

IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

between

AKGUN INSAAT MAKINA SANAYII VE DIS TICARET LTD. STI.

Claimant

and

THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

Respondent

RESPONDENT'S SUBMISSION ON COSTS

8 October 2025

TABLE OF CONTENTS

I. INTRODUCTION	- 3 -
II. COSTS	- 5 -
a. The Applicable Rule	- 5 -
b. The Claimant Casually Dismissed the Alternative Lands that Ethiopia Offered for the ETIZ Project as an Accommodation to Settle the Dispute	- 6 -
c. Ethiopia's Defense Necessity Was Driven by the Claimant's Callous Decision to Pursue a Half-Billion-Dollar Claim Which is Now Roundly Defeated	- 12 -
III. CONCLUSION	- 14 -

I. INTRODUCTION

1. The Federal Democratic Republic of Ethiopia here renders its final submission on costs in the case of the claims brought against it by Akgun Insaat Makina Sanayii ve Dis Ticaret Ltd. Sti.
2. Ethiopia has overwhelmingly prevailed in this arbitration and its earlier request for the full costs of this proceeding including all costs of its representation and including interests remains intact.
3. The Claimant's principal claim that could have entitled it to any measurable damages was expropriation. This claim was categorically rejected.
4. At the factual level, the Claimant initiated its claims by putting forward unseemly suggestions of conspiracy and discrimination that formed the basis of its initial factual theories.¹ These claims are now disproven. The Tribunal has confirmed that there was no discrimination or bad faith on the part of Ethiopia at any time and has exercised a margin of discretion under the fair and equitable treatment ("FET") standard (protecting an investor's "legitimate expectations") but has rejected *all other claims put forth by the Claimant*.
5. More importantly, precisely as Ethiopia has argued all along, the Claimant brought an excessive and exaggerated and even outlandish damages claim (exceeding half a billion dollars in value) against a developing nation. That is what caused Ethiopia to mobilize and dedicate considerable resources to its defense, as any rational actor would do, *and that is the claim that Ethiopia has now roundly defeated*.

¹ Ethiopia recalls that in the earlier course of these proceedings Akgun submitted to this Tribunal that Ethiopia "belatedly invoked the EIA requirement as part of its discriminatory machinations to halt the ETIZ project in favor of the Condominium Project it preferred" and that Ethiopia's "insistence" on an EIA for ETIZ "*was intended and did in fact target ETIZ and cause its demise*." Claimant's Reply, dated 22 October 2021, para. 5.184 (emphasis added). Not to be outdone by the earlier memorials, in its final pre-hearing submission, the Claimant denoted Ethiopia's EIA process as being nothing less than "diabolical." Claimant's Rejoinder, dated 25 March 2022, para. 2.2.

6. In short, the hard expenditure that Ethiopia has incurred from its limited resources was done out of the sovereign imperative **to defeat the damages claim**. Indeed, **more than 99%** of the damages claim stands rejected. ***This quantitative proportion is the best scientific indicator of the proportion of the allocation of costs.***
7. The Claimant for its part has expended in excess of fifty percent more than the amount that it has obtained in a damages award (also being essentially twice as much as the Respondent has expended in its defense); such is in and of itself another powerful indicator of the overreach.
8. Lastly, it was plain to all that the ETIZ project was simply too infantile in its stage to allow for any quantum of damages ever going beyond simple sunk costs in any scenario. This truth is reflected and confirmed in the manner by which the Tribunal has ultimately dispensed the evidence of the Claimant's quantum expert in the final award.²

² See Final Award (Save as to Costs), dated 29 August 2025, Sec. XVI (Quantum).

II. COSTS

a. The Applicable Rule

9. All agree as to the applicable rule on costs. Article 42 of the UNCITRAL Rules states:

“1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.”³

10. Ethiopia submits that the Claimant is the unsuccessful party and thus bears the full burden of the rule's presumption from which there is no principled basis to depart.
11. Ethiopia shall here briefly overview the two key factors which it considers to be central in the Tribunal's award of costs, namely **(i)** the Claimant's casual dismissal of the alternative lands that Ethiopia offered; and most of all **(ii)** the Claimant's outrageously exaggerated damages claims.

³ 2010 UNCITRAL Arbitration Rules, Art. 42.

b. The Claimant Casually Dismissed the Alternative Lands that Ethiopia Offered for the ETIZ Project as an Accommodation to Settle the Dispute

12. The liability phase of this arbitration has now concluded – there is a core factual episode which has been heavily litigated between the Parties during that phase but which independently goes to the question of costs. That is Ethiopia's generous offer of alternative lands for the ETIZ project which the Claimant too casually disregarded and dismissed.
13. The Tribunal would recall that Akgun's theory somehow ended with the argument that the replacement land was too far from a city center without apparently even checking the presence of cities nearby.⁴
14. In the present case, this failure goes to the heart of the question of costs, for Ethiopia's offering of suitable alternative lands and the Claimant's unexplained rejection of the same constitutes evidence tending to prove the unreasonableness of the Claimant's conduct. By offering alternative lands the Respondent acted reasonably and not arbitrarily, in a reasonable accommodation to Akgun essentially taking the form of a settlement offer. It must be noted that the Claimant **never** held any absolute entitlement to the originally considered Sendafa site for the ETIZ project (as the Claimant itself has implicitly conceded and confirmed).⁵
15. Thus Akgun acknowledged and confirmed (as it must) that an offering of suitable alternative lands could serve to defeat its claims but chose instead to factually dispute the suitability of the lands as were, in the event, offered to it. The standard that Akgun appeared to endorse is

⁴ See, e.g., Hr. Tr. (20 May 2022) [Prof. Kidane & Mr. Yusuf Akgun] 93:9-94:6.

⁵ See Claimant's Reply, dated 22 October 2021, para. 5.128 (describing Ethiopia's "expropriatory measures" as "culminating in its July 2014 suspension letter **and** its failure to offer suitable alternative land") (emphasis added). Akgun here conceded that an offering of suitable alternative lands forestalls a destruction of any "investment" and bars a finding of expropriation; thus necessarily conceding, by implication, that it never held absolute entitlement to the Sendafa site at all. See also Claimant's Post-Hearing Submission, para. 2.29 (stating that "Ethiopia's refusal to allow Akgun to develop ETIZ on the land it had allocated **and** its failure to allocate alternative land violate Treaty Article IV") (emphasis added).

one of adequate suitability.⁶ Ethiopia maintains that the offered lands were lands of eminent suitability.⁷

16. To demonstrate this truth, Ethiopia adduced evidence in the form of videos of offered alternative lands taken by Akgun itself during site visits in August 2015:



⁶ See, e.g., Claimant's Reply, dated 22 October 2021, para. 2.1.7.

⁷ See Ethiopia's Rejoinder, dated 21 January 2022, paras. 190-194.



Still Images from the Video AKGUN-146
taken on 21 August 2015 during a site visit in Ethiopia, **Exhibit R-57**

17. While viewing this site, Mr. Yusuf Akgun himself concluded that with a certain addition “*this [land] could do.*”⁸ Upon being queried regarding such addition Mr. Deribu Jamal, then bureau head for Oromia Land and Environmental Protection,⁹ responded affirmatively.¹⁰
18. At the hearing, Mr. Yusuf Akgun notably declined to shed any light on the discrepancy as between his favorable contemporaneous view and his adverse testimony in this arbitration. Instead, he testified only that the land “wasn’t acceptable” and “*I don’t even want to discuss this issue*” without more.¹¹ This, Ethiopia submits, is unreasonable and unexplained conduct with respect to a serious and generous offer of accommodation and settlement of the dispute.
19. Where weighing Akgun’s refusal to take up the offered lands: it causes the claim for costs to fail, for the reasonable offer (to which Mr. Akgun refused to give any explanation as to why it was declined whereas he had favorably viewed the land at the time, this being the embodiment of arbitrary or irrational or unreasonable conduct) comprised replacement lands of a quality equal to (or perhaps greater than) the originally contemplated land – thus confirming the existence of a legitimate and *bona fide* effort of accommodation by Ethiopia which was unreasonably refused by Akgun who instead chose to pursue expensive litigation.
20. As may be visibly seen from the videographic evidence, the specific site that Mr. Yusuf Akgun himself viewed favorably in August 2015 is an open expanse of flat land situated along a highway. The land is confirmed to be situated in the vicinity of Modjo,¹² the site of a massive dry port that featured in the Claimant’s own feasibility studies,¹³ near to the world-class Addis

⁸ Transcription of the Video AKGUN-146 taken on 21 August 2015 during a site visit in Ethiopia, **Exhibit R-58** (emphasis added).

⁹ Hr. Tr. (24 May 2022) [Dr. Haile & Mr. Sisay Gemechu Edo] 19:21-20:13.

¹⁰ Video AKGUN-146 taken on 21 August 2015 during a site visit in Ethiopia, **Exhibit R-56** (02:40). Ethiopia here notes that in its letter of 2 November 2015 Akgun wrote that “in order to discuss the fate of the project, we attend[ed] a meeting organized at the Ministry of Industry on 20.08.2015, to which Vice President of Oromia State Deribu JAMAL participated” but that “[w]e have not received a reasonable offer on or after the meeting.” Letter from Akgun Construction to President Dr. Mulatu Teshome et al., dated 2 November 2015, **Exhibit C-088**. Ethiopia submits that the exchanges here described, captured live on video the following day, 21 August 2015, disprove Akgun’s suggestion.

¹¹ Hr. Tr. (20 May 2022) [Mr. Yusuf Akgun] 94:5-6 (emphasis added).

¹² Hr. Tr. (24 May 2022) [Dr. Haile & Mr. Sisay Gemechu Edo] 15:24-18:25.

¹³ See Ethio-Turkish Industrial Zone Feasibility Study by Casta, dated December 2009, **Exhibit C-045**, p. 333.

Ababa-Adama Expressway,¹⁴ and located within thirty kilometers of Adama itself, also known as Nazareth, one of Ethiopia's largest cities, already numbering at the relevant time hundreds of thousands of people. Incidentally, nearby Bishoftu is the chosen site of Ethiopia's USD 10 billion international airport project which is expected to be the largest on the continent.¹⁵



Claimant's Rejoinder on Jurisdiction and Counterclaims, dated 25 March 2022
Figure 3: Distance from Addis Ababa to Mojo (77.3 km) (Source: Google Maps)

21. Furthermore, in discussions amongst the Parties regarding alternative lands, Ethiopia expanded its offering by the inclusion of a fifteen-year exemption from all taxes thus representing

¹⁴ See Video AKGUN-149 taken on 21 August 2015 during a site visit in Ethiopia, **Exhibit R-64** and Still Images from the Video AKGUN-149 taken on 21 August 2015 during a site visit in Ethiopia, **Exhibit R-65**.

¹⁵ See, e.g., <<https://africa.businessinsider.com/local/markets/us-backs-dollar-10-billion-ethiopian-airport-following-record-aircraft-purchase/xljlf05>>. Such infrastructural synergies were a natural and foreseeable outgrowth in view of, for example, the already-known presence of the Modjo dry port which featured in the Claimant's own feasibility studies as early as 2009; see note 13 *supra*.

valuable economic advantage that could serve to recoup sunk costs.¹⁶ It is in viewing all these facts that Ethiopia has observed Akgun's "unmitigated abandonment" of the ETIZ project.¹⁷

22. If Mr. Akgun had validly explained why the offered replacement lands were somehow not reasonable (and thus evinced a reasonable basis of his refusal) this could weigh in consideration of the settlement offer with respect to the costs consideration. Instead, Mr. Akgun simply refused to do so. Mr. Akgun has failed to explain why he chose many years of costly litigation as somehow preferable to the use of an alternative site along with generous and valuable tax incentives for his project.
23. Ethiopia understands and respects the Tribunal's reckoning of these facts and the legal consequences that it attached relating to the merits stage but it here submits the issue of the reasonableness of the offer for its relevance to the allocation of costs of the proceedings.

¹⁶ See, e.g., Letter from Akgun Construction to Ministry of Industry, dated 19 December 2014, **Exhibit C-017** ("H.E. Dr. Arekebe Oqubay also expressed that [Ethiopia] can [...] provide tax exemption for 15 years").

¹⁷ Ethiopia's Rejoinder, dated 21 January 2022, paras. 431, 481.

c. Ethiopia's Defense Necessity Was Driven by the Claimant's Callous Decision to Pursue a Half-Billion-Dollar Claim Which is Now Roundly Defeated

24. Under the Claimant's pleading, the Claimant's expert A&M "calculate[d] the total amount of **USD 241,515,079** as Claimant's lost profits for the first two Stages (1460ha) of ETIZ, before interest"¹⁸ and the Claimant there referred to this Table 5 within its Statement of Claim:

Table 5 – FMV of Claimant's Investment by Completed Stage of Development

	<i>Hectares</i>	<i>USD</i>	<i>USD</i>	<i>USD</i>	<i>USD</i>	<i>%</i>
Progression	Area	Present Value "PV" Profits Through Construction Completion	PV Profits Post-Construction Completion	Total PV Profits	Cumulative PV Profits	Stage % of PV
Phase 1	100	18,494,964	8,769,255	27,264,219	27,264,219	11%
Stage I	660	156,865,764	25,995,048	182,860,811	182,860,811	76%
Stage II	800	59,082,416	25,566,899	84,649,315	241,515,079	100%
Estimated Pre-Award Interest					139,962,101	
Total Damages Including Pre-Award Interest					381,477,179	

25. With respect to its additional head of claim for loss of opportunity, Akgun submitted that "Claimant's damages for loss of opportunity to negotiate the allocation of additional 2000ha of land and to expand ETIZ shall [...] ***be no less than half of Claimant's lost profits*** [...] for Stage I and Stage II of ETIZ collectively."¹⁹
26. Thus the Claimant sought an additional **USD 120,757,539.50** for "loss of opportunity" (this being one-half of USD 241,515,079). The total amount sought by the Claimant thereby reaches to **USD 502,234,718.50** (USD 381,477,179 + USD 120,757,539.50).

¹⁸ Statement of Claim, para. 6.52 (emphasis added).

¹⁹ Statement of Claim, para. 6.79 (emphasis added).

27. **Akgun brought a half-billion dollar claim against Ethiopia.** On these numbers, the amount which the Tribunal has awarded in damages to the Claimant at **USD 4,955,131** stands at **less than one percent** of the amount sought – **0.987 percent** to be more precise.²⁰
28. Ethiopia considers that it is the successful party in this arbitration to the order of 99.013 percent and thereby seeks 99.013 percent of all its costs incurred or **USD 4,337,705.22**.²¹

²⁰ Ethiopia notes that the Tribunal's Procedural Order No. 1 states that "Parties shall conduct themselves in a manner consistent with the efficient use of time and resources" and further that "[t]he Tribunal *shall* take into account when using its discretion to allocate costs any unreasonable behaviour by a Party" whereafter "unreasonable behaviour" is explicitly stated to include "*exaggerated claims*." Procedural Order No. 1, dated 4 December 2020, Sec. 19 ("**Conduct of the Parties**") (emphasis added).

²¹ See Ethiopia's Letter to the Tribunal, dated 5 August 2025 (Costs Submissions) (stating Ethiopia's total costs incurred to be USD 4,380,945.15).

III. CONCLUSION

29. The Claimant not only bypassed all available domestic administrative and judicial remedies.²²
30. It also bypassed the Parties' mutually intended international contract remedies and initiated a treaty claim under substantive principles enshrined in the Ethiopia-Turkey bilateral investment treaty wherein the two nations have accepted certain fundamental international law principles for the protection of each other's investments and investors.
31. Akgun went to treaty arbitration and sought *half a billion dollars* and obtained *less than one percent* of the damages that it sought – less than two-thirds of the amount that Akgun has indicated in its own fees and expenses of the arbitration – thus demonstrating the extent of the frivolity.
32. Ethiopia kept its promise to arbitrate, honored the Tribunal as it did honor the Claimant, and requests that it receive a just award comprising 99.013 percent of its costs in the amount of **USD 4,337,705.22** as quantified hereinabove.

²² Ethiopia here notes the Tribunal's express finding that "Claimant never attempted to seek redress in the local courts and does not point to any action taken by Respondent preventing it from doing so." Final Award (Save as to Costs), dated 29 August 2025, para. 756.3. *See also ibid.*, para. 916 ("[t]here is also no suggestion that Respondent did not give Claimant due process of law").

Respectfully submitted,



Dr. Zewdineh Beyene Haile
Professor Won Kidane
Mr. Jackson Shaw Kern

ALG LLP

8 October 2025