Lecciones de Procedimiento Administrativo*. Caracas: FUNEDA. p.37.
[36] *Ibid*. p.41.

enable the individual to access further remedies — administrative and jurisdictional — when faced with the formal passivity of the Administration. For this reason, instead of it being an infringement of due process, it is rather a procedural guarantee of the same. In that sense, it is appropriate to note that Corona/Walvis' negligence in complying with the time limits to question the presumptive act generated by negative silence is not attributable to the Administration and much less to the Dominican Constitution.

75. We must emphasize that formalities do not constitute a procedural obstacle to the exercise of the individuals' rights to file their claims or motions. On the contrary, the procedure, requirements and time limits are limits established to guarantee the legal certainty of parties.

76. The notion in Dominican law that the procedure, requirements and time limits are geared toward affording legal certainty to the parties is consistent with the International Law of human rights. Notably, legal certainty constitutes a procedural guarantee of international judicial protection. Such has been recognized by the Inter-American Court of Human Rights (Hereinafter "IHR Court") when indicating that:

> "The Court must preserve a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of international judicial protection — because on the contrary it — would result in a loss of the authority and credibility that are indispensable to organs charged with administering the system for the protection of human rights."[37]

In the city of Santo Domingo, National District, on the nineteenth (19) day of the month of February of the year two thousand fifteen (2015).

[Signature]

Professor Eduardo Jorge Prats

Photograph

[37] **RA-31**, IHR Court, Judgment of February 3, 1993, C Series No. 14, Para. 63; *Cayara Case, Preliminary Objections;* and, **RA-32**, IHR Court, Judgment of February 21, 1994, C Series No. 17, Para. 44. *Caballero Delgado y Santana Case, Preliminary Objections*.

Appendix I

(1) Request for Arbitration filed by Corona on June 10, 2014 before the International Centre for Settlement of Investment Disputes (hereinafter “ICSID”).

(2) Expedited Preliminary Objections in conformity with article 10.20.5 of the Free Trade Agreement between Dominican Republic, Central-America and the United States of America (hereinafter “DR-CAFTA”), filed by the Dominican Republic on December 3, 2015.

(3) Counter Memorial to the Preliminary Objections filed by Corona on January 29, 2016.

(4) Communication No. DEA-3867-10 issued by the Ministry of Environment on August 18, 2010.

(5) Reconsideration request dated October 5, 2010, filed by Corona’s subsidiary.