

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.

In the arbitration proceeding between

INTEROCEAN OIL DEVELOPMENT COMPANY

AND

INTEROCEAN OIL EXPLORATION COMPANY

Claimants

and

FEDERAL REPUBLIC OF NIGERIA

Respondent

ICSID Case No. ARB/13/20

PROCEDURAL ORDER NO. 1

Members of the Tribunal
Professor William Park, President
Professor Julian Lew
Justice Edward Torgbor

Secretary of the Tribunal
Mr. James Claxton

February 26, 2014

TABLE OF CONTENTS

1.	Applicable Arbitration Rules	4
2.	Constitution of the Tribunal and Tribunal Members' Declarations	4
3.	Fees and Expenses of Tribunal Members	5
4.	Presence and Quorum.....	5
5.	Decisions and Procedural Rulings of the Tribunal.....	5
6.	Power to Fix Time Limits	5
7.	Secretary of the Tribunal.....	6
8.	Representation of the Parties.....	6
9.	Apportionment of Costs and Advance Payments to ICSID	7
10.	Place of Proceeding.....	8
11.	Procedural Language(s), Translation and Interpretation.....	8
12.	Routing of Communications	9
13.	Number of Copies and Method of Filing of Parties' Pleadings	9
14.	Number and Sequence of Pleadings.....	10
15.	Production of Documents.....	11
16.	Submission of Documents.....	12
17.	Witness Statements and Expert Reports.....	14
18.	Examination of Witnesses and Experts.....	14
19.	Pre-Hearing Organizational Meetings.....	15
20.	Hearings	15
21.	Records of Hearings and Sessions	16
22.	Post-Hearing Memorials and Statements of Costs.....	16
23.	Publication.....	16
	Annex A - Timetable.....	18

Introduction

The first session of the Arbitral Tribunal was held on February 13, 2014 at 2:10 p.m. in Paris, France.

Present at the session were:

Members of the Tribunal:

Professor William Park, President of the Tribunal
Professor Julian Lew, Arbitrator
Justice Edward Torgbor, Arbitrator

ICSID Secretariat:

Mr. James Claxton, Secretary of the Tribunal

Attending on behalf of Claimants:

Mr. Olasupo Shasore, SAN, Ajumogobia & Okeke
Mr. Oba Nsugbe QC, SAN, Pump Court Chambers
Mrs. Bimpe Nkontchou, Addie & Co Advisory
Mr. Bello Salihu, Counsel for Claimants
Mr. Patrizio Di Guevara Fabbri, Director of Interocean Oil Development Company &
Interocean Oil Exploration Company
Mr. Riccardo Di Guevara Fabbri, Director of Interocean Oil Development Company &
Interocean Oil Exploration Company
Mr. Jacques Jones, Claimants' Legal Counsel

Attending as observer:

Ms. Oyinkan Badejo-Okusanya, Intern at Ajumogobia & Okeke

Attending on behalf of Respondent:

Mr. Adebayo Adenipekun, SAN, FCI Arb., Afe Babalola & Co.
Mr. Olu Daramola, SAN, MCI Arb., Afe Babalola & Co.
Mr. Oluwasina Ogungbade, Esq., Afe Babalola & Co.
Mr. Kehinde Ogunwumiju, Esq., Afe Babalola & Co.
Mr. Ola Faro, Esq., Afe Babalola & Co.
Mrs. Esther Yemisi Adenipekun, MCI Arb., Afe Babalola & Co.
Mr. Taiwo Abidogun, Federal Ministry of Justice, Federal Republic of Nigeria
Mr. Rufai Khalid, Nigerian National Petroleum Corporation (NNPC)
Mrs. Folakemi Adelere, Ministry of Petroleum Resources, Federal Republic of Nigeria

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on December 27, 2013;
- The Draft Procedural Order circulated by the Tribunal Secretary on December 27, 2013; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on February 4, 2014 and on February 10, 2014, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, the Tribunal now issues the present order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules
Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Arbitration Rule 6

- 2.1. The Tribunal was constituted on December 11, 2013 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on December 11, 2013.

3. Fees and Expenses of Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. Subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

- 4.1. The presence of two Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Decisions and Procedural Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Mr. James Claxton, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. James Claxton
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 473-1053
Fax: + 1 (202) 522-2615
Email: jclaxton@worldbank.org
Paralegal email: ating@worldbank.org

8. Representation of the Parties

Arbitration Rule 18

- 8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimants

Interocean Oil Development Company &
Interocean Oil Exploration Company
c/o Mr. Olasupo Shasore, SAN
Ajumogobia & Okeke
2nd Floor
Sterling Towers
20 Marina
Lagos

For Respondent

Federal Republic of Nigeria
c/o Aare Afe Babalola, SAN, FCI Arb.,
OFR, CON
Mr. Adebayo Adenipekun, SAN, FCI Arb.
Mr. Olu Daramola, SAN, MCI Arb.
Mr. Oluwasina Ogungbade, Esq.
Mr. Kehinde Ogunwumiju, Esq.
Mr. Ola Faro, Esq.

*Interocean Oil Development Company and Interocean Oil Exploration Company v.
Federal Republic of Nigeria
(ICSID Case No. ARB/13/20)*

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and
c/o Mr. Bello Salihu
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Nigeria
and
c/o Mr. Oba Nsugbe QC
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9. Apportionment of Costs and Advance Payments to ICSID
*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration
Rule 28*

- 9.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of December 12, 2013, ICSID requested that each party pay US\$100,000 to defray the initial costs of the proceeding. ICSID received Claimants' payment on December 24, 2013 and Respondent's payment on January 2, 2014.

- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. London, United Kingdom, shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Tribunal may deliberate at any place it considers convenient.
11. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulations 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need to be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
- 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.8. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

12. Routing of Communications

Administrative and Financial Regulation 24

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the Tribunal Secretary, who shall send them to the opposing party and the Tribunal.
- 12.3. The Tribunal Secretary shall not be copied on direct communications between the parties which are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,¹ and upload the pleading with the supporting documentation to the FTP server created for this case.

13.1.1. The parties shall courier to the Tribunal Secretary on the same date:

- 13.1.1.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);
- 13.1.1.2. one hard copy of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and
- 13.1.1.3. two USB drives or CD-ROMs or DVDs, not protected by passcode or password, with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

- 13.1.2. at the same time, courier to the opposing party at the address(es) indicated at §8.1 above and to each Member of the Tribunal at the addresses indicated at §13.2 below:

¹ Please note that the World Bank server does not accept emails larger than 10MB.

² The A4/Letter format is required for ICSID's archiving.

*Interocean Oil Development Company and Interocean Oil Exploration Company v.
Federal Republic of Nigeria
(ICSID Case No. ARB/13/20)*

13.1.2.1. one hard copy of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

13.1.2.2. one minimum USB drive or CD-ROM or DVD, not protected by passcode or password, with a full copy of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

13.2. The addresses of the Tribunal Members are as follows:

Professor William Park
85 Atlantic Avenue
Cohasset, MA 02025
United States of America
Tel. +1 617 353 3149

Professor Julian Lew
20 Essex Street
London WC2R 3AL
United Kingdom
Tel.+44 20 7842 6712

Justice Edward Torgbor
No. 31, Trio Estate, Gigiri
P.O. Box 1200-00621
Nairobi
Kenya
Tel. +254724837170
+254722679247

13.3. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.4. Microsoft Word versions of all pleadings shall be provided.

13.5. Pleadings shall be accompanied by an index to the supporting documentation.

13.6. The parties are requested to use sturdy bindings for paper filings and not to overfill the binders.

13.7. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.8. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

14.1. The first phase of the proceedings will comprise the delivery of pleadings, consideration and hearing on the following preliminary objections (“Preliminary Objections”) raised by Respondent:

14.1.1. Respondent did not consent to submit this dispute to arbitration by ICSID;

- 14.1.2. Section 26 of the Nigerian Investment Protection Commission Act (“NIPC”) does not provide a basis for finding consent on the part of Respondent as it merely provides that disputes should be conducted in accordance with the ICSID Rules;
- 14.1.3. Claimants are not registered with the NIPC and therefore cannot rely on Section 26(3) of the NIPC Act to invoke the jurisdiction of ICISD, and Claimants misled the Secretariat of ICSID to register their Request for Arbitration when they falsely claimed that their enterprise was registered with the NIPC. Pleadings on this objection shall be limited to whether Claimants are registered and the bearing of registration on the Tribunal’s jurisdiction;
- 14.1.4. Respondent is not a competent party to this arbitration. Claimants’ pleadings on this objection should identify the law and legal authorities on which they intend to rely and the corresponding liability of Respondent;
- 14.1.5. Claimants’ claims are barred by statute; and
- 14.1.6. The request is premature in that Claimants failed to explore local remedies/conditions precedent contained in the NIPC Act.
- 14.2. The sequence of pleadings on these objections will be as follows:
 - 14.2.1. Respondent shall file a Memorial on the Preliminary Objections by March 14, 2014;
 - 14.2.2. Claimants shall file a Counter-Memorial on the Preliminary Objections by April 11, 2014;
 - 14.2.3. Respondent shall file a Reply on the Preliminary Objections by April 25, 2014; and
 - 14.2.4. Claimants shall file a Rejoinder on the Preliminary Objections by May 9, 2014.
- 14.3. The number and sequence of any other pleadings will be determined at a later time.
15. Production of Documents
Convention Article 43(a); Arbitration Rules 24 and 33-36
 - 15.1. Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) shall guide the Tribunal and the parties regarding document production in this case.
 - 15.2. Each party may serve a request for production of documents on the other party.

*Interocean Oil Development Company and Interocean Oil Exploration Company v.
Federal Republic of Nigeria
(ICSID Case No. ARB/13/20)*

Every request for production of documents shall precisely identify each document, or category of documents, sought and establish its relevance. Such a request shall not be copied to the Tribunal or the Tribunal Secretary.

- 15.3. Each party shall subsequently provide the other party with the documents in its possession, custody or control that are responsive to the other party's request.
- 15.4. Each party shall state in writing its responses or objections to the requested documents with reference to the objections listed in Article 9(2) of the IBA Rules.
- 15.5. The requesting party shall subsequently file its comments in writing on any response or objection made to production with the Tribunal, with a copy to the other party (in both Word and PDF formats).
- 15.6. A party shall produce those documents for which no objection is sustained by the Tribunal.
- 15.7. The request, responses or objections to the request, the reply to the responses or objections to the request, and the Tribunal's decisions referred to in this Section shall be recorded in a joint schedule in the form below:

1	2	3		4	5	6
Requesting Party [insert]						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Objections to Document Requests	Tribunal's Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 16.1. Written submissions shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.

- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.
- 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
- 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall afford the other party sufficient opportunity to comment on the evidential value or otherwise of such document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
- 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 16.5.2. The number of each Exhibit containing a document produced by Claimants shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
- 16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-001” and “R-001,” respectively.
- 16.5.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.6. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 16.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be

used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing.

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings subject to the provisions below.
- 17.2. No witness statements or expert reports will be submitted with the pleadings on the Preliminary Objections. The preliminary issues are to be determined on the basis of oral and written submissions, documents and the applicable legal authorities.
- 17.3. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.
- 17.4. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 18.1. If a witness hearing is held, each party shall notify the other party, with a copy to the Tribunal, which witnesses and experts it wishes to examine at the hearing by a date to be determined.
- 18.2. The procedure for examining witnesses and experts at the hearing shall be the following:
 - 18.2.1. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3).
 - 18.2.2. The witness statement of each witness and expert shall stand in lieu of the examination by the party producing the witness and expert ("direct examination"), subject to the provisions below.
 - 18.2.3. The examination may include matters raised in the pleadings, witness statements, documents that have been produced (including those by order of the Tribunal),

and/or oral evidence of the other party's witnesses, to the extent the witness is competent to testify on these statements and materials.

18.2.4. Witnesses giving oral testimony may first be examined in direct examination for no longer than 15 minutes or within such extra time as may be granted by the Tribunal.

18.2.5. The direct examination of witnesses is followed by examination by the other party ("cross-examination"), and subsequently by the party producing the witness ("redirect examination").

18.2.6. The cross-examination may include matters raised in the pleadings, witness statements, documents that have been produced (including those by order of the Tribunal), and/or oral evidence of the other party's witnesses, to the extent the witness is competent to testify on these statements and materials.

18.2.7. The redirect examination shall be limited to matters raised in cross-examination.

18.3. Witnesses shall not be allowed in the hearing room before giving their testimony and shall not be permitted to read the transcript before testifying. This provision does not apply to party representatives provided that they are identified more than 30 days before the hearing.

18.4. Experts shall be allowed in the hearing room at any time.

18.5. The Tribunal will decide whether expert witness will be questioned together, commonly referred to as "witness conferencing," at a later date.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 13

19.1. The parties shall identify any issues bearing on the hearing on Preliminary Objections by May 15, 2014. By the same date, the parties shall submit a protocol for debate that includes the order and duration of the oral submissions and provide a list of all individuals who will attend the hearing.

19.2. The date of the pre-organizational meeting for any subsequent hearing will be determined at a later time.

20. Hearings
Arbitration Rules 20(1)(e) and 32

20.1. Oral argument on the Preliminary Objections will be held on June 26, 2014.

- 20.2. The date of any other hearing will be determined at a later time.
- 20.3. The Tribunal will decide any disputes about the allocation of time if they arise.
- 20.4. The Tribunal will decide any disputes about attendance at any hearing if they arise.
21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)
- 21.1. The Tribunal Secretary will circulate a list of participants in advance of all hearings and sessions.
- 21.2. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.3. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 21.4. Verbatim transcripts in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.5. The parties shall agree on any corrections to the transcripts by a date to be determined. The agreed corrections may be entered in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered in the revised transcripts.
22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)
- 22.1. Provisions on Post-Hearing Memorials and Statements of Costs will be determined at a later time if needed.
23. Publication
Convention Article 48(5); Administrative and Financial Regulation 22; Arbitration Rule 48(4)
- 23.1. The parties consent to ICSID publication of any ruling issued in the present proceeding.

*Interocean Oil Development Company and Interocean Oil Exploration Company v.
Federal Republic of Nigeria
(ICSID Case No. ARB/13/20)*

Other Matters

The session was adjourned at 5:45 p.m.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the parties.

[SIGNED]

Professor William W. Park
President of the Tribunal
Date: 26 February 2014

Annex A - Timetable

The following timetable shall apply to the first phase of the proceedings:

Date	Party	Description	Section of this Order
March 14, 2014	RESPONDENT	Memorial on the Preliminary Objections	§14.2.1
April 11, 2014	CLAIMANTS	Counter-Memorial on the Preliminary Objections	§14.2.2
April 25, 2014	RESPONDENT	Reply on the Preliminary Objections	§14.2.3
May 9, 2014	CLAIMANTS	Rejoinder on the Preliminary Objections	§14.2.4
May 15, 2014	CLAIMANTS / RESPONDENT	Pre-hearing submission on protocol for debate, attendees, and outstanding issues	§19.1
June 26, 2014	CLAIMANTS / RESPONDENT	Hearing in London on Preliminary Objections	§20.1