

PCA Case No. 2023-22

**IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – PERU TRADE
PROMOTION AGREEMENT,**

ENTERED INTO FORCE ON 1 FEBRUARY 2009

— and —

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, AS REVISED IN 2013 (THE “UNCITRAL RULES”)**

— between —

BACILIO AMORRORTU

Claimant,

v.

THE REPUBLIC OF PERU

Respondent.

RESPONDENT’S REJOINDER AND REPLY ON JURISDICTION

14 July 2026

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Defined Terms

Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2013	UNCITRAL Rules
BASPETROL S.A.C.	Baspetrol
Blocks III and IV	Blocks
Claimant Bacilio Amorrortu's Opposition to Respondent Peru's Request for Bifurcation (19 December 2023)	Claimant's Opposition to Bifurcation
Claimant Bacilio Amorrortu's Rejoinder in Opposition to Respondent Peru's Request for Bifurcation (10 January 2024)	Claimant's Rejoinder in Opposition to Bifurcation
Claimant's Notice of Arbitration (16 August 2022)	NoA
Claimant's Statement of Claim (21 August 2023)	SoC
Claimant's Statement of Reply	Reply
Commission in charge of conducting the Bidding Processes	Commission
Comptroller General of the Republic of Peru (<i>i.e.</i> , <i>Contraloría General de la República del Perú</i>)	Comptroller General
Confidential documents from Peru's <i>Lava Jato</i> Special Team	Confidential Documents
License contracts for the Blocks' operation	Contracts/License Contracts
Discounted Cash Flow	DCF
Directory Agreement No. 034-2014 (20 March 2014) and Directory Agreement No. 035-2014 (20 March 2014) approving temporary agreements with Interoil	Temporary Contracts
Fair Market Value	FMV
Graña y Montero Petrolera S.A.	GMP

Graña y Montero S.A.A.	GyM
International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts	ILC Articles
International public bidding processes No. PERUPETRO-001-2014 and No. PERUPETRO-002-2014	Bidding Processes
Interoil Peru S.A.	Interoil
<i>Interoil, Perú S.A.c. Perupetro S.A.</i> , ICC Case No. 18783/CA/ASM	ICC Arbitration
Law No. 30130, Declaring of Public Necessity and National Interest the Priority Execution of the Modernization of the Talara Refinery to Ensure the Preservation of Air Quality and Public Health and Adopts Measures to Strengthen the Corporate Governance of Petroleums of Peru - Petroperu S.A.	Law No. 30130
Memorandum No. GGRL-025-2014 (22 April 2014) (<i>Bases de Licitación</i>)	Bidding Rules
Mercantile Peru Oil and Gas, S.A.	Mercantile
Ministry of Economy and Finance	MEF
National Coalition of Petroperu's Unions (<i>i.e., la Coalición Nacional de Sindicatos de Petroperú</i>)	CNSP
Odebrecht S.A.	Odebrecht
Empresa Petrolera (EP) según lo requerido por el Reglamento de Calificación	Oil Company
Perenco S.A.	Perenco
Peru's Ministry of Energy and Mines	MINEM
Peru's Ministry of Transport and Communications	MTC
Peru's Notification of Intention to Request Bifurcation (29 September 2023)	NoI to Bifurcate

Peru's Organic Hydrocarbons Law No. 26221 of 1993	Organic Hydrocarbons Law
Peru's Request for Bifurcation (14 November 2023)	RfB
PeruPetro Procedure GFCN-8, Contracting Through Direct Negotiation	Procedure 8
Perupetro S.A.	Perupetro
Perupetro's Institutional Control Organ (<i>i.e., el Órgano de Control Institucional</i>)	OCI
Petróleos del Perú - Petroperú, S.A.	PETROPERU
Promociones Petroleras Talara, S.A.	Propetsa
Propetsa-Visisa Serpet Asociados	Provisa
Proyecto del Gasoducto del Sur	South Pipeline Project
Reply Statement to Claimant's Opposition to Republic of Peru's Request for Bifurcation (29 December 2023)	Reply to Claimant's Opposition to Bifurcation
Respondent's Statement of Defense	SoD
Respondent's Statement of Rejoinder and Reply on Jurisdiction	Rejoinder
Task force of prosecutors appointed in Dec. 2016 to investigate the Lava Jato scandal (<i>i.e., el Equipo Especial de Fiscales</i>)	<i>Lava Jato</i> Special Team
United States and Peru Trade and Promotion Agreement Investment Chapter (12 April 2006)	USPTPA Investment Chapter
Vienna Convention on the Law of Treaties (1969)	VCLT
Oil company qualified by Perupetro S.A. under Supreme Decree No. 030-2004-EM	Qualified Oil Company
Procedimiento e Indicadores para Calificación de Empresas aprobado mediante Acuerdo de Directorio de Perupetro No. 04-2014 del 15 de abril de 2010	Qualification Procedure

Procedural Order No. 5 (6 February 2025)	PO5
Procedural Order No. 8 (21 August 2025)	PO8
Decreto Supremo No. 030-2004-EM, Reglamento de Calificación de Empresas Petroleras	Regulation
United States-Peru Trade Promotion Agreement	USTPA/Treaty

In accordance with Procedural Order No. 14 of 1 June 2026 and the procedural calendar set forth therein, the Republic of Peru hereby presents its Rejoinder and Reply on Jurisdiction (the “**Rejoinder**”).

I. INTRODUCTION

1. This case is a fraud. It is driven by one man’s fixation on “resuming” operations in Block III¹—operations Amorrortu fully and irrevocably transferred to InterOil in 1997. That fixation has led him to misrepresent his interactions with Perupetro’s president, Luis Ortigas, and even to fabricate evidence. At bottom, Amorrortu asks the Tribunal to hold Peru internationally responsible, and to award him more than half a billion dollars, for rights that Baspetro, a company in which he held only a 40% minority interest, never acquired, simply because Perupetro elected to award two license contracts through open competitive bidding rather than a closed-door direct negotiation. Amorrortu has persistently sought to substitute speculation for evidence, fiction for fact, and aspiration for entitlement. The Tribunal should not indulge those attempts; it should dismiss his claim in its entirety.

2. Amorrortu claims that Baspetro acquired rights over two oil blocks in the Talara region of Peru—Blocks III and IV—by the mere act of sending an unsolicited letter, or “proposal,” to Perupetro. The reality, however, is that he should never have sent that letter in the first place. Perupetro’s president, Mr. Ortigas, had told him that Block III was not available for direct negotiation and that he should await the call for bids. According to Amorrortu, Baspetro’s proposal triggered a “direct negotiation” that entitled Baspetro to license contracts for the Blocks’ operation (the “**Contracts**” or “**License Contracts**”), such that Peru’s decision to award the Contracts instead through transparent, competitive public bidding processes—bidding processes in which Baspetro voluntarily participated—constituted a breach of the minimum standard of treatment under Article 10.5 of the United States-Peru Trade Promotion Agreement. None of this is true.

¹ Capitalized terms employ the definitions used herein or in Peru’s Statement of Defense.

3. Amorrortu's fixation on the Blocks (especially Block III) is not the product of a reasoned investment strategy. It is the latest chapter in a decades-long personal crusade against Peru. At every turn, Amorrortu has failed. And at every turn, rather than accept the result, he has sought a different forum. Claimant's Reply in Support of his Statement of Claim dated 22 December 2025 (the "**Reply**") does nothing to change the outcome. The reality is simple: no direct negotiation ever commenced, among other reasons because Baspetro never obtained—and never even applied for—certification as a Qualified Oil Company, which was a prerequisite under Peruvian law for engaging in direct negotiations with Perupetro; because the Blocks were reserved for public tenders as early as 2010, as confirmed in public documents—a fact that Amorrortu himself acknowledged when he approached Perupetro regarding the Blocks; and because Baspetro's so-called proposal of 28 May 2014 failed to satisfy even the most basic formal requirements to trigger a direct negotiation under the governing legal framework.

4. Put simply, no right arose because no step in the process that could have given rise to one was ever completed. Unable to establish a legal foundation for his claim, Amorrortu resorts to sweeping allegations of corruption. He contends that Graña y Montero S.A.A. obtained the Contracts for the Blocks through a corrupt bargain with then-First Lady Nadine Heredia, and that the Bidding Processes were rigged to favor GyM. Yet the very evidence Amorrortu demanded from Peru in this arbitration—confidential documents from Peru's *Lava Jato* Special Team (the "**Confidential Documents**")—proves the opposite. Despite years of rigorous investigation that successfully unearthed corruption in numerous major infrastructure projects and across various administrations and political parties, the *Lava Jato* Special Team found no evidence of corruption with respect to the Blocks or the Bidding Processes. Amorrortu claims to have scoured these documents for proof. He found none.

5. Instead, he resorts to reckless misrepresentations of innocuous references in the Confidential Documents while, in the same breath, launching baseless attacks on the integrity of the anti-corruption institutions that produced them—the very institutions whose work refutes his narrative. Ultimately, the evidence demonstrates that the Bidding Processes were not the sham Amorrortu portrays. They were conducted transparently, in strict compliance with the applicable

legal framework, and under the supervision of independent oversight bodies—including Perupetro’s Institutional Control Organ.

6. Baspetro was not singled out for exclusion; it was eliminated from the Bidding Processes because its submission was entirely unresponsive to the published bidding requirements. Eleven other companies were similarly disqualified at various stages of the process. GyM was adjudicated the Contracts because it was the winning bid—not because it was the beneficiary of any corruption scheme.

7. Even if Amorrortu could surmount these obstacles—he cannot—his claim would still fail on causation and quantum. Baspetro was a newly incorporated company with no certification as a Qualified Oil Company, no prior operations, no technical staff, no binding agreements with third-party operators, and only US\$ 80,000 in paid-up capital. The notion that, absent Peru’s alleged breach, such a company would have obtained, and then profitably operated, two oil blocks requiring millions of dollars in capital investment and specialized technical capacity defies logic and credibility, making Amorrortu’s claim entirely speculative. Yet Amorrortu calculates his alleged damages on precisely that flawed premise, compounded by overstated assumptions regarding his ownership interest in Baspetro, oil production and drilling projections, and oil prices, as well as understated assumptions regarding costs and taxes, among other defects. In short, Amorrortu’s damages claim is an exercise in speculation. International law, however, bars the recovery of speculative damages, and his claim must therefore be dismissed.

8. This Rejoinder is organized as follows:

9. **Part II** dismantles Amorrortu’s factual account. It demonstrates that, far from rebutting Peru’s arguments, the Reply has merely reinforced three key conclusions. First, Amorrortu never conducted the most basic due diligence yet expects Peru to bear the consequences of his own ignorance: Baspetro could not have, and in fact did not, commence a direct negotiation with Perupetro. Second, the Bidding Processes were transparent and legally compliant exercises of Perupetro’s right to adjudicate the Contracts, and Baspetro’s elimination was the inevitable consequence of its own shortcomings. Third, the *Lava Jato* Special Team’s findings do not support

Amorrortu's theory that GyM secured the Contracts through a corrupt agreement with Nadine Heredia.

10. **Part III** addresses and rebuts Amorrortu's requests regarding Peru's document production. Peru demonstrates that Amorrortu's request to strip the Confidential Documents of their protections is unjustified and that his request for adverse inferences lacks support in both fact and law. These perfunctory requests should be denied in their entirety.

11. **Part IV** demonstrates that Amorrortu's claim is outside the jurisdiction of the Tribunal on six independent grounds: (i) the claim was already time-barred under Article 10.18.1 of the Treaty, as Amorrortu submitted it more than three years after he first acquired knowledge of the alleged breach; (ii) Amorrortu's dominant and effective nationality was Peruvian at the time of the alleged breach and his strategic renunciation of that nationality on the eve of litigation constitutes an abuse of process; (iii) Amorrortu did not have a protected investment; (iv) the disputed measures are not attributable to Peru because Perupetro did not exercise governmental authority in connection with the adjudication of the Blocks; (v) there is no causal connection between Peru's purported Treaty breach and the damages Amorrortu claims; and (vi) Amorrortu failed to comply with the requirements of Articles 10.15 and 10.16.2, leaving Peru's consent to arbitration unperfected. The Reply's attempts to deflect these objections through mischaracterizations of the law, reliance on *Amorrortu I* claim, and unfounded invocations of *res judicata* are unavailing.

12. In **Part V**, Peru proves that, even if the Tribunal were to find jurisdiction, Peru did not breach the minimum standard of treatment under Article 10.5 of the Treaty. The disputed measure—Perupetro's decision to proceed with the Bidding Processes and the conduct of those processes—was lawful, transparent, and consistent with Peru's regulatory framework. Amorrortu's expectations were not legitimate, his allegations of corruption are unproven, and no breach of customary international law occurred.

13. For the sake of completeness, **Part VI** demonstrates that Amorrortu is not entitled to the damages he seeks. Peru first shows that there is no causal link between Amorrortu's

purported damages and Peru's alleged breach of the Treaty—Baspetrol could never have obtained the License Contracts, whether through a direct negotiation or the Bidding Processes, and could never have operated the Blocks profitably given its complete lack of technical capacity, financial means, and operational experience. Peru then demonstrates that Amorrortu's damages valuation fails on its own terms: his reliance on the Fair Market Value standard is disconnected from his own counterfactual; his use of the DCF methodology yields speculative results for a company that was never a going concern; and his valuation is riddled with flawed, unreliable, and grossly inflated assumptions.

14. Finally, **Part VII** sets out Peru's Request for Relief.

15. This Rejoinder is accompanied by the following witness statements and expert reports:

- Second Witness Statement of Mr. Roberto Carlos Guzmán Oliver (Guzmán Second Witness Statement (**RWS-04**));
- Second Witness Statement of Ms. Isabel Mercedes Tafur Marín (Tafur Second Witness Statement (**RWS-05**));
- Second Witness Statement of Mr. Rafael Ernesto Vela Barba (Vela Second Witness Statement (**RWS-06**));
- Second Expert Report of Mr. Kurt G. Strunk (Charles River Associates) (Strunk Second Expert Report (**RER-03**));² and
- Second Expert Report of Dr. Carlos Raúl José Vizquerra Pérez Albela (Vizquerra Second Expert Report (**RER-04**)).

16. Also submitted with this Rejoinder are Peru's new factual exhibits numbered **R-69** to **R-120** and legal authorities numbered **RLA-198** to **RLA-248**.

² Peru hereby informs the Tribunal that, since the submission of his first expert report (defined in Peru's Statement of Defense as the "**NERA Expert Report**"), Mr. Strunk has moved from NERA Economic Consulting to Charles River Associates ("**CRA**"). For the avoidance of doubt, this change of affiliation has no bearing on Mr. Strunk's opinions in both reports: the NERA Expert Report, prepared and submitted by Mr. Strunk while at NERA, reflects his own independent opinion, as does the Strunk Second Expert Report, prepared and submitted by Mr. Strunk while at CRA.

17. In light of the foregoing, and as demonstrated in detail in the pages that follow, the Republic of Peru respectfully requests that the Tribunal dismiss Amorrortu's claim in its entirety and order Amorrortu to pay all costs related to this arbitration, including all expenses and legal and expert fees incurred by the Republic in the preparation of its defense.

II. STATEMENT OF FACTS

18. The Reply was Amorrortu's last chance to articulate even a minimally plausible claim on the facts. This chapter demonstrates that Amorrortu's Reply not only failed to do so but also laid bare his inability to overcome the factual record Peru established in its Statement of Defense. Where Peru presents detailed arguments supported by documentary and witness evidence, Amorrortu offers only evasions, mischaracterizations of the legal framework governing Perupetro's activities, and sweeping allegations of a corruption scheme for which the record provides no support. If anything, the Reply has only deepened the fundamental deficiencies in Amorrortu's case that were exposed in Peru's Statement of Defense ("**SoD**").

19. This Section addresses each of these deficiencies in turn. (**Section A**) demonstrates that Amorrortu's claim fails in the first place because Baspetro could not have, and in fact did not, commence a direct negotiation with Perupetro over the Blocks. (**Section B**) establishes that the Bidding Processes of the Blocks were not manipulated to favor GyM, and that Baspetro's disqualification from the Block III Bidding Process—the only one in which Baspetro participated—was the only possible outcome because it lacked the required technical and economic capabilities. (**Section C**) shows that nothing in the *Lava Jato* investigations supports Amorrortu's claim that Perupetro's decision to adjudicate the Blocks through a selection process was motivated by corruption. The Confidential Documents of the *Lava Jato* investigations (the "**Confidential Documents**") further undermine Amorrortu's allegations that the adjudication of the Blocks to GyM was corrupt.

A. Baspetro Could Not Have, And in Fact Did Not, Commence A Direct Negotiation with Perupetro Over the Blocks

20. Peru's Statement of Defense established that (i) Perupetro never invited Amorrortu to submit a direct negotiation proposal; (ii) a direct negotiation was not possible for Baspetro; and (iii) Baspetro did not commence a direct negotiation over the Blocks.³ Instead of confronting the facts set out in Sections II.A-II.C.1 of Peru's SoD, Amorrortu continues to misrepresent the evidentiary record and the legal framework applicable to the adjudication of Perupetro's contracts.

21. As this Section demonstrates, Amorrortu and/or Baspetro never conducted any preparatory work or due diligence that could form the basis of his alleged expectation that Baspetro would secure contracts for the Blocks' operation through a direct negotiation (**Section 1**). Moreover, the legal framework governing direct negotiations does not support Amorrortu's alleged expectation and, in any event, Baspetro could not have initiated a direct negotiation in the circumstances of this case, nor did it commence a direct negotiation for the Blocks through the Alleged Proposal (**Section 2**).

22. Before addressing these points, Peru notes that the Reply no longer mentions Amorrortu's purported persecution and ensuing historical legal pursuits against Peru—including the saga before U.S. courts—except to admit that those circumstances are irrelevant here.⁴ Their only value in this proceeding is to illuminate the driving force behind Amorrortu's claim: a longstanding crusade against Peru. Amorrortu's pleadings on these points have only served to prove that (i) Propetsa legally transferred the rights over Block III in 1995;⁵ and (ii) he has been obsessed with "recovering" those rights by any means necessary. This obsession is the only reason

³ See Respondent's Statement of Defense (29 April 2024) ("**SoD**"), §§ II.B-II.C.1.

⁴ See Claimant's Statement of Reply (22 December 2025) ("**Reply**"), note 386.

⁵ Claimant's Statement of Claim (21 August 2023) ("**SoC**"), ¶¶ 45-46. The transfer was finalized by 1997. *See Id.*

Amorrortu presented the Alleged Proposal despite having been told months earlier that Block III would be adjudicated through a competitive public bid.⁶

1. Despite his fixation on regaining rights over Block III, which he transferred legally in 1995, Amorrortu and Baspetro never conducted proper due diligence

23. In its SoD, Peru established that Amorrortu's various claims regarding the formation of Baspetro and its preparatory steps were either unsubstantiated or contradicted by the few contemporary documents proffered by Amorrortu.⁷ Amorrortu does not meaningfully engage with these arguments, leaving the majority unchallenged.⁸

24. Amorrortu has definitively failed to prove that he and/or Baspetro conducted proper—or any—due diligence to support his alleged expectation that Baspetro would secure the Blocks' operation through a direct negotiation. As Peru established in the SoD,⁹ proper due diligence would have informed Amorrortu (i) of the requirements for a proposal for direct negotiations; (ii) that the Blocks were unavailable for direct negotiation; and (iii) that Perupetro's practice was to award long term contracts for operating blocks through public tenders rather than direct negotiations.¹⁰

25. As to the legal framework, Amorrortu continues to provide no documents reflecting his contemporary understanding, if any, of the requirements applicable to direct negotiations. The only conclusion that can be drawn from this omission is that he did not bother to investigate these issues. Whatever expectation Amorrortu had of obtaining rights over the Blocks through direct negotiation, it was illusory. Had he consulted qualified legal counsel or

⁶ See SoD, ¶¶ 3-4.

⁷ See SoD, § II.A.4.

⁸ In the interest of brevity and procedural economy, Peru does not repeat those arguments here to the extent that they have not been addressed by Amorrortu and incorporates them by reference.

⁹ See SoD, § II.B; Witness Statement of Roberto Carlos Guzmán Oliver (29 April 2024) (RWS-01) ("Guzmán First Witness Statement"), ¶ 8; Witness Statement of Isabel Mercedes Tafur Marín (29 April 2024) (RWS-02) ("Tafur First Witness Statement"), ¶¶ 19-23.

¹⁰ SoD, ¶ 48 *et seq.*

conducted other forms of due diligence, Amorrortu would have understood that Baspetrol's Alleged Proposal was hopeless.¹¹

26. Amorrortu similarly fails to provide any documents that would suggest, let alone prove, that he assessed the Blocks' availability for direct negotiations. As discussed below, the record shows the opposite: Amorrortu always knew that they would be adjudicated through public tenders. Amorrortu offers no evidence suggesting that he investigated Perupetro's contracting policies and practices. Contrary to Amorrortu's allegations in the Reply,¹² Perupetro's preference for public tenders would have been apparent to any diligent party, and certainly to experienced participants in Peru's oil and gas industry, like Amorrortu claims to be.¹³ The same is true of Perupetro's absolute prerogative, under article 11 of the Hydrocarbons Law, to choose whether to award license contracts by direct negotiation or through public tender.

27. In addition to the witness and expert testimony that Peru has submitted in this arbitration,¹⁴ Peru demonstrated, through Exhibits R-15 and R-17, that Perupetro's decision to adjudicate the Blocks through public tenders was memorialized as early as 2010 and that its general policy was again set out in 2012.¹⁵ Amorrortu's failure to address these exhibits in his Reply speaks for itself.

28. Moreover, and contrary to Amorrortu's position,¹⁶ a diligent operator could have confirmed Perupetro's consistent adherence to this general policy through the public records and information concerning past adjudications that are available on Perupetro's website. Mr. Guzmán, the current Secretary of Perupetro's Directory who has held several positions in the company over

¹¹ See SoD, §§ II.B, V.A.2.a. See also § VI.A.2 *infra*.

¹² Reply, ¶ 71.

¹³ Amorrortu's suggestion that Perupetro's documented practice in this respect was somehow obviated by Luis Ortigas's purported instruction to him lacks all factual and legal support. See Reply, note 96.

¹⁴ See Guzmán First Witness Statement, ¶ 8; Tafur First Witness Statement, ¶¶ 19-23; Expert Witness Report of Carlos Raúl José Vizquerra Pérez Albela (29 April 2024) (**RER-02**) ("**Vizquerra First Expert Report**"), ¶ 45 *et seq.*

¹⁵ See SoD, ¶ 49. See also Witness Statement of Isabel Mercedes Tafur Marín (4 May 2026) (**RWS-05**) ("**Tafur Second Witness Statement**"), ¶ 24.

¹⁶ See Reply, ¶ 72

16 years, has documented this policy through a detailed compilation of exploitation contracts awarded since Perupetro's creation:

As a PERUPETRO official with more than 16 years of experience at the company, I can attest that PERUPETRO has historically been consistent with its policy of awarding long-term exploitation contracts through selection or tender processes. PERUPETRO's files confirm this. I have attached to this statement a chart detailing all contracts for the exploitation of hydrocarbons entered into by PERUPETRO since the start of its operations to date and the method by which they were awarded, as well as the documentary support for each case. The chart shows that long-term exploitation contracts have been awarded in most cases through selection (or tender) processes, with few exceptions. The method for awarding varies depending on the type of activity and/or contract and responds to a practical need.¹⁷

29. This compilation of exploitation contracts awarded by Perupetro (Exhibit RG-1) shows that Perupetro has signed 22 long-term exploitation contracts, including Blocks III and IV in 2015.¹⁸ The majority of these contracts—16 to be precise—were adjudicated pursuant to a public tender process, in keeping with Perupetro's policy described by Mr. Guzmán in his first witness statement. The handful of exceptions adjudicated via direct negotiation respond to specific circumstances, namely, (i) non-producing blocks,¹⁹ (ii) a specific Congressional directive,²⁰ (iii) a contract derived from an agreement that predated Perupetro's existence,²¹ and (iv) a contract for the benefit of an educational institution.²² These exceptions are plainly inapplicable to the Blocks. There was simply no reason for Perupetro to deviate from its policy to adjudicate the corresponding long-term contracts for Blocks III and IV via public tender.

¹⁷ Second Witness Statement of Roberto Carlos Guzmán Oliver (19 May 2026) (**RWS-04**) (“**Guzmán Second Witness Statement**”), ¶¶ 9-10.

¹⁸ See Relación de Contratos de Explotación de Hidrocarburos y Mecanismo de Adjudicación (**RG-1**).

¹⁹ Relación de Contratos de Explotación de Hidrocarburos y Mecanismo de Adjudicación (**RG-1**), rows 8, 12-13.

²⁰ Relación de Contratos de Explotación de Hidrocarburos y Mecanismo de Adjudicación (**RG-1**), row 17.

²¹ Relación de Contratos de Explotación de Hidrocarburos y Mecanismo de Adjudicación (**RG-1**), row 11. Perupetro was established in November 1993 pursuant to Law No. 26221 known as the Organic Hydrocarbons Law. See Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**).

²² Relación de Contratos de Explotación de Hidrocarburos y Mecanismo de Adjudicación (**RG-1**), row 16.

30. It is worth noting that there is no contradiction, as Amorrortu maintains,²³ between Peru’s witnesses and Dr. Vizquerra’s First Expert Report on the issue of PeruPetro’s contracting policy. According to Amorrortu, Dr. Vizquerra “confirmed [...] that PeruPetro often contracts through Direct Negotiation.”²⁴ To support this statement, the Reply cites a direct quote with certain contracting data²⁵ which is purportedly set out in paragraph 46 of Dr. Vizquerra’s First Expert Report.²⁶ This is misleading. One need only review said paragraph to confirm that it is actually a quote from Ms. Yaya’s First Expert Report—which Dr. Vizquerra was, in turn, addressing—not Dr. Vizquerra’s own opinion. Indeed, the sentence immediately before the portion cited explicitly indicates that Dr. Vizquerra does not consider “the statement contained in paragraph 263 of Monica Yaya’s Expert Report” with the data referenced in the Reply to be true.²⁷ Claimant’s attempt to attribute Ms. Yaya’s opinion to Dr. Vizquerra is unfortunate. In fact, Dr. Vizquerra’s opinion that “there is indeed an objective basis supporting my statements to the effect that license agreements for the exploitation of hydrocarbons (such as those for Block III and Block IV) are preferably executed through a selection process rather than direct negotiation” and his subsequent discussion about the correct data in paragraph 47 of his First Expert Report aligns perfectly with Ms. Tafur’s and Mr. Guzmán’s statements.²⁸

31. Nor does Amorrortu dispute the rationale behind PeruPetro’s approach²⁹—the Reply even acknowledges it³⁰—or the fact that the Amorrortu’s examples concerning Anadarko,

²³ Reply, ¶ 71.

²⁴ Reply, ¶ 71.

²⁵ See Reply, ¶ 71.

²⁶ See Reply, note 98.

²⁷ Vizquerra First Expert Report, ¶ 46.

²⁸ Expert Witness Report of Carlos Raúl José Vizquerra Pérez Albela (14 July 2026) (**RER-04**) (“**Vizquerra Second Expert Report**”), ¶ 63.

²⁹ See SoD, ¶¶ 50-51 (establishing that exploitation contracts attract significant public interest due to their profitability and reduced capital requirements, unlike exploration contracts); Tafur First Witness Statement, ¶¶ 19-21 (*Id.*). See also Guzmán Second Witness Statement, ¶¶ 9-11.

³⁰ See Reply, ¶ 73 (“Ms. Tafur states that PeruPetro only gives long-term contracts via direct negotiation if there is expected to be little interest in the project.”).

Tullow, and Block 192 actually confirm Perupetro’s policy.³¹ Amorrortu says nothing of these examples now, leaving Peru’s responses unchallenged.

32. It is clear, therefore, that Perupetro had a well-known policy of adjudicating long-term exploitation contracts through public tender rather than direct negotiation.

33. It was never Peru’s position, nor Mr. Guzmán’s for that matter,³² that there is a specific “law that ... states such a policy,” as Amorrortu suggests.³³ Indeed such a law is unnecessary because proper due diligence and experience in Peru’s oil and gas sector were enough to put Amorrortu on notice of Perupetro’s company policy and practice with respect to long term contracts.³⁴

34. In sum, Amorrortu’s alleged expectations regarding Baspetro’s ability to secure the Blocks’ operation through direct negotiation therefore remain unsubstantiated. The clearest indication that those expectations lacked any rational basis—rooted instead in a fixation born from his past—is the patent inadequacy of the Alleged Proposal itself.

2. Baspetro’s May 2014 proposal did not trigger a direct negotiation over the Blocks

35. Peru demonstrated in its SoD that Baspetro could never have commenced a direct negotiation over the Blocks for three independent reasons: (i) its Alleged Proposal of 28 May 2014 did not satisfy the legal requirements to trigger a direct negotiation; (ii) the Blocks were

³¹ SoD, ¶¶ 52-53.

³² See Guzmán Second Witness Statement, ¶ 8 (“Amorrortu’s and his expert’s criticisms do not make sense; rather, they show a lack of knowledge about the sector and, in particular, about how PERUPETRO operates. *First*, Article 11 of the Organic Hydrocarbons Law grants PERUPETRO full discretion to adopt the method for adjudication oil blocks—whether through direct negotiation or a selection process. *Second*, PERUPETRO is a state-owned company governed by private law, and therefore its business practices, such as the discretion to adopt adjudication mechanisms, do not necessarily need to be codified or regulated.”).

³³ Reply, ¶ 73.

³⁴ As Peru already established in its SoD and again in Section II.A.2.d *infra*, Amorrortu cannot in any event feign ignorance of Perupetro’s decision to adhere to its general policy with respect to Block III because he was explicitly informed that it was not available for direct negotiation since 12 August 2013. See Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (C-6).

not available for direct negotiation; and (iii) Baspetro had not obtained, nor even applied for, the required certification to become a Qualified Oil Company.³⁵

36. Amorrortu's chief response to whether Baspetro commenced a direct negotiation over the Blocks does not engage with Peru's arguments. Instead, the Reply makes a notable shift, seeking to attribute to the *Amorrortu I* award on jurisdiction ("***Amorrortu I* Award**") the effect of "[r]es judicata [that] estops Peru from arguing that a Direct Negotiation Procedure was not commenced."³⁶ Amorrortu's *res judicata* argument is misplaced.

37. The *Amorrortu I* Award does not constitute *res judicata* on this point because, in analyzing Peru's objection under Article 10.20.4 of the Treaty, that tribunal was "obliged [...] to accept Mr. Amorrortu's factual description of events as correct."³⁷ That tribunal's conclusions regarding the existence of a direct negotiation or direct negotiation procedure were thus made *pro tem* and for the specific purpose of Article 10.20.4. Whether Baspetro commenced a direct negotiation over the Blocks remains an open question that this Tribunal must resolve based on the Parties' factual and legal submissions.³⁸

38. Aware that his reliance on the *Amorrortu I* Award is hopeless,³⁹ Amorrortu presents four alternative arguments. All of them fail for the reasons explained below.⁴⁰

³⁵ See SoD, § II.C.1.

³⁶ Reply, p. 74. See also Reply, § II.B.b.

³⁷ See § V *infra*.

³⁸ See § V *infra*.

³⁹ See Reply, § II.B.b.i.1.

⁴⁰ Amorrortu provides no response to Peru's argument that there are no contemporary documents internal to Baspetro and/or its advisors claiming that Mr. Ortigas had instructed Amorrortu to submit a proposal or that Baspetro had in fact commenced a direct negotiation. See SoD, ¶ 84. The only conclusion that can be drawn is that no such documents exist.

a. Amorrortu obfuscates the legal framework applicable to a direct negotiation

39. Amorrortu asserts that “the Direct Negotiations Procedure began but the Direct Negotiations Process did not.”⁴¹ His position is, however, in tension with Mr. Quiroga’s opinion and Amorrortu’s own statements in other parts of the Reply wherein they maintain that a “Direct Negotiation process was indeed commenced.”⁴² Given the obfuscation created by Amorrortu and his experts, Peru considers it necessary to briefly clarify the applicable framework before addressing Baspetro’s failure to comply with it.

40. There are four main instruments that are relevant to assessing Amorrortu’s claim that Baspetro commenced a direct negotiation. Supreme Decree No. 030-2004-EM⁴³ (the “**Qualification Regulation**”) and Perupetro’s Board of Directors Agreement No. 048-2010⁴⁴ (the “**Qualification Procedure**”) are the governing legal instruments applicable to requests for direct negotiations.

41. Article 2 of the Qualification Regulation provides that “[e]very Oil Company must be duly qualified, by PERUPETRO SA, to initiate the negotiation of a Contract.”⁴⁵ This provision makes clear that a direct negotiation process or procedure cannot commence before obtaining the qualification. Articles 5 and 6 of the Qualification Regulation in turn set out the requirements for the qualification of an oil company with and without experience, respectively. For its part, the Qualification Procedure’s “purpose is to establish the procedure to be used for the

⁴¹ Reply, ¶ 218.

⁴² Reply, ¶ 224 *citing* Expert Report of Aníbal Quiroga (19 December 2025) (**CER-02**) (“**Quiroga Second Expert Report**”), ¶ 3.29.

⁴³ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**).

⁴⁴ *See* Perupetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA-10**).

⁴⁵ *See also* “Qualification of companies” in Perupetro’s Website (**R-118**) (“Any Oil Company shall be duly qualified by PERUPETRO S.A. **before starting the negotiation of a Contract**, this with the purpose to determine if it is able to develop Hydrocarbon Exploration and/or Exploitation activities, in the country under the following modalities: License Contracts, Services Contracts, Technical Evaluation Agreements and other contracting modalities authorized by the Ministry of Energy and Mines, that be approved in application of the Article 10° of the SRT of the Organic Hydrocarbon Law, Law N° 26221.”) (emphasis added).

qualification of Oil Companies in accordance with the [Qualification] Regulation,”⁴⁶ and the technical and economic indicators that an interested party must meet to operate a given block.⁴⁷ These requirements are set out in Sections 3.1 and 3.2 of the Qualification Procedure, while the technical and economic indicators are set out in Section 4 thereof. Crucially, Annexes I and II of the Qualification Procedure provide the templates that a company must use when submitting a letter of interest for direct negotiations.⁴⁸

42. The remaining two instruments are Perupetro’s GFCN-8 Procedure⁴⁹ (“**Procedure 8**”) and Perupetro’s GFCN-6 Procedure⁵⁰ (“**Procedure 6**”). Procedure 8 sets out Perupetro’s internal procedure for the entire direct negotiation process, whereas Procedure 6 provides the process by which Perupetro certifies a company as a Qualified Oil Company. It is important to note that Procedure 8 and Procedure 6 are distinct and subordinate to the Qualification Regulation and Qualification Procedure because, as Dr. Vizquerra explains, they:

are directed exclusively at PERUPETRO personnel and therefore do not create or modify the rights of third parties. These are management procedures that have been established as managerial tools and institutional self-protection mechanisms that internally set out, for operational purposes, the description of control activities, responsibilities, communication mechanisms, forms, and deadlines regarding the activities under PERUPETRO’s charge in accordance with the legal framework in force. Their legal basis and related policies are the Organic Law on Hydrocarbons, the Regulations, and the Qualification Procedure.⁵¹

43. Dr. Vizquerra further observes that it is “important [...] to distinguish between Procedure 8 and direct negotiation. Procedure 8 not only governs direct negotiation but all

⁴⁶ Vizquerra First Expert Report, ¶ 25. *See also* PeruPetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA-10**), Art. 1.

⁴⁷ As discussed in Section II.B.2 *infra*, the technical and economic indicators set out in the Qualification Procedure are also used for public tenders, including the Bidding Processes.

⁴⁸ PeruPetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA-10**), pp. 10-11 [PDF].

⁴⁹ *See* Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**).

⁵⁰ *See* Procedure GFCN-006 “Qualification of Oil Companies.” Version 3.0 (7 February 2013) (**QUIROGA-11**).

⁵¹ Vizquerra Second Expert Report, ¶ 16 (emphasis added). *See also* Vizquerra First Expert Report, ¶¶ 12-15.

management procedures up to the execution of a license agreement. That is why its title is ‘Contracting by Direct Negotiation.’”⁵² The scope of Procedure 8 is consequently broader than the Qualification Regulation and Qualification Procedure as it encompasses various steps in Perupetro’s internal process beyond the substantive and procedural requirements that a company must satisfy.

44. Against this backdrop, Amorrortu needed to prove that Baspetro’s Alleged Proposal satisfied the procedural and substantive requirements set out in the Qualification Regulation and the Qualification Procedure to be able to trigger Procedure 8. Peru already established that, as an 18-page narrative of Amorrortu’s personal trajectory and aspirations, the Alleged Proposal did not in fact commence a direct negotiation or trigger Procedure 8.⁵³ Given that Amorrortu ignores these arguments, and for the sake of brevity, Peru does not repeat them here but incorporates them by reference and summarizes them as follows:

- The Alleged Proposal did not commence a direct negotiation because Baspetro was not a Qualified Oil Company—a prerequisite that Mr. Quiroga himself admits⁵⁴—and failed to submit the documents to become one pursuant to Articles 5 and 6 of the Qualification Regulation.
- Nor did the Alleged Proposal trigger Procedure 8. On this point, Amorrortu fails to rebut that Baspetro did not (i) request to be certified as a Qualified Oil Company; (ii) invoke the Qualification Procedure; (iii) identify and properly accredit its legal representatives pursuant to Annex I of the Qualification Procedure; (iv) provide any of the documents required by Articles 5 and 6 of the Qualification Regulation; or even (v) follow the format set out in Annex II of the Qualification Procedure.

45. These are the issues that the Reply should have, and did not, address.

46. Instead, Amorrortu argues that Perupetro was obligated to take certain steps under Procedure 8 and that Peru cannot rely on Baspetro’s missing certification as a Qualified Oil Company because, according to Ms. Yaya, it was not relevant until step 13 thereof. Ms. Yaya’s

⁵² Vizquerra Second Expert Report, ¶ 74.

⁵³ See SoD, § II.C.1. See also Vizquerra First Expert Report, ¶ 32; Vizquerra Second Expert Report, ¶ 24.

⁵⁴ Quiroga Second Expert Report, ¶ 3.19 (“with regard to direct negotiations, the interested company must first obtain a qualification from [Perupetro]”)

position attempts to sidestep the relevant framework described above. As Dr. Vizquerra explains, “Baspetro’s Proposal did not meet the minimum requirements to be considered a Letter of Interest enforceable against PERUPETRO that would trigger Procedure 8. In light of the foregoing, it was not necessary for PERUPETRO to complete any of the activities under Procedure 8.”⁵⁵

47. For his part, Amorrortu takes it one step further, arguing that Perupetro should have “undertaken Activity 13 to grant qualification or request any documents it considered missing or requiring clarification.”⁵⁶ Neither of the paragraphs in Ms. Yaya’s report cited by Amorrortu in support of his statement relate to this issue.⁵⁷ If Amorrortu meant to cite paragraph 230 of Ms. Yaya’s report, his argument would nevertheless be flawed as it implies that (i) Perupetro should begin processing a certification for a company that has not asked for it; (ii) and do so before any of the other steps in the Procedure are satisfied.⁵⁸ This is incorrect because negotiations cannot begin before the qualification is obtained.⁵⁹

48. Ms. Yaya and Mr. Quiroga also maintain that Perupetro’s failure to respond to the Alleged Proposal bestowed Baspetro with the Qualified Oil Company certification based on constructive approval (*silencio administrativo positivo*).⁶⁰ Dr. Vizquerra already explained in his first expert report why the opposite is true;⁶¹ a matter that Amorrortu would have known had he consulted qualified legal counsel at the time he submitted Baspetro’s Alleged Proposal. In his second report, Dr. Vizquerra affirms this point, noting that:

It would appear that the Second Expert Report of Mónica Yaya equates professional responsibility with constructive silence. However, that is not what the law provides. The consequence

⁵⁵ Vizquerra Second Expert Report, ¶ 71.

⁵⁶ See Reply, ¶ 222.

⁵⁷ See Reply, note 333, citing Expert Report of Mónica Yaya (22 December 2025) (“**Yaya Second Expert Report**”), ¶¶ 228, 249.

⁵⁸ Indeed, even Mr. Quiroga admits that “the interested company must first obtain a qualification from [Perupetro].” Reply, ¶ 245(a). See also Vizquerra Second Expert Report, ¶¶ 70-71.

⁵⁹ See, e.g., “Qualification of companies” in Perupetro’s Website (**R-118**).

⁶⁰ Quiroga Second Expert Report, ¶ 4.19.iv; Yaya Second Expert Report, ¶ 233.

⁶¹ Vizquerra First Expert Report, pp. 92-93.

expressly established by Article 14 for the expiration of the ten (10)-day period without a response is the professional responsibility of the officials who failed to act in granting the qualification, not the deemed grant thereof (through constructive silence).⁶²

49. Amorrortu next relies on paragraph 224 of Ms. Yaya's second expert report to argue that "PeruPetro was obliged to notify [*sic*] Baspetro if it did not qualify within 30 days from the date of receipt of the notification."⁶³ This argument is incorrect for numerous reasons. At the outset, paragraph 224 of Ms. Yaya's second expert report has no bearing on Amorrortu's argument. There, she indicates that, at step 19 of Procedure 8, PeruPetro must publish the availability of the block at issue on its website for 30 days—an entirely different issue. Even if Amorrortu meant to cite paragraph 226 of Ms. Yaya's second expert report, it still does not support his statement. There (in paragraph 226), she indicates:

if PeruPetro had detected any error or omission in the documents referred to in Articles 5 and 6 for the qualification of oil companies with or without experience, or if it had considered that the information was insufficient, as established in Article 7 of the Regulations, it was obliged to notify Baspetro so that within thirty (30) calendar days from the date of receipt of the notification, said oil company could submit the required supplementary documentation.

50. There are two problems with Ms. Yaya's opinion transcribed above.

51. *First*, nowhere does Ms. Yaya indicate that the 30-day period is for PeruPetro to respond to Baspetro informing it of any deficiencies in its submission. Rather, this 30-day period is for the company to submit the missing documents. More importantly, however, Ms. Yaya's argument consists of an attempt to impose on PeruPetro an obligation that simply does not exist. As Dr. Vizquerra explains:

it bears repeating that the submission of any proposal containing an intention to negotiate a license agreement, while omitting the requirements established by the Qualification Regulations, in

⁶² Vizquerra Second Expert Report, ¶ 58.

⁶³ Reply, ¶ 221. *See also* Reply, ¶ 222.

particular without attaching all of the minimum documentation required thereunder, does not trigger PERUPETRO's internal procedures and therefore does not give rise to an obligation to respond within the 10-business-day period established in Article 9 of the Regulations. For that reason, the Second Expert Report of Mónica Yaya is mistaken in asserting, in its Sections 226 and 237, that Baspetro had a thirty (30) calendar-day period from the time it was notified by PERUPETRO that the information submitted was insufficient. Under Article 10 of the Regulations, PERUPETRO may request (i) additional information supplementing the minimum documentation required for mandatory submission set out in Articles 5 and 6, when the information submitted pursuant to those articles is not sufficient to evaluate the applicant company; and (ii) additional information if it detects errors or omissions in the documentation detailed in the aforementioned Articles 5 and 6 of the Regulations. With respect to the latter case, the factual scenario governed by Article 10 of the Regulations is one in which the applicant company has submitted the information required by Articles 5 and 6, but there are errors or omissions in that information. In other words, Article 10 of the Regulations does not address situations involving a total failure to comply with the duty to submit the very documentation mandatorily required under Articles 5 and 6 of the Regulations. In this case, Baspetro's Proposal did not attach any document required by the Regulations, constituting a total failure to comply with the duty to submit such documentation. Therefore, Article 10 of the Regulations does not apply to it.⁶⁴

52. Perupetro was plainly under no obligation to respond to Baspetro's Alleged Proposal within 30 days or any other period, but, as Dr. Vizquerra notes, even if "assuming that the General Administrative Procedure Law applies to this case (*quod non*), and that every request must accordingly be answered with a reasoned response, as paragraph 236 of the Second Expert Report of Mónica Yaya states, I must note that Baspetro's Proposal was duly answered by PERUPETRO through its communication of 20 August 2014, inviting Amorrortu to participate in PERUPETRO's bidding process."⁶⁵

⁶⁴ Vizquerra Second Expert Report, ¶ 56 (emphasis added).

⁶⁵ Vizquerra Second Expert Report, ¶ 54.

53. Amorrortu’s statement that “PeruPetro was obliged to notify [sic] Baspetro if it did not qualify within 30 days from the date of receipt of the notification”⁶⁶ is thus not only a misrepresentation of his own expert’s opinion, but of Peruvian law as well. As Peru already established in the SoD and above, Baspetro’s Alleged Proposal did not request to be certified as a Qualified Oil Company or submit itself to the Qualification Procedure more generally.

b. Amorrortu’s argument based on his prior experience in Propetsa and Provisa is unfounded and represents a transparent *post-hoc* attempt to salvage his flailing claim

54. Amorrortu also argues that he “was, through Baspetro, ready, willing, and able to operate Blocks III and IV,”⁶⁷ and that it is “asinine” for Peru to argue otherwise because PeruPetro “knew or should have known of the long and proven trajectory of Amorrortu in the very region and Lot for which the Proposal was being submitted.”⁶⁸ Amorrortu cites Propetsa and Provisa as examples.⁶⁹

55. Through this argument, Amorrortu once again exposes his lack of understanding of the applicable legal framework. Whether Amorrortu, Propetsa or Provisa had participated in the industry at some point is entirely irrelevant to whether Baspetro—the company that purportedly requested the direct negotiation—was qualified to secure contracts for the Blocks. Amorrortu himself admits that Baspetro was “a newly formed company”⁷⁰ and provides no reason—let alone a compelling one—for his implicit argument that PeruPetro should have effectively pierced the corporate veil to his benefit without so much as a request from Baspetro in this respect. Nor does he explain how piercing the corporate veil would enable Baspetro to meet the relevant requirements.

⁶⁶ Reply, ¶ 221.

⁶⁷ Reply, p. 91.

⁶⁸ Reply, ¶ 226. *See also* Reply, ¶¶ 499-500 (emphasis added).

⁶⁹ Reply, ¶ 226. *See also* Reply, ¶¶ 499-500 (emphasis added).

⁷⁰ Reply, ¶ 226.

56. Perupetro was plainly under no obligation to conflate Baspetro's experience with that alleged to be had by any other entity or individual, as Amorrortu suggests, and would have violated the governing legal framework had it done so.⁷¹

57. Moreover, Amorrortu's argument is nothing more than a *post-hoc* effort to cure the defects in the Alleged Proposal. Indeed, he neither proves nor even alleges that he raised this argument with Perupetro when he submitted the Alleged Proposal or at any point thereafter. In any event, Amorrortu's assertion that his prior experience in Propetsa and Provisa would have made a difference is incorrect: the qualification criteria still would not have been satisfied.⁷²

c. The Recreated Evidence is yet another *post-hoc* attempt to rehabilitate an untenable position

58. Amorrortu further maintains that Baspetro "would have included a Business Plan as the second step in the Process"⁷³ which, according to his classmate and long-term acquaintance, Mr. José Zamalloa,⁷⁴ "was sufficient."⁷⁵ This argument is equally flawed.

59. At the outset, Amorrortu fails to identify the legal bases underpinning his argument that Baspetro could cure deficiencies in its submission in a "second step in the Process."⁷⁶ In fact, he does not even identify what the "second step" consists of. As noted above, in any case, Dr. Vizquerra establishes that article 10 of the Qualification Regulation allows—but does not obligate—Perupetro to require additional information and documents to the minimum required by articles 5 and 6; it does not create an opportunity, let alone right, for the interested party to commence a direct negotiation based on a deficient submission and then cure those

⁷¹ See, e.g., Vizquerra Second Expert Report, ¶ 9.

⁷² See § VI.A *infra*.

⁷³ Reply, ¶ 229.

⁷⁴ See Expert Report of Santiago Jose Zamalloa (BRG) (22 December 2025) ("**Zamalloa Expert Report**"), ¶ 1.4.

⁷⁵ Reply, ¶ 230. See also Reply, ¶¶ 228-237 (summarizing and transcribing portions of Zamalloa's Expert Report).

⁷⁶ Reply, ¶ 229.

deficiencies at a later point once the process has begun. There is plainly no support in the governing framework for Amorrortu's interpretation to this effect.

60. In any event, the Business Plan and related materials (the “**Recreated Evidence**”) that Amorrortu claims would have been presented are *post-hoc* efforts to cure the deficiencies in his claims that were identified by Peru in its SoD. They have no probative weight whatsoever. As Peru established in its request to the Tribunal dated 18 March 2026:⁷⁷

- Amorrortu offers no contemporary evidence proving, or even suggesting, that the Recreated Evidence existed prior to this arbitration;
- there are strong indicia that the Recreated Evidence did not in fact exist prior to this arbitration and was manufactured by Amorrortu with bias in mind to salvage his claims in this arbitration;
- Amorrortu fails to particularize the method or inputs used to produce the Recreated Evidence; and
- Amorrortu offers no contemporary evidence proving, or even suggesting, that even if the Recreated Evidence existed prior to this arbitration (*quod non*), Amorrortu and/or Baspetro intended to submit it to Perupetro in support of the Alleged Proposal.

61. The principle that *post-hoc*, self-serving evidence created after a dispute has arisen carries little or no evidentiary weight is firmly established in international law.

62. Applying principles of public international law, the Singapore Court of Appeal held in *Sanum v. Laos* that evidence “which comes into being after the critical date and is self-serving and intended by the party putting it forward to improve its position in the arbitration” is to be regarded “as being of little, if any, weight.”⁷⁸ The court further concluded that, even assuming

⁷⁷ See Peru's Request to Exclude Evidence Purportedly Recreated from Memory (18 March 2025) (**R-97**).

⁷⁸ *Sanum Investments Ltd v. Government of the Lao People's Democratic Republic* [2016] SGCA 57 (**RLA-222**), ¶ 104.

such evidence were admissible, “no material weight can be placed on [it]” where it is adduced to advance a position not established by the pre-existing contemporaneous record.⁷⁹

63. The parallel to the Recreated Evidence is direct. The Recreated Evidence consists of documents created, on Claimant’s own account, “during the course of this arbitration,” years after the events they purport to document, without any contemporary evidence to corroborate their content or specific information regarding the process through which they were created, and designed to fill evidentiary gaps identified by Peru in its SoD.⁸⁰

64. The “critical date” doctrine reinforces this conclusion. Commentators observe that the critical date doctrine “forecloses the use of evidence of self-serving conduct intended by the party concerned to improve its position in the arbitration after the dispute has arisen.”⁸¹ Here, the critical date is, at the very latest, the date on which this arbitration was commenced—21 August 2023—and on Amorrortu’s own account the Recreated Evidence was created during this arbitration and only in response to Peru’s document requests. Whatever the precise date of creation—an element of Claimant’s position that has shifted on no fewer than three occasions, from recreation “from memory” to a collaborative process spanning 2017 through 2024—the Recreated Evidence post-dates the critical date by any measure and was plainly intended to improve Amorrortu’s position in this arbitration by curing deficiencies identified by Peru.

65. The absence of any underlying corroborating material further diminishes the Recreated Evidence’s probative value. In determining the weight to be given to indirect evidence, consideration must be given to “whether there is an acceptable reason for the non-production of direct evidence.”⁸² Amorrortu has withheld every piece of underlying evidence relating to the

⁷⁹ *Sanum Investments Ltd v. Government of the Lao People’s Democratic Republic* [2016] SGCA 57 (**RLA-222**), ¶ 113.

⁸⁰ See Peru’s Request to Exclude Evidence Purportedly Recreated from Memory (18 March 2025) (**R-97**), § II; Peru’s Reply on Request to Exclude Evidence (3 April 2026) (**R-102**).

⁸¹ R. F. Petrowski, “Evidence in International Arbitration,” *Arbitration International*, Vol. 22, Issue 3 (September 2006) (**RLA-211**), p. 401.

⁸² R. F. Petrowski, “Evidence in International Arbitration,” *Arbitration International*, Vol. 22, Issue 3 (September 2006) (**RLA-211**), p. 381.

construction of the Recreated Evidence—including the alleged emails, WhatsApp communications, virtual meeting records, drafts, and notes—that would reveal when each document was created, by whom, on what basis, and through what methodology.⁸³ As Peru noted already, Amorrortu and his proffered witnesses are both the authors and the sole purported authenticators of the Recreated Evidence, rendering the documents devoid of the foundation necessary to test their reliability.⁸⁴

66. The Recreated Evidence is therefore entitled to no probative weight and cannot serve the purpose for which Amorrortu has submitted it: namely, to retroactively cure some of the fundamental deficiencies of Baspetro's Alleged Proposal that Peru identified in its SoD, among others.⁸⁵ The Tribunal should therefore assess whether Baspetro commenced a direct negotiation, like all other issues in dispute, on the basis of only contemporaneous evidence which, in this case, consists of Exhibit C-11 alone.

67. Moreover, Mr. Zamalloa's opinion based on the Recreated Evidence is unavailing because it does not seek to determine whether it (along with the Alleged Proposal) is "sufficient" under Peruvian law. Rather, it consists of a general "technical examination"⁸⁶ that plainly has no bearing on the issue at hand here: whether a direct negotiation under Peruvian law was commenced. It plainly has no bearing on the issues in dispute and should be ignored accordingly.

68. The Alleged Proposal's failures described thus far become most apparent when compared with a compliant submission. For instance, in its Letter of Interest, Tullow Oil Plc ("**Tullow**") indicated as follows:

Based upon Articles 10 and 11 of the Organic Law of Hydrocarbons
- Law N° 26221; Articles 1, 2, 3, 4, 5 of Supreme Decree N° 030-

⁸³ See Peru's Reply on Request to Exclude Evidence (3 April 2026) (**R-102**), p. 3.

⁸⁴ See Peru's Request to Exclude Evidence Purportedly Recreated from Memory (18 March 2025) (**R-97**), § III.

⁸⁵ As Peru established in its Request to Exclude the Recreated Evidence and § IV.B *infra*, the Recreated Evidence also attempts to fill gaps in Amorrortu's position regarding Peru's jurisdictional objections based on his lack of investment and nationality.

⁸⁶ Zamalloa Expert Report, ¶ 2.5. See also Reply, ¶¶ 229-237.

2004-EM: Regulation of Oil Company Qualification; Articles 1, 2, 3, 4.1, 5 and Annex II of the Board Agreement N° 048-2010: Procedure and Indicators for the Qualification of Oil Companies; Articles 122 and 123 of the Sole Consolidated Text of Law N° 27444 - Law of General Administrative Procedure; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I the undersigned by this letter make known our interest in becoming a qualified Oil Company for the direct negotiation of a contract for certain open acreage and available areas identified within a) Tumbes/Talara Basins (Shallow Water), b) Northern Trujillo Basin, (both Shallow and Deep Water), and c) Southern Trujillo/Northern Lima Basins (Deep Water), for this purpose we attach the documentation to start the evaluation procedure and, if compliant, subsequent qualification according to the qualification regulation, according to the attached.⁸⁷

69. Tullo not only invoked the applicable legal bases—Articles 1 through 5 of the Qualification Regulation, as well as Articles 1, 2, 3, 4.1, 5 and Annex II of the Qualification Procedure—addressed *supra*, but also explicitly (i) identified its legal representative; (ii) indicated its interest in “becoming a qualified Oil Company for the direct negotiation of a contract;” (iii) identified the available areas it wished to negotiate over; and (iv) “declare[d] that [it] expressly understands and agrees for its submission to the Oil Company qualification procedure approved by the [Qualification Procedure] which complements the Qualification Regulation, a procedure that Tullo Oil Plc declares it knows.”⁸⁸

70. Crucially, Tullo submitted the documents required by the Qualification Regulation, as listed on page 4 of its Letter of Interest.⁸⁹ Tullo’s compliance with the legal framework resulted in its certification as a Qualified Oil Company which, in turn, triggered a direct negotiation.⁹⁰ Two months later, the negotiation concluded with a formal recommendation that an

⁸⁷ Tullo, Letter of Interest (7 August 2017) (R-91), p. 3 [PDF].

⁸⁸ Tullo, Letter of Interest (7 August 2017) (R-91), p. 3 [PDF].

⁸⁹ Tullo, Letter of Interest (7 August 2017) (R-91), p. 4 [PDF].

⁹⁰ PeruPetro, Qualification Certificates of Tullo Oil PLC (16 October 2017) (R-92), p. 2 (“In accordance with the foregoing, we would appreciate your confirmation regarding the start of the direct negotiation process for the aforementioned areas on 31 October 2017.”) (translation provided by Counsel. In the original Spanish: “*Por lo antes*

exploration and exploitation contract over Block Z-64 be executed.⁹¹ The Alleged Proposal is a perfunctory effort that pales in comparison, failing to even adopt the ready-made template in Annex II of the Qualification Procedure, let alone invoke—and much less satisfy—the requirements set out in the Qualification Regulation and Qualification Procedure.

d. Amorrortu had actual knowledge that the Blocks were not available for direct negotiation

71. In response to Peru’s argument that, even if the Alleged Proposal was sufficient (*quod non*), the Blocks were not available for direct negotiation, Amorrortu and Mr. Quiroga argue that there are not “sufficient elements [on the record] to establish, beyond a reasonable doubt, that diligent action by Amorrortu [...] would have allowed him to realize that Lots III and IV were not available for direct negotiation.”⁹² This is false. As Ms. Tafur explains,

Since 2010, PERUPETRO had already decided that when the contracts in force for Blocks III and IV ended, PERUPETRO would initiate a bidding process to select the next contractor. Subsequently, in 2012, PERUPETRO decided that it would conduct selection processes for all hydrocarbon exploitation contracts that were about to expire.⁹³

72. Indeed, there are numerous elements on the record to this effect—some of them even introduced by Claimant and his experts—that the Reply simply ignores, including:

- Perupetro’s Board of Directors Agreement No. 100-2010 dated 14 July 2010;⁹⁴

expuesto, agradeceremos su confirmación respecto al inicio del proceso de Negociación Directa de las áreas antes señaladas para el próximo 31 de octubre de 2017.”).

⁹¹ Technical-Legal-Economic Report No. PRCO-GFCN-0553-2017 (15 December 2017) (**R-93**), ¶ 10.

⁹² Reply, ¶ 224 *citing* Quiroga Second Expert Report, ¶ 4.5.

⁹³ Tafur Second Witness Statement, ¶ 24.

⁹⁴ See Perupetro’s Board of Directors, *Agreement No. 100-2010, Perupetro S.A. is required to carry out a selection process to enter into new contracts for hydrocarbons in lots in the Northwest, whose contracts are close to expire.* (14 July 2010) (**R-15**) (“The President stated that, in the interest of transparency and to safeguard the country’s interests, a selection process must be conducted for the awarding of new oil service contracts for Blocks I-AB, III, and IV.”) (translation provided by Counsel. In the original Spanish: “*El Presidente manifestó que, por transparencia y en salvaguarda de los intereses del país, se debe realizar un Proceso de Selección para el otorgamiento de los nuevos Contratos de Petroleros por los Lotes I-AB, III y IV.*”) (emphasis added).

- Perupetro’s Board of Directors Agreement No. 002-2012 dated 12 January 2012;⁹⁵
- Perupetro’s Board of Directors Agreements Nos. 032-2014 and 033-2014 dated 20 March 2014;⁹⁶
- Perupetro’s Board of Directors Agreements Nos. 034-2014 and 035-2014 dated 20 March 2014;⁹⁷ and
- Supreme Decrees Nos. 12-2014-EM and 13-2014-EM dated 5 April 2014⁹⁸ which were referenced in the Alleged Proposal itself.⁹⁹

⁹⁵ See Perupetro’s Board of Directors, *Agreement No. 002-2012, Approving that in all cases of expiration of the term of Hydrocarbon contracts, these shall be subject to new selection processes* (12 January 2012) (R-17) p. 2.

⁹⁶ See Perupetro, Board of Directors Agreement No. 032-2014 (20 March 2014) (R-78); Perupetro, Board of Directors Agreement No. 033-2014 (20 March 2014) (R-79).

⁹⁷ See Perupetro’s Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (C-3); Perupetro’s Board of Directors, *Agreement No. 035-2014, Approval of Temporary License Draft Contract for Exploitation of Block IV* (20 March 2014) (R-18).

⁹⁸ See Ministry of Energy and Mines of Peru, *Supreme Decree No. 012-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block III, and Supreme Decree No. 013-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block IV* (5 April 2014) (CLA-59) (“In this regard, it is necessary to enter into a Temporary License Agreement for a period that allows PERUPETRO S.A. to carry out the selection process for the execution of a new License Agreement for the Exploration and Production of Hydrocarbons in Lot III [...] it has been deemed appropriate to enter into a Temporary License Agreement, through direct negotiation, for a period of up to twelve (12) months, while the selection process for the conclusion of the new License Agreement for the Exploration and Production of Hydrocarbons in Lot III is underway.”) (translation provided by Counsel. In the original Spanish: “*Que, en este orden de ideas, resulta necesario suscribir un Contrato de Licencia Temporal, por un periodo que permita a PERUPETRO S.A. llevar a cabo el proceso de selección para la celebración de un nuevo Contrato de Licencia para la Explotación de Hidrocarburos en el Lote III [...] se ha visto por conveniente suscribir un Contrato de Licencia Temporal, mediante negociación directa, por un periodo de hasta doce (12) meses, en tanto se lleve a cabo el proceso de selección para la celebración del nuevo Contrato de Licencia para la Explotación de Hidrocarburos en el Lote III.*”) (emphasis added); Supreme Decree 013-2014-EM (4 de abril de 2014) (QUIROGA-50) (“In this regard, it is necessary to enter into a Temporary License Agreement for a period that allows PERUPETRO S.A. to carry out the selection process for the execution of a new License Agreement for the Exploration and Production of Hydrocarbons in Lot IV [...] it has been deemed appropriate to enter into a Temporary License Agreement, through direct negotiation, for a period of up to twelve (12) months, while the selection process for the conclusion of the new License Agreement for the Exploration and Production of Hydrocarbons in Lot IV is underway.”) (translation provided by Counsel. In the original Spanish: “*Que, en este orden de ideas, resulta necesario suscribir un Contrato de Licencia Temporal, por un periodo que permita a PERUPETRO S.A. llevar a cabo el proceso de selección para la celebración de un nuevo Contrato de Licencia para la Explotación de Hidrocarburos en el Lote IV [...] se ha visto por conveniente suscribir un Contrato de Licencia Temporal, mediante negociación directa, por un periodo de hasta doce (12) meses, en tanto se lleve a cabo el proceso de selección para la celebración del nuevo Contrato de Licencia para la Explotación de Hidrocarburos en el Lote IV.*”) (emphasis added).

⁹⁹ See Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 13 [PDF].

73. Amorrortu should have been aware of Perupetro's Board of Directors Agreements listed above. After all, as Dr. Vizquerra observes, "Amorrortu's own express statements establish that he knew how to obtain access to PERUPETRO's board resolutions and was aware of their content, since otherwise he would not have mentioned them in Baspetro's Proposal."¹⁰⁰ In any event, as Ms. Tafur notes, "[t]hese Board Agreements were accessible to any company that formally requested them."¹⁰¹

74. But even if Amorrortu was not aware of these documents due to his failure to conduct proper due diligence, there was ample contemporary news coverage confirming Peru's position. For instance, one article dated 24 March 2014—two months before the Alleged Proposal—recounted Perupetro's victory in the ICC Arbitration and noted that, as a result thereof, Perupetro would need to execute temporary contracts since "Blocks III and IV will be put out to international tender."¹⁰² Indeed, it specifically stated that "Perupetro can contract the services of an operator to continue producing in Blocks III and IV, so during that period a call for bids to award the blocks is expected."¹⁰³ Even as early as 2012—when Amorrortu and his sons constituted Baspetro¹⁰⁴—public reporting stated, in no uncertain terms, that "[t]he Peruvian government will put out to tender oil blocks III and IV."¹⁰⁵ Thus, any member of the public, whether an expert in oil and gas or not, could have known that the Blocks were going to be adjudicated through public tenders if they only took the time to find out. It is, therefore, plainly incorrect that Amorrortu could

¹⁰⁰ Vizquerra Second Expert Report, ¶ 44.

¹⁰¹ Tafur Second Witness Statement, ¶ 24.

¹⁰² See Gestión, "The development of blocks III and IV in Piura requires an additional US\$50 million," *available at*: <https://gestion.pe/impresia/explotacion-lotes-iii-iv-piura-requiere-us-50-millones-7368-noticia/> (24 March 2014) (R-80).

¹⁰³ Gestión, "The development of blocks III and IV in Piura requires an additional US\$50 million," *available at*: <https://gestion.pe/impresia/explotacion-lotes-iii-iv-piura-requiere-us-50-millones-7368-noticia/> (24 March 2014) (R-80).

¹⁰⁴ Baspetro was constituted on 17 October 2012. See Certificate of Incorporation of Baspetro S.A.C. (17 October 2012) (C-24).

¹⁰⁵ See Andina, "The bidding process for three oil blocks in northern Peru will take place in the remainder of the year," *available at*: <https://andina.pe/ingles/noticia-licitacion-tres-lotes-petroleros-del-norte-peru-sera-lo-resta-del-ano-422859.aspx> (2 August 2012) (R-72).

not have known that a direct negotiation was not an option for the Blocks before Baspetrol submitted the Alleged Proposal.

75. Amorrortu and Mr. Quiroga would also have the Tribunal overlook what is perhaps the most crucial piece of evidence in this arbitration and was submitted by Amorrortu himself, Exhibit C-6, which Peru not only referenced in its SoD, but also transcribed in full.¹⁰⁶ In that communication, Perupetro's President, Mr. Ortigas, explicitly informed Amorrortu that Block III was not available for direct negotiation eight months before he submitted the Alleged Proposal. The Reply offers no response to this. Simply put, Amorrortu should have never sent Baspetrol's Alleged Proposal.

76. In a last-ditch effort to try to excuse his awareness of the Blocks' unavailability for direct negotiation, Amorrortu argues that "Ms. Tafur also concedes, importantly, that when Luis Ortigas told her around June 2014 that he had met with Claimant, no public bid had commenced (or been announced)."¹⁰⁷ It is undisputed that the Bidding Processes were formally launched on 14 July 2014—Peru stated as much in its SoD¹⁰⁸—but it is also irrelevant. In line with the facts established above, Ms. Tafur also stated that it was public knowledge as of June 2014 that the Blocks would be adjudicated by public tender.¹⁰⁹ The Reply tellingly glosses over this part of her statement, which she confirms in her second witness statement.¹¹⁰

77. Thus, not only are there sufficient elements on the record to conclude that a hypothetical, diligent operator would have known that the Blocks were not available for direct negotiation, but also Amorrortu himself had actual knowledge of this fact before he submitted

¹⁰⁶ See SoD, ¶ 63. The Reply's only reference is an unwitting note that "a similar proposal had been denied on August 12, 2013." Reply, ¶ 86.b.

¹⁰⁷ Reply, ¶ 240.

¹⁰⁸ SoD, ¶ 132.

¹⁰⁹ Tafur First Witness Statement, ¶ 30 ("Around June 2014, Mr. Ortigas mentioned to me that he had met with Mr. Amorrortu and that Mr. Amorrortu had an interest in operating Block III. At that date it was public knowledge that Perupetro had decided that Blocks III and IV were going to be awarded by tender as I explained above, but the tender had not yet been called.") (emphasis added).

¹¹⁰ See Tafur Second Witness Statement, ¶¶ 21-25.

Baspetrol's Alleged Proposal. The Reply offers no reason why the Tribunal's inquiry should go any further than this.¹¹¹

78. In sum, the record does not support Amorrortu's conclusion that Baspetrol commenced a direct negotiation over Blocks III and IV.¹¹² As such, Perupetro's decision to abide by its previously announced commitment to adjudicate the Contracts through public tenders was appropriate.

B. The Public Bidding Processes Were Not Manipulated to Favor GyM

79. In its SoD, Peru demonstrated that the ICC Arbitration made the Temporary Contracts with Interoil necessary for Perupetro to have sufficient time to conduct the Bidding Processes without halting the Blocks' operations and production.¹¹³ Peru also showed that the Bidding Process for Block III¹¹⁴—the only one that Baspetrol participated in—was conducted in

¹¹¹ Amorrortu's argument that Mr. Ortigas' purported instruction to submit a proposal obviates Peru's arguments concerning the Blocks' unavailability misses the mark and is, in any event, unsupported. *See* Reply, ¶¶ 70, 208, 244. At the outset, and as Peru already explained in the SoD, Amorrortu's version of his meeting with Mr. Ortigas is entirely unreliable given (i) the weight of contemporary evidence to the contrary, including Exhibit C-6; (ii) the absence of contemporary documents to support his self-interested statement; and (iii) his *modus operandi* of submitting unsolicited communications that ignored Perupetro's procedures. *See* SoD, ¶¶ 71-73. Moreover, even assuming *arguendo* that Mr. Ortigas had instructed Amorrortu to submit a proposal, Peru also already explained that such an informal invitation does not have the effect of reversing a decision by the Board of Directors and would not have changed the outcome of the Alleged Proposal because the first step in Procedure 8 is to verify whether the requested block is available for direct negotiation. *See* SoD, ¶¶ 41-42, 74-75; Tafur First Witness Statement, ¶ 18; Vizquerra Second Expert Report, ¶ 86.

¹¹² As explained in the SoD and Section VI.A *infra*, even if a direct negotiation had commenced (*quod non*), public tenders would have nevertheless been launched pursuant to Procedure 8 because Perupetro would have been required to post the Blocks' availability for 30 days and initiate a public tender if interest is registered. *See* SoD, ¶ 83; Vizquerra Second Expert Report, ¶ 65; Yaya Second Expert Report, ¶ 224; Quiroga Second Expert Report, p. 30. As a result, Baspetrol and Amorrortu would have ended up in the same position, *i.e.*, participating—and losing—in the Bidding Process.

¹¹³ *See* SoD, §§ II.C.2-II.C.3.

¹¹⁴ The SoD's factual account of the Bidding Processes focused on the public tender for Block III because Baspetrol did not participate in the process for Block IV. *See* SoD, note 133. Peru nevertheless reserved its right to supplement its factual account to respond to any arguments presented by Amorrortu in the Reply concerning the Bidding Process for Block IV. *See* SoD, note 133. Although Amorrortu has not presented any such arguments in his Reply that warrant adopting a different approach in this Rejoinder, the Republic nevertheless reserves its right to supplement this account, as necessary, at the Hearing.

accordance with the applicable law and procedure; a fact that was confirmed by the OCI¹¹⁵ in its 2014 and 2016 reports.¹¹⁶

80. Since the SoD, Peru produced the complete files for the Bidding Processes, spanning over 8,600 pages.¹¹⁷ These files contain every document related to the public tenders, including each company's submission, the minutes for each of the Commission's meetings, including those in which it evaluated every company that participated, and all communications sent between the Commission and the participating companies. Despite this wealth of information, Amorrortu still cannot support with concrete evidence his claim that the Bidding Processes were rigged to favor GyM.¹¹⁸

81. Instead, Amorrortu's Reply doubles down on his theory that the Bidding Processes were manipulated to favor GyM through general allegations and blanket statements that fail to establish any link between the alleged irregularities and a concrete benefit to GyM. As Peru will demonstrate below, Amorrortu's claim collapses under scrutiny.

82. The Contracts for the Blocks were not awarded under controversial circumstances, and the Temporary Contracts served a legitimate purpose that Amorrortu has failed to rebut (**Section 1**). As for Amorrortu's challenges to the Minimum Indicators, the update to Block III's proven hydrocarbon reserves, the Commission's evaluation of GyM, and the 20 October 2014 modifications to the Bidding Rules, each one is factually and legally unfounded. And in any event, did not exclusively favor GyM or affect the outcome of the Bidding Process for Block III (**Sections 2 through 5**). Moreover, Baspetro was afforded the same treatment as the other participants and its disqualification was the inevitable consequence of its wholly unresponsive submission (**Section**

¹¹⁵ As Peru explained in the SoD, the OCI is Perupetro's Institutional Control Organ, an entity that forms part of the Comptroller General of the Republic and is tasked with supervising the correct application of public policies and the use of State resources. *See* SoD, ¶ 162.

¹¹⁶ *See* SoD, § II.C.2.

¹¹⁷ *See* Exhibits C-215 through C-291.

¹¹⁸ Such evidence does not in fact exist because the public tenders were conducted pursuant to the applicable framework.

6). Finally, Amorrortu fails to engage with critical arguments and evidence that are fatal to his allegations that the Bidding Process were rigged (**Section 7**).

1. The Contracts for the Blocks were not awarded under controversial circumstances

83. According to the Reply, “PeruPetro awarded the contracts for the operation of the Blocks through controversial circumstances.”¹¹⁹ What follows, however, is an incoherent medley of arguments largely duplicative of other parts of the Reply, which Peru has addressed in the corresponding sections of this Rejoinder.¹²⁰ The discussion concludes with a summary of purported irregularities that, according to Amorrortu and Mr. Quiroga, vitiated the Bidding Processes.¹²¹ Each of those purported irregularities is a mere repetition of Amorrortu’s arguments regarding the direct negotiation addressed above.¹²² This subsection therefore focuses on Amorrortu’s only remaining argument: the Temporary Contracts.

84. Amorrortu maintains that the ICC Arbitration and resulting Temporary Contracts are “unavailing” to Peru’s defense because he was “actively meeting with Peruvian officials and representatives on the very topic of the contracts to operate Blocks III and IV while

¹¹⁹ Reply, p. 30.

¹²⁰ See Reply, ¶¶ 66-85. The only new argument introduced by Amorrortu is that, at Public Act No. 1 on 10 December 2014 for the Bidding Process for Block IV, Omega “was unable to submit a required Deposit Bond and instead its Legal Representative handed a bank check for USD 100,000 to the Bid Administrator.” Reply, ¶ 83. This argument is particularly irrelevant because it occurred in the Bidding Process in which Baspetro chose not to participate. According to Claimant, this consisted of an “irregularity” yet he offers no analysis of how the Commission handled the incident; merely referencing it and leaving the Tribunal to infer impropriety. The inference collapses the moment one examines what actually happened. The record shows that the Commission enforced the Bidding Rules with exactitude: when Omega presented Format No. 11 issued by itself rather than by a financial institution, the Commission declared the omission “uncurable” under Section 7.6 and rejected Omega’s attempt to cure the defect by delivering a Letter of Guarantee after the opening of Envelopes No. 1 had concluded. See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-36 (2014) (C-235), pp. 2–4; Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-50 (2014) (C-249), pp. 2–4; Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-57 (2014) (C-256), pp. 2–4; Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-32 (2014) (C-231), pp. [PDF] 346-347; Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (R-43), pp. 29-31 [PDF]. See also Guzmán Second Witness Statement, ¶ 49. Far from evidencing “irregularities,” the Omega episode demonstrates the rigorous, rules-based conduct of a Bidding Process that Baspetro never even entered.

¹²¹ See Reply, ¶ 86.

¹²² See § II.A.2 *supra*.

that arbitration was ongoing.”¹²³ This is his sole response to Peru’s detailed explanation regarding the need for the Temporary Contracts,¹²⁴ leaving Peru’s arguments unchallenged. In any event, the purported meetings invoked by Amorrortu do not assist him.

85. The evidence does not prove that Amorrortu was “actively meeting with Peruvian officials and representatives [regarding the Blocks] while that arbitration was ongoing.”¹²⁵ Of the ten exhibits he cites,¹²⁶ only one—Exhibit C-7—fits that description, and it too fails to prove his argument regarding the ICC Arbitration and Temporary Contracts.¹²⁷ Exhibit C-7 references a meeting with Mr. Ortigas on 8 August 2013, which was followed just four days later by a communication from Mr. Ortigas informing Amorrortu that Block III was unavailable

¹²³ Reply, ¶ 68.

¹²⁴ See SoD, § II.C.2.

¹²⁵ Reply, ¶ 68.

¹²⁶ See Reply, note 93 *citing* Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (C-6); Letter from I. Tafur Marín (Perupetro) to B. Amorrortu (Baspetro) (20 August 2014) (C-13); Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetro) (3 November 2014) (C-15); Letter from B. Amorrortu (Baspetro) to I. Tafur Marín (Perupetro) (5 February 2015) (C-16); Letter from B. Amorrortu (Baspetro) to I. Tafur Marín (Perupetro) (15 December 2014) (C-17); Email from B. Amorrortu (Baspetro) to M. A. Cobena (Perupetro) (16 January 2014) (C-7); Email exchange between B. Amorrortu (Baspetro), M. A. Cobena (Perupetro), and M. Hernandez (Perupetro) (May 2014) (C-8); Email from B. Amorrortu (Baspetro) to M. A. Cobena (Perupetro) (28 May 2014) (C-9); Receipt of Baspetro Proposal Stamped by Perupetro (28 May 2014) (C-10); Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11).

¹²⁷ Of the remaining nine exhibits cited by Amorrortu in support of his argument:

- One is a communication by Mr. Ortigas dated 12 August 2013 whereby he informs Amorrortu that Block III was not available for direct negotiation, without any mention of a past or future meeting. See Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (C-6).
- Three postdate the ICC Arbitration and the Temporary Contracts. See Email exchange between B. Amorrortu (Baspetro), M. A. Cobena (Perupetro), and M. Hernandez (Perupetro) (May 2014) (C-8); Receipt of Baspetro Proposal Stamped by Perupetro (28 May 2014) (C-10); Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11).
- Five postdate the ICC Arbitration and the Temporary Contracts and, in any event, do not mention past or future meetings. See Letter from I. Tafur Marín (Perupetro) to B. Amorrortu (Baspetro) (20 August 2014) (C-13); Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetro) (3 November 2014) (C-15); Letter from B. Amorrortu (Baspetro) to I. Tafur Marín (Perupetro) (5 February 2015) (C-16); Letter from B. Amorrortu (Baspetro) to I. Tafur Marín (Perupetro) (15 December 2014) (C-17); Email from B. Amorrortu (Baspetro) to M. A. Cobena (Perupetro) (28 May 2014) (C-9).

for direct negotiation.¹²⁸ Far from supporting Amorrortu's position, Exhibit C-7 undermines any purported entitlement to Block III that the Temporary Contracts could have infringed.

86. But even if all the cited exhibits established that Amorrortu was meeting with Peruvian officials regarding the Blocks (*quod non*), it would not change the fact that the Temporary Contracts served a legitimate objective that Amorrortu has failed to rebut: affording Perupetro sufficient time to conduct public tenders for Blocks' new contracts—this being Peru's point since the SoD. This is because Amorrortu offers no evidence that would suggest, let alone prove, that Peru made concrete commitments to him during those hypothetical meetings that would conflict with the Temporary Contracts.

87. Amorrortu has thus failed to substantiate his theory that the Temporary Contracts were “a smoke screen to cover the rigged public bidding process in favor of Graña y Montero.”¹²⁹ He has not even articulated how the Temporary Contracts allegedly aided GyM's winning bid. There is nothing “controversial” about these circumstances.

88. Amorrortu unwittingly admits that the Temporary Contracts were approved two months before he met with Mr. Ortigas and submitted the Alleged Proposal in May 2014,¹³⁰ yet he fails to acknowledge that their approval announced that the Blocks would be adjudicated via public tenders.¹³¹ If Amorrortu was aware of the Temporary Contracts before he submitted the Alleged Proposal—and there is conclusive evidence that he was¹³²—then he was also aware that

¹²⁸ See Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (C-6).

¹²⁹ SoC, note 95.

¹³⁰ See Reply, ¶ 66 (stating that Perupetro approved the Temporary Contracts on 20 March 2014 and Amorrortu met with Mr. Ortigas on 22 May 2014).

¹³¹ See Perupetro, Board of Directors Agreement No. 032-2014 (20 March 2014) (R-78); Perupetro, Board of Directors Agreement No. 033-2014 (20 March 2014) (R-79); Perupetro's Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (C-3); Perupetro's Board of Directors, *Agreement No. 035-2014, Approval of Temporary License Draft Contract for Exploitation of Block IV* (20 March 2014) (R-18).

¹³² See Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 13 [PDF] citing Perupetro, Board of Directors Agreement No. 032-2014 (20 March 2014) (R-78) and Perupetro, Board of Directors Agreement No. 033-2014 (20 March 2014) (R-79).

the Blocks were not available for direct negotiation, directly undermining his entire claim in this arbitration.

2. The Minimum Indicators did not need to be included in the Bidding Rules but were published in any event and known by diligent operators

89. The Reply makes much of the fact that, according to Amorrortu and Ms. Yaya, “aside from GyM, none of the other bidders had actual knowledge of the minimum requirements and which supporting documents were to be submitted.”¹³³ Amorrortu and Ms. Yaya advance four arguments in support of this statement.

90. Before refuting those arguments, Peru notes that Amorrortu’s position rests on a fundamental misunderstanding of the Minimum Indicators’ purpose and role. As Peru already established in the SoD, the first step in the Bidding Process was for interested companies to submit a Letter of Interest according to the template provided as Form 1 in the Bidding Rules. Form 1 required that an interested company declare its maximum capabilities in the categories corresponding to the Minimum Indicators.¹³⁴ This necessarily called upon the companies to present their strongest qualifications—based on what they could ultimately substantiate (in the second phase)—irrespective of the threshold amounts. Whether the public was explicitly informed of those specific amounts did not alter whether a company was in fact capable of satisfying them. Mr. Guzmán confirms this, noting that:

[I]t was not necessary to know what the Minimum Indicators were in order to complete the sections corresponding to the technical and financial indicators required in Form No. 1. Those technical and financial indicators correspond to information specific to each company and could be included in Form No. 1 without consulting the Minimum Indicators. In reality, the Minimum Indicators were an internal evaluation tool for PERUPETRO and did not need to be published as part of the Bidding Rules.¹³⁵

¹³³ Reply, ¶ 94. See also Reply, ¶¶ 89-91, 95-97.

¹³⁴ Perupetro’s Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (R-22), Format 1.

¹³⁵ Guzmán Second Witness Statement, ¶ 18.

91. But even if a company chose to verify its compliance with the Minimum Indicators before submitting Form 1—a matter of preference not necessity—it was able to do so, as explained below.

92. Turning to Amorrortu’s and Ms. Yaya’s arguments, *first*, they maintain that “the interested bidding companies did *not* receive a PeruPetro document” with the Minimum Indicators and these were not included in the Bidding Rules.¹³⁶ As Mr. Guzmán observes, however, “there is nothing irregular about this.”¹³⁷ Indeed, neither Amorrortu or Ms. Yaya refer to any legal basis to substantiate their position. There was plainly no requirement that the Commission include the Minimum Indicators in the Bidding Rules or any other document. In any event, Amorrortu’s and Ms. Yaya’s own subsequent statements acknowledge that the Bidding Rules—a document available to interested bidding companies—explicitly establishes that the Minimum Indicators are determined by reference to the Qualification Procedure.¹³⁸ Thus, any interested party was tasked with consulting said document, which leads to Amorrortu’s and Ms. Yaya’s second argument.

93. *Second*, Amorrortu and Ms. Yaya take issue with the fact that the Minimum Indicators were not spelled out in the Qualification Procedure.¹³⁹ This is unremarkable and merely exposes their lack of experience and familiarity with Peru’s oil and gas industry. As Dr. Vizquerra explains:

the contracting arrangement for granting such exploitation rights is one entered into between experts: (i) on one side, PERUPETRO, which is responsible for negotiating, executing, and, in its capacity as contracting party, supervising license agreements for hydrocarbons exploration and exploitation; and (ii) on the other side, a company possessing legal, technical, economic, and financial capacity of such a nature as to qualify it to execute license agreements and render it fit to carry out the aforementioned

¹³⁶ Reply, ¶ 89 (emphasis in original).

¹³⁷ Guzmán Second Witness Statement, ¶ 17. Nor did Perupetro violate the Law of Administrative Procedure by not including the Minimum Indicators in the Bidding Rules as Amorrortu alleges without more. *See* Vizquerra Second Expert Report, ¶¶ 20-21.

¹³⁸ *See* Reply, ¶ 89.

¹³⁹ Reply, ¶ 89.

activities. In light of the foregoing, it is entirely clear that, in a contract between experts, both parties must be aware of the legal provisions applicable to this type of contracting, as well as the particular circumstances of the subject matter of the contract they intend to execute, and must act diligently and in good faith in accordance with those provisions.¹⁴⁰

94. This is further confirmed by Mr. Guzmán who explains that “the Bidding Rules make clear that each participating company would be evaluated in accordance with the Minimum Indicators approved by PERUPETRO for that purpose. This was no secret. Section 6.1 of the Bidding Rules clearly provides that ‘[t]he [participating companies] are those that have expressed interest in participating in the Bidding Process, and that meet the Minimum Indicators approved by Board Agreement No. 048-2010.’”¹⁴¹ Thus, diligent operators could determine the Minimum Indicators by consulting the Qualification Procedure, the characteristics of the blocks published in on Perupetro’s public portal for the Bidding Processes, and using their own experience or, if necessary, the advice of qualified legal and industry advisors.¹⁴² Baspetro had neither in this case.

95. Beyond consulting the Qualification Procedure and the characteristics of the Blocks, Mr. Guzmán notes that there was another way for interested parties to consult the Minimum Indicators: “the participating companies could obtain the information directly, since the Minimum Indicators were published on PERUPETRO’s website, including in the Minimum Indicators Simulator [...] available on PERUPETRO’s portal for the Block III Bidding Process.”¹⁴³ Indeed, any company who accessed the simulator would have been met with the following:¹⁴⁴

¹⁴⁰ Vizquerra Second Expert Report, ¶ 18.

¹⁴¹ Guzmán Second Witness Statement, ¶ 19.

¹⁴² See Vizquerra Second Expert Report, ¶¶ 18-21; Guzmán Second Witness Statement, ¶¶ 19-22, 24-25.

¹⁴³ Guzmán Second Witness Statement, ¶ 20.

¹⁴⁴ Perupetro, Captura de Pantalla del Portal (12 September 2014) (RG-2).

Perú petro SIMULADOR DE INDICADORES MÍNIMOS
Licitación Pública Internacional para Otorgar Contrato de Licencia - Lote III

Aspectos Técnicos

Empresas	"A"
RESERVAS (MMBL) (1)	220
PRODUCCION (MBLD) (2)	47087
POZOS DE DESARROLLO (3)	287
Porcentaje de Participación	100.00%

(1) Tener bajo operación las Reservas de Hidrocarburos del Lote.
(2) Producción Promedio de los últimos dos (2) años.
(3) Información de la sumatoria de las actividades realizadas en los cinco (5) últimos años.

Capacidad de Contratación (CC) Todo expresado en MMUS\$

Empresa "A"	2012	2013	CC Parcial	CC Empresa "A"
Activo Corriente	3082	3669	3375.5	
Patrimonio	6513	7108	3405.25	3405.25
Flujo de Caja	2582	2541	2561.5	

Resultado

Trabajos Técnicos Acreditados:

Reservas(MMBL)	220
Produccion(MBLD)	47087
Pozos de Desarrollo	287
Capacidad de Contratación Final:(MMUS\$)	3405.2 MMUS\$
Puede presentar oferta por lote:	SI

SI CUMPLE CON LOS INDICADORES MÍNIMOS

Calcular << Inicio

Indicadores Mínimos:

Reserva (MMBL) :	20.05
Produccion (MBLD) :	2.89
Pozos Desarrollo:	90
CC (MMUS\$) :	202.50

96. As can be seen from the above, the Minimum Indicators were explicitly set out in the table titled “*Indicadores Mínimos*” on the right-hand side.

97. *Third*, Amorrortu and Ms. Yaya deny that the simulator was publicly available on the official Bidding Process portal, despite acknowledging its existence immediately thereafter.¹⁴⁵ Their sole argument in support of their position is that the simulator was not

¹⁴⁵ See Reply, note 143 (“And though on PeruPetro’s website there is a link referring to Minimum Indicators (outside of the Bidding Terms), it is not enabled to view its content.”). Peru does not dispute that the simulator has since been deactivated given the passage of time and its backup copy is no longer available, in line with Perupetro’s Information Technology policy. See Perupetro, Plan de Contingencia y Recuperación de Desastres Tecnología de Información (December 2012) (R-73), § 4.2.1, Table C07 – Frecuencia y Contenido de las Copias de Respaldo (establishing a retention period of three (3) years for Perupetro’s annual backup). Peru notes, however, that there is conclusive evidence on the record which Amorrortu has not rebutted that proves that the simulator was operational during the Bidding Process. See, e.g., Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetro) (3 November 2014) (C-15); Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-22 (2014) (C-221), pp. 56-57, 60-61, 65, 67, 72, 74-76 [PDF].

mentioned in the Bidding Rules.¹⁴⁶ As before, Amorrortu and Ms. Yaya do not ground their argument in any legal requirement, but rather their own beliefs on how the Bidding Process should have been conducted. Their beliefs are, plainly, irrelevant. Perupetro was not required to reference the simulator in the Bidding Rules and that it was not referenced therein does not negate its existence or the fact that the Minimum Indicators could be found in the simulator.

98. In any event, it is beyond dispute that Baspetro was specifically made aware of the simulator. Indeed, even if Amorrortu could prove that the simulator was not known by all interested parties (*quod non*), he cannot deny that he and Baspetro had actual knowledge of its existence and use, as well as where to find the Minimum Indicators. On 3 November 2014, the Commission informed Amorrortu that Baspetro's submission did not meet any of the Minimum Indicators. In that communication, the Commission also explicitly stated that:

The [Bidding Rules], [the] Board Agreement No. 048-2010, as well as the Minimum Indicator Simulator and the values corresponding to the Minimum Indicators for the Tender, are available on the PERUPETRO S.A. portal: <http://www.perupetro.com.pe>.¹⁴⁷

99. The Commission sent this letter 11 days before the deadline to submit Form 1,¹⁴⁸ affording Baspetro ample time to consult the resources identified therein and update its submission accordingly. Baspetro chose not to do so, and Peru cannot be faulted for that decision.

100. *Finally*, Amorrortu and Ms. Yaya conclude that, because “GyM was the only party who submitted the required documents for the second phase of the bid for Lot III [...] it is evident that aside from GyM, none of the other bidders had actual knowledge of the Minimum Requirements and which supporting documents were to be submitted at the various phases of the

¹⁴⁶ See Reply, ¶ 95 (“Peru also alleges that PeruPetro had a portal to facilitate the bidding process participation of the bidders. This is not so. The *Bases de Licitacion*/Bidding Terms do not mention any simulator.”) (footnote omitted).

¹⁴⁷ Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetro) (3 November 2014) (C-15) (emphasis added).

¹⁴⁸ The deadline to submit Form 1 was 14 November 2014. See SoD, ¶ 128, note 177.

bidding process.”¹⁴⁹ This is incorrect and reveals that, despite Peru’s detailed explanation in the SoD,¹⁵⁰ Amorrortu and his expert have chosen to ignore the record.

101. Peru already established that eight companies cleared the first hurdle which, according to Amorrortu, required knowledge of the Minimum Indicators.¹⁵¹ In the second phase, those companies were invited to submit documents proving their declarations with respect to the Minimum Indicators.¹⁵² Although all of them submitted some form of documents, only Perenco S.A. (“**Perenco**”) and GyM substantiated their declarations.¹⁵³ It was not until the third and final phase that GyM was the sole remaining participant, and this was only because Perenco did not present a bid, rather than any conduct by the Commission or Perupetro.¹⁵⁴ If none of the other participating companies had “actual knowledge of the Minimum Indicators,” as Amorrortu and Ms. Yaya allege, then how did the majority—eight out of 12, to be exact¹⁵⁵—clear that first step? There is only one possible answer: including the Minimum Indicators in the Bidding Rules was not necessary.

102. Amorrortu and Ms. Yaya also maintain that an email from Ms. Maybelle Helmersen of Nor Trade Group to Mr. Winston Wusen of Perupetro dated 15 October 2014 “surely” proves that it was all a tactic designed to limit participation in the Bidding Process, in line with the statements of an effective collaborator in the *Lava Jato* investigations.¹⁵⁶ This is, however, a gross misrepresentation of the evidence.

103. On one hand, the email merely proves that, aside from Baspetro, there was another company who was unable to successfully navigate the applicable regulatory framework.

¹⁴⁹ Reply, ¶¶ 93-94.

¹⁵⁰ See SoD, ¶¶ 91-163; Guzmán First Witness Statement, ¶¶ 16-27.

¹⁵¹ See SoD, ¶ 141.

¹⁵² See SoD, ¶ 142.

¹⁵³ See SoD, ¶¶ 143-144.

¹⁵⁴ See SoD, ¶ 147.

¹⁵⁵ See SoD, Tables 13 and 14 on pp. 47-48, 52-53.

¹⁵⁶ See Reply, ¶¶ 91-92.

At the outset, Mr. Winston Wusen was not a member of the Commission¹⁵⁷ such that, under the Bidding Rules, Ms. Helmersen’s communication was directed at the wrong person.¹⁵⁸ Mr. Guzmán confirms that “[i]f any of the bidders had been interested in knowing the Minimum Indicators, they could have requested them from the Commission, and they would have been provided without any problem.”¹⁵⁹

104. Moreover, by requesting that Mr. Wusen “send [her] exactly what needs to be submitted on 31 October,”¹⁶⁰ Ms. Helmersen exposed her failure or unwillingness to refer to the Bidding Rules which explicitly stated that, on 31 October 2014, an interested company needed to submit its letter of interest pursuant to the template provided therein.¹⁶¹ All an interested company needed to do, therefore, was read the Bidding Rules, fill out the template with its information, and submit it to the Commission by the specified deadline.

105. Far from evidencing any impropriety by Perupetro, Ms. Helmersen’s email confirms that not all companies exercised equal diligence in their approach to the Bidding Process.¹⁶² Their disqualification on that basis was the natural and expected outcome of a properly

¹⁵⁷ See Memorandum No. GGRL-CONT-081-2014 (8 July 2014) (**R-24**).

¹⁵⁸ See Perupetro’s Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 6.6 (“Las comunicaciones de la EP o Consorcio referidas a la Licitación deberán ser dirigidas de manera escrita a la Comisión:

Comisión de la Licitación Pública Internacional N° PERUPETRO-001-2014

PERUPETRO S.A.

Av. Luis Aldana N° 320, San Borja

Lima, Perú”) (emphasis in original).

¹⁵⁹ Guzmán Second Witness Statement, ¶ 20.

¹⁶⁰ Email from M. Helmersen (Nor Trade Group) to Ing. W. Wusen (Perupetro) (15 October 2014) (**Yaya-92**) (translation provided by Counsel). Peru notes, however, that Ms. Yaya’s extract comes from Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-17 (2014) (**C-216**), p. 74 [PDF].

¹⁶¹ See Perupetro’s Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.2, Annex 1, Format 1.

¹⁶² The company that Ms. Helmersen represented—China National Petroleum Group Ltd—ultimately submitted its letter of interest after the deadline had expired, namely on 19 November 2014, and was disqualified on that basis. See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-17 (2014) (**C-216**), pp. 5, 74; Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-23 (2014) (1 January 2014) (**C-222**), pp. 63, 65-74 [PDF]. See also SoD, Table 13 on pp. 47-48; Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**), pp. 18, 20 [PDF].

conducted public tender—one designed to ensure that Block III was awarded to the most qualified and competent bidder.

106. [REDACTED]

107. [REDACTED]

[REDACTED] Regrettably, this is but one example of Amorrortu's and Ms. Yaya's systematic misuse of the Confidential Documents.¹⁶⁶

108. This decision is all the more striking, however, given that the record affirmatively disproves their narrative. For instance, Ms. Yaya maintains that Perenco was one of the companies that “submitted soft bids so that Graña y Montero would end up as the sole bidder,”¹⁶⁷ but omits that Perenco, a renowned international firm, had other legitimate reasons for

¹⁶³ Reply, ¶ 92.

¹⁶⁶ See § II.C.1 *infra*.

¹⁶⁷ Reply, ¶ 92.

abandoning the Bidding Processes. Indeed, Claimant’s own exhibit shows that Perenco informed PeruPetro that:

[C]urrently, Block 67 is operating at a loss due to operating costs, pending capital expenditures (CAPEX), and low crude oil prices. Managing this deficit is considered a Group-wide priority, so we are currently focused on evaluating all possible strategies to limit the economic impact on Block 67, including the rescheduling of our upcoming investments as well as a potential reorganization of the company. In this context, we believe that bidding on Blocks III and IV is incompatible with the aforementioned considerations; therefore, our parent company has decided not to submit bids for Blocks III and IV.¹⁶⁸

109. Perenco’s decision not to submit bids in the Bidding Processes was thus driven not by any illicit agreement with GyM—as Amorrortu and Ms. Yaya maintain without any support—but by independent commercial considerations.

110. In any event, Amorrortu’s baseless allegations are certainly not enough to discharge his evidentiary burden of proving that “PeruPetro did this to favor G&M.”¹⁶⁹ He provides no proof or particularization of why this would be the case when, as explained above and in Peru’s SoD, all companies had access to the same information and eight companies advanced to the second phase of the Bidding Process, meaning they submitted their respective Form 1 with information that satisfied the Minimum Indicators.

111. In sum, Amorrortu’s and Ms. Yaya’s arguments make clear that they misunderstand the role of the Minimum Indicators in a public tender and that Baspetro failed to successfully navigate the applicable regulatory framework. This is unsurprising given Baspetro’s

¹⁶⁸ Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-30 (2014) (C-229), p. 96 [PDF] (translation provided by Counsel. In the original Spanish: “[a]ctualmente el Lote 67 se encuentra en una situación deficitaria debido a los costos de operación, las inversiones pendientes (CAPEX) y los bajos precios de venta del crudo. El control de esta situación deficitaria es considerado como una prioridad a nivel del Grupo por lo que actualmente estamos enfocados en evaluar todas las estrategias posibles que permitan limitar los impactos económicos sobre el Lote 67, entre las que se incluyen la reprogramación de nuestras próximas inversiones así como la posible reorganización de la compañía. En este contexto consideramos que ofertar por los Lotes III y IV es incompatible con los aspectos antes señalados, por lo que nuestra casa matriz ha decidido no presentar ofertas por los Lotes III y IV.”) (emphasis added).

¹⁶⁹ Reply, ¶ 97.

lack of experience in Peru's oil and gas industry and its failure to retain qualified legal or industry advisors. Peru cannot be made to bear the consequences of that failure.

3. Amorrortu has failed to prove that the update to Block III's proven reserves consisted of a modification to the Bidding Rules, let alone an unlawful one designed to favor GyM

112. In the SoD, Peru established that, what Amorrortu described as “[t]he first modification to the Bidding Rules”¹⁷⁰ was in fact an update of Block III's proven hydrocarbon reserves which, in turn, lowered the Minimum Indicator that a party needed to comply with from 20.05 million of barrels or MMBL, per its industry abbreviation, to 18.27 MMBL.¹⁷¹ Peru also explained that this update was not implemented at the behest of GyM, as Amorrortu alleged, and did not “obviously favor”¹⁷² it because it applied equally to all operators and GyM satisfied the corresponding Minimum Indicator regardless of the update.¹⁷³ The Reply does not rebut Peru's position, ignoring the technical and legal reasons that made the update necessary,¹⁷⁴ and instead doubling down on Amorrortu's narrative while introducing a series of new arguments that are equally flawed.

113. *First*, recognizing that his original argument—that the update constituted a “modification to the Bidding Rules”¹⁷⁵—was plainly incorrect, Amorrortu now attempts to deflect by dismissing the distinction as mere semantics, claiming it “unnecessary to engage in an alphabet soup over the characterization of these changes.”¹⁷⁶ Although it is clear that formalities and procedure are not important to Amorrortu, the same cannot be said for Peru and Perupetro. A modification to the Bidding Rules requires compliance with certain safeguards, including technical

¹⁷⁰ SoC, ¶ 160.

¹⁷¹ See SoD, ¶¶ 102-103, note 165. See also Memorandum No. CONT-0107-2014 (12 September 2014) (C-50); Perupetro, *Circular No. 2 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (23 September 2014) (R-29).

¹⁷² SoC, ¶ 160.

¹⁷³ See SoD, ¶¶ 104-111.

¹⁷⁴ SoD, ¶ 103.

¹⁷⁵ SoC, ¶ 160.

¹⁷⁶ Reply, ¶ 98. See also Reply, ¶¶ 99-100, 112, 115.

and legal evaluations followed by Board approval, as proven by the modifications implemented in October 2014.¹⁷⁷ Updating the Block's proven reserves, on the other hand, does not. This distinction alone underscores precisely why proper characterization in fact matters.

114. *Second*, Amorrortu claims that Perupetro “waited until the middle of the Bidding Process to make its announcement” such that the update came “at the eleventh hour.”¹⁷⁸ This is plainly false. Mr. Guzmán explained in his first witness statement that, even though the reserves were updated to 31 December 2013, the MINEM often published the Annual Book of Hydrocarbon Reserves with some delay, meaning the new figures were not available to Perupetro or other entities until that time.¹⁷⁹ Amorrortu does not address this. The MINEM approved and adopted the 2013 Annual Book of Hydrocarbon Reserves on 15 August 2014.¹⁸⁰ As can be seen from the MINEM's Directorial Resolution, it was not until that date that publication was authorized and it was ordered to be sent to Perupetro.¹⁸¹ Consequently, the update in the Bidding Process on 12 September 2014 was implemented as soon as the relevant information became available to Perupetro, making it both reasonable and timely.

115. Nor did the timing of the update affect any company's evaluation, including Baspetro, as Amorrortu argues.¹⁸² Any interested company had more than 50 days to prepare its Letter of Interest after the update was communicated.¹⁸³ In fact, Baspetro submitted its Letter of

¹⁷⁷ See SoD, ¶¶ 113, 124, § II.B.5 *infra*.

¹⁷⁸ Reply, ¶¶ 98, 101.

¹⁷⁹ Guzmán First Witness Statement, ¶ 19.

¹⁸⁰ See Ministry of Energy and Mines of Peru, Resolución Directorial No 112-2014-MEM-DGH (15 August 2014) (**R-83**), Art. 1.

¹⁸¹ See Ministry of Energy and Mines of Peru, Resolución Directorial No 112-2014-MEM-DGH (15 August 2014) (**R-83**), Arts. 2, 3.

¹⁸² See Reply, ¶ 104.

¹⁸³ The update was communicated via Newsletter No. 2 dated 23 September 2014, whereas the deadline for the submission of Form 1 was 14 November 2014.

Interest on 31 October 2014, that is, 38 days after the update was communicated, affording it ample time to make any adjustments it deemed necessary.¹⁸⁴

116. *Third*, Amorrortu continues to advance his baseless theory that “this update was in direct response to a request from GyM” as part of an illicit agreement.¹⁸⁵ Having failed to identify any supporting evidence—the only document Amorrortu and Ms. Yaya cite postdates the update and contains no such request¹⁸⁶—the Reply resorts to a tactic that pervades Amorrortu’s submission: inviting the Tribunal to excuse the absence of evidence by assuming that, because corruption occurred in other projects, it must have occurred here as well.¹⁸⁷ This is insufficient for Claimant to meet his burden and is belied by the record.

117. [REDACTED]

[REDACTED] There is thus no support for Amorrortu’s suggestion that the update to the Block’s proven reserves was the result of a corrupt agreement between Nadine Heredia and GyM. As Peru already explained in the SoD and further below, Amorrortu’s theory is also in tension with

¹⁸⁴ Baspetrol’s submission also postdated the modifications implemented on 20 October 2014, such that Amorrortu’s statement that “some of the modifications and updates were issued after Amorrortu submitted his Proposal” is plainly false. Reply, ¶ 104.

¹⁸⁵ Reply, ¶ 102. *See also* Reply, ¶ 126.

¹⁸⁶ *See* Expert Report of Mónica Yaya (18 August 2023) (**CER-02**), ¶ 190 *citing* Pliego Absolutorio de Consultas y Solicitudes de Aclaración a las Bases de la Licitación, Licitación Pública Internacional No. PeruPetro-001-2014 (August – November 2014) (**Yaya-30**).

¹⁸⁷ *See* Reply, ¶¶ 102-103. As in numerous other instances identified below, Amorrortu fails to identify which portion of the nine Confidential Documents—spanning 944 pages—purportedly supports his theory. *See* Reply, note 155. Peru reserves all its rights accordingly.

¹⁸⁸ *See* § II.C.1 *infra*.

¹⁸⁹ *See* § II.C.1 *infra*.

¹⁹⁰ *See* § II.C.1 *infra*.

ample evidence on the record proving that GyM did not curry Nadine Heredia's favor.¹⁹¹ [REDACTED]

118. In this respect, Peru does not “ask[] the Tribunal to assume no corruption and off-the-books conversations occurred between, *inter alia*, PeruPetro officials, GyM, and the First Lady” regarding this purported modification,¹⁹³ but rather requests that the Tribunal not assume Amorrortu's allegations as true when no evidence supports them and evidence to the contrary remains undisputed. The burden of proof with respect to corruption lays with the party that invokes its existence;¹⁹⁴ in this case, that party is Amorrortu.

119. *Fourth*, Amorrortu and Ms. Yaya challenge the update to the Block's proven reserves based on a 24 October 2013¹⁹⁵ meeting between Ms. Tafur and Mr. Francisco Dulanto Swayne of Graña y Montero Petrolera S.A. (“GMP”), a GyM subsidiary.¹⁹⁶ There are several flaws with this argument.

120. At the outset, Ms. Tafur confirms that she never “participated in the drafting of the Annual Hydrocarbon Reserves Books” given that “highly specialized technical personnel is necessary, because volumetric calculations must be made, for which [she is] neither prepared nor trained. [Her] training is as a lawyer, and it would be impossible for [her] to draft the Annual Hydrocarbon Reserves Book because it involves calculations, which require training as a Petroleum Engineer.”¹⁹⁷

¹⁹¹ See SoD, ¶¶ 200-206, 212-213; § II.C.1 *infra*.

¹⁹² See § II.C.1 *infra*.

¹⁹³ Reply, ¶ 103.

¹⁹⁴ See § V.B *infra*.

¹⁹⁵ Amorrortu and Ms. Yaya maintain that the meeting was held on 23 October 2013. See Reply, ¶ 111; Yaya Second Expert Report, ¶ 24. Peru was unable to verify this allegation, however, given that, at footnote 12 of her Second Expert Report, Ms. Yaya fails to provide the source which she relied on, merely citing a link to a search engine that does not produce the results she describes in her report. See Yaya Second Expert Report, note 12. Peru conducted its own searches and found that a meeting between Ms. Tafur and Mr. Swayne, amongst others, was held on 24 October 2013 in line with Exhibit Yaya-94 and thus responds on that basis, reserving all its rights accordingly.

¹⁹⁶ See Reply, ¶¶ 110-114.

¹⁹⁷ Tafur Second Witness Statement, ¶ 6.

121. As for the meeting specifically invoked by Amorrortu and his expert, Peru notes that there is nothing remarkable about Ms. Tafur meeting with those who participate or wish to participate in Peru's oil and gas industry, including GMP. As Amorrortu himself admits, it was her job.¹⁹⁸ More importantly, Amorrortu and Ms. Yaya fail to tell the whole story. In Exhibit Yaya-94, Ms. Yaya appears to have copied and pasted the following to purportedly prove that Ms. Tafur met with Mr. Swayne:

17	24/10/2013	LOZANO MAYTA, SIDFREDO	DNI:10165650	PARTICULAR	GESTIÃO ADMINISTRATIVA	SAITO SAITO, JORGE	Especialista I	DGER - SALA DEP	15:56	16:21
18	24/10/2013	DULANTO SWAYNE, FRANCISCO JAVIER	DNI:8254231	PARTICULAR	REUNIÓN DE TRABAJO	TAFUR MARIN, ISABEL MERCEDES	Especialista I	ASESORES SALA 2	15:57	18:07
19	24/10/2013	PERAZA ESCOBAR, WALTER	DNI:420923	PARTICULAR	GESTIÃO	AQUINO ALBINO, RUBEN	Especialista	DGER - SALA DEP	16:00	17:25

122. The above is merely a partial excerpt of a document that, when viewed in full, proves that three other individuals, unrelated to GMP and GyM, participated in the meeting. Ms. Yaya's misleading exhibit conveniently omits that Pedro Alarcón Medina of Savia Perú—the

¹⁹⁸ Reply, ¶ 241.

operator of Block Z-2B at that time—, Carmen Gutiérrez Velazco, and Heidi Calcina Cateriano¹⁹⁹ also attended the meeting, as shown below:²⁰⁰

Nro.	Fecha	Visitante	Doc. Identidad	Entidad	Motivo	Empleado Público	Oficina/Cargo	Lugar de Reunión	Hora de Ing.	Hora de Sal.
1	24/10/2013	RUIZ ALBORNOZ, JOSE	DNI:40547794	PARTICULAR	DOCUMENTOS	PEREZ CUELLAR, FLAVIO	Especialista I	OGA - INFORMATICA	15:22	15:24
2	24/10/2013	RAMIREZ YARASCA, OSWALDO	DNI:20720431	PARTICULAR	CONSULTA CIUDADANA	LUZA PEZO, FREDI	Especialista I	DGER - SALA DEP	15:25	15:53
3	24/10/2013	SIFUENTES VARGAS, ROSENDO ALBERTO	DNI:41264917	PARTICULAR	DOCUMENTOS	BUSTAMANTE VELARDE, ENIT LUCY	Especialista I	OGA - LOGISTICA	15:41	15:49
4	24/10/2013	BRIONES DELGADO, EDGARDO	DNI:17542896	PARTICULAR	CONSULTA CIUDADANA	AQUINO ALBINO, RUBEN GERMAN	Especialista I	DGER - SALA DEP	15:44	17:24
5	24/10/2013	VALDEZ VALLEJO, CARLOS ZOCIMO	DNI:43525918	PARTICULAR	DOCUMENTOS	BUSTAMANTE VELARDE, ENIT LUCY	Especialista I	OGA - LOGISTICA	15:47	15:57
6	24/10/2013	CASTILLO MALDONADO, EDUARDO ERNESTO MARTIN	DNI:7787358	PARTICULAR	GESTIÃO ADMINISTRATIVA	VALQUI SUAREZ, ELSI HAYDEE	Especialista I	OGA - OFIC. PERSONAL	15:47	16:05
7	24/10/2013	CENTURION MENDOZA, GERALD JULIO	DNI:9858568	PARTICULAR	REUNIÓN DE TRABAJO	QUINTANILLA NAVARRO, VICTOR MHIJAYLO YOVANI	Especialista I	OGP - SALA REUNION	15:48	17:52
8	24/10/2013	ALARCON MEDINA, PEDRO	DNI:6353649	SAVIA PERU S.A.	REUNIÓN DE TRABAJO	TAFUR MARIN, ISABEL MERCEDES	Especialista I	ASESORES SALA 2	15:48	18:07
9	24/10/2013	ZUBIATE CORNEJO, SUSAN ELIZABETH	DNI:46203787	PARTICULAR	REUNIÓN DE TRABAJO	QUINTANILLA NAVARRO, VICTOR MHIJAYLO YOVANI	Especialista I	OGP - SALA REUNION	15:48	17:52
10	24/10/2013	RAMIREZ ASENCIOS, ORLANDO PORFIRIO	DNI:7031562	PARTICULAR	CONSULTA CIUDADANA	BADILLO CARRILLO, ARMANDO ERICK	Especialista I	DGER - SALA DEP	15:50	15:59
11	24/10/2013	FERNANDEZ NAJARRO, RENEE	DNI:25554559	PARTICULAR	GESTIÃO ADMINISTRATIVA	SAITO SAITO, JORGE	Especialista I	DGER - SALA DEP	15:50	16:15
12	24/10/2013	GUTIERREZ VELASCO, CARMEN ALICIA	DNI:8241251	PARTICULAR	REUNIÓN DE TRABAJO	TAFUR MARIN, ISABEL MERCEDES	Especialista I	ASESORES SALA 2	15:51	18:20
13	24/10/2013	CALCINA CATERIANO, HEIDI LIZBETH	DNI:40432535	PARTICULAR	REUNIÓN DE TRABAJO	TAFUR MARIN, ISABEL MERCEDES	Especialista I	ASESORES SALA 2	15:51	18:20
14	24/10/2013	CIUDAD MAZZI, CARLOS	DNI:6856998	PARTICULAR	CONSULTA CIUDADANA	SAITO SAITO, JORGE	Especialista I	DGER - SALA DEP	15:52	16:10
15	24/10/2013	MAYTA OSORIO, LUIS ALBERTO	DNI:41932682	PARTICULAR	CONSULTA CIUDADANA	RODRIGUEZ HINOSTROZA, JAIME LIZARDO	Especialista I	DGER - SALA DEP	15:53	16:21
16	24/10/2013	GOICOCHEA VEGA, CARLOS	DNI:32869702	PARTICULAR	CONSULTA CIUDADANA	RIVAS URBANO, ALFREDO DANIEL	Especialista I	DGER - SALA DEP	15:53	18:40
17	24/10/2013	LOZANO MAYTA, SIDFREDO	DNI:10165650	PARTICULAR	GESTIÃO ADMINISTRATIVA	SAITO SAITO, JORGE	Especialista I	DGER - SALA DEP	15:56	16:21
18	24/10/2013	DULANTO SWAYNE, FRANCISCO JAVIER	DNI:8254231	PARTICULAR	REUNIÓN DE TRABAJO	TAFUR MARIN, ISABEL MERCEDES	Especialista I	ASESORES SALA 2	15:57	18:07
19	24/10/2013	PERAZA ESCOBAR, WALTER RUBEN	DNI:420923	PARTICULAR	GESTIÃO ADMINISTRATIVA	AQUINO ALBINO, RUBEN GERMAN	Especialista I	DGER - SALA DEP	16:00	17:25
20	24/10/2013	MONZON GONZALES, VICTOR RAUL	DNI:474181	PARTICULAR	GESTIÃO ADMINISTRATIVA	AQUINO ALBINO, RUBEN GERMAN	Especialista I	DGER - SALA DEP	16:00	17:25

RESULTADO DE LA BÚSQUEDA (212 Registros)

“1.- Las visitas registradas a nombre del Sr. Jorge Luis José Montero Cornejo (Viceministro del Despacho Viceministerial de Minas), corresponden a reuniones atendidas por el Sr. Oscar Frías Martinelli, Presidente del Equipo Revisor designado por el Presidente de la Republica en el marco del Proceso de Transferencia de Gestión del Sector”.

“2.- En el marco del proceso de transferencia gestión se vienen efectuando reuniones de coordinación por parte de la Comisión de Transferencia motivo por el cual, los reportes de visitas serán cargados en versión digital.”.

123. Indeed, Ms. Tafur recalls that:

Mr. Francisco Dulanto Swayne and [her] were not the only ones present at that meeting; Mr. Pedro Alarcon Medina, of the company Savia Perú, S.A., an oil company, and Ms. Heidi Lizbeth Calcina

¹⁹⁹ Ms. Gutiérrez Velazco and Ms. Calcina Cateriano are marketing and event planning professionals associated with INGEPET, a renowned oil and gas conference in Peru. *See* LinkedIn, Carmen Alicia Gutierrez Velasco, *available at*: <https://www.linkedin.com/in/carmen-alicia-gutierrez-velasco-81a62567/> (last accessed: 9 April 2026) (R-103); LinkedIn, Heidi Calcina Cateriano, *available at*: <https://www.linkedin.com/in/heidi-calcina-cateriano-68476565/> (last accessed: 9 April 2026) (R-104); “INGEPET 2025: MINEM destaca el papel clave de los hidrocarburos en la seguridad energética del país,” *available at*: <https://www.gob.pe/institucion/minem/noticias/1276790-ingepet-2025-minem-destaca-el-papel-clave-de-los-hidrocarburos-en-la-seguridad-energetica-del-pais> (29 October 2025) (R-99).

²⁰⁰ *See* Visits to the Ministry of Energy and Mines of Peru (24 October 2013) (R-76), rows 8, 12-13.

Cateriano and Ms. Carmen Gutiérrez Velasco, who at that time worked for the International Congress on Exploration, Exploitation, Processing, and Transportation of Hydrocarbons – INGEPET, were also present. INGEPET is an international event, based in Peru, where current issues in the hydrocarbon industry are addressed, and the Organizing Committee is made up of representatives of the oil companies operating in Peru. PERUPETRO [...] is the company that organizes INGEPET. Ms. Heidi Calcina and Ms. Carmen Gutiérrez, together with the company they represent, are responsible for organizing the event; the INGEPET program and the topics to be addressed are defined precisely by the Organizing Committee, supported by Technical Committees. Consequently, the meeting could be characterized as public, because several people from different companies were present, and its purpose was to determine the final general program for INGEPET, considering that the date of that event was approaching.²⁰¹

124. Amorrortu and Ms. Yaya’s efforts to hide this from the Tribunal is not only misleading, but also an implicit admission that their claims of a complicit agreement between Ms. Tafur and Mr. Swayne regarding the 2013 Annual Book of Hydrocarbon Reserves hold no water.

125. Nor was it uncommon for representatives of companies that were actively involved in Peru’s oil and gas sector to meet with MINEM officials or advisors.²⁰² For instance, on 14 August 2014—one month after the Bidding Processes had begun—Juan Ortiz Guevara, then MINEM’s Director General of Hydrocarbons, met with Luis Alberto del Campo Ampuero, Legal Representative for Regulatory and Institutional Affairs at Olympic Peru; a company that was actively participating in the Bidding Processes. Three other individuals were present at the meeting which took place from roughly 9AM to 10:25AM and was also described as a “working meeting.”²⁰³ Mr. Ortiz Guevara had another “working meeting” that day with Rafael Zoeger

²⁰¹ Tafur Second Witness Statement, ¶¶ 8-9.

²⁰² See Tafur Second Witness Statement, ¶ 10 (“It is common for members of the office of the MINEM Minister and PERUPETRO itself to receive and attend to representatives of oil companies in their offices, as was the case with Mr. Amorrortu himself.”).

²⁰³ See Visits to the Ministry of Energy and Mines of Peru (14 August 2014) (R-82).

Núñez, Chief Executive Officer of BPZ Exploration & Production S.R.L.—another company that participated in the Bidding Processes—and two others.²⁰⁴

126. These are two examples that confirm that there was nothing uncommon, let alone nefarious, about a MINEM official or advisor meeting with industry participants, including those who were actively participating in the Bidding Processes.

127. *Finally*, Amorrortu maintains that the update was designed “to favor the companies of the GyM group,” especially because GMP’s “chances of winning the tender would have been lower [than GyM’s].”²⁰⁵ As with most of his arguments in this respect, Amorrortu offers no particularization for his claim that the update favored GyM²⁰⁶—let alone only GyM—, especially since both GyM and GMP met the associated technical indicator with or without the update.²⁰⁷ As Mr. Guzmán affirms:

The effect of the update was to reduce the minimum reserves value that companies had to demonstrate, from 20.05MBL to 18.27MBL. This means that even companies with less experience in hydrocarbon production could have participated in the Block III Bidding Process [...] the update to the minimum value of proven hydrocarbon reserves actually increased the number of companies eligible to bid; therefore, far from favoring Graña y Montero, it made the process more competitive.²⁰⁸

²⁰⁴ Visits to the Ministry of Energy and Mines of Peru (14 August 2014) (**R-82**).

²⁰⁵ See Reply, ¶¶ 109, 112-113.

²⁰⁶ See SoD, ¶ 110. See also Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-20 (2014) (**C-219**), pp. 4, 14 [PDF].

²⁰⁷ Nor does Ms. Yaya’s reliance on the minutes of the Commission’s meeting on 23 September 2014 support of her statement that, as of 19 September 2014, the Commission did not know whether it would evaluate GyM or GMP. See Yaya Second Expert Report, ¶ 26 *citing* Acta No. 07 – 0187 (23 September 2014) (**Yaya-93**). See also Reply, ¶ 113. In reality, the Commission had already determined on 18 September 2014 that it would evaluate GyM and had in fact done so, concluding that it complied with the Minimum Indicators. See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-22 (2014) (**C-221**), Acta No. 6, ¶ 2, Annex 1 on p. 3 [PDF].

²⁰⁸ Guzmán Second Witness Statement, ¶¶ 33, 35.

128. Had Perupetro intended to adjudicate Block III to GyM or GMP all along, it would have made more sense for it to keep the proven reserves under the previous amount to exclude competition.

129. Similarly, Amorrortu and Ms. Yaya fail to particularize how GMP would have purportedly had a lower chance of winning such that the update to the Block's proven reserves was necessary to protect its prospects. In fact, the opposite would appear to be true. Aside from the fact that GMP also met technical indicator affected by the update with or without the update,²⁰⁹ GMP's Letter of Interest declared a higher amount for the technical indicator related to production than GyM.²¹⁰ One could argue, therefore, that it had a better chance of meeting two of the three Minimum Indicators necessary to advance to the second phase of the Bidding Process. Without any indication, let alone evidence, from Amorrortu or Ms. Yaya regarding why "it was necessary to minimize any indicator that was not favorable"²¹¹ to GMP as opposed to GyM, their argument rings hollow.²¹²

4. Amorrortu attempts to recharacterize the evaluation of GyM as a "second" modification to the Bidding Rules, but fails to prove that assertion or its purported effect on the Bidding Process for Block III

130. In the SoC, Amorrortu and Ms. Yaya alleged that GMP was "illegally favored" when it was adjudicated the Blocks (*Buena Pro*) because it was allowed to rely on the financial information of its parent company, GyM; a right they maintain is reserved for foreign companies.²¹³ Peru established in the SoD that their argument was factually and legally incorrect because GyM is the entity that was evaluated and granted the adjudication based on its own

²⁰⁹ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-20 (2014) (C-219), p. 14 [PDF].

²¹⁰ Compare Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-20 (2014) (C-219), p. 14 [PDF] (declaring 3,246 for GMP) and p. 4 [PDF] (declaring 1,497 for GyM).

²¹¹ Reply, ¶ 113.

²¹² The Reply also refers to a complaint by Upland Oil & Gas LLC ("Upland") to argue that it is not true that "the modification of the indicators did not affect the results of the letters of interest." Reply, ¶ 116. Upland's complaint, however, did not refer to the update of the Block's proven reserves, rendering it irrelevant to this point. Peru nevertheless addresses Upland's complaint in § II.B.6 *infra*.

²¹³ SoC, ¶ 165 *et seq.*

financial information, not GMP, such that the subsidiary was not afforded a right purportedly reserved for foreign companies.²¹⁴

131. Unable to substantiate their original argument, Amorrortu and Ms. Yaya move the goalpost in the Reply, now maintaining that the Commission’s evaluation of GyM constituted a second,²¹⁵ illegal modification to the Bidding Rules “with the corrupt goal of having GyM qualify as a bidder.”²¹⁶ According to the Reply, allowing GMP to execute the Contracts was “an arbitrary decision, as it was contemplated neither in the terms [of the Bidding Processes] nor in the law.”²¹⁷

132. For the same reasons that their original argument was incorrect, their new one is also unavailing. GyM was evaluated by the Commission and won the adjudication accordingly, not GMP.²¹⁸ GyM was also entitled from the outset of the Bidding Processes to execute the Contracts through a subsidiary, in this case GMP, and remain as the guarantor, as it ultimately did.²¹⁹ That Amorrortu and Ms. Yaya profess ignorance of this possibility—despite its express basis in both the Bidding Rules and the applicable law, as Peru and Dr. Vizquerra have already demonstrated²²⁰—is an issue of their own making and therefore unavailing to Amorrortu’s claims. Despite the clarity of the applicable legal framework, the Reply alleges that:

through Memorandum No. LEGL-0584-2014, dated September 18, 2014, mentioned in Minutes No. 07 of September 23, 2014,

²¹⁴ See SoD, ¶¶ 151-160.

²¹⁵ As established in § II.B.3 *supra* and herein, updating the Block’s proven hydrocarbon reserves and the Commission’s evaluation of GyM did not constitute modifications, as Amorrortu argues, such that the modifications adopted 20 October 2014 discussed *infra* were the first and only ones to have been occurred.

²¹⁶ See Reply, ¶¶ 117, 119-120.

²¹⁷ Reply, ¶ 61 *citing* Yaya Second Expert Report, ¶ 43.

²¹⁸ See SoD, ¶¶ 151-160. Amorrortu and Ms. Yaya maintain that “[i]t is unknown which criteria was used by the [Commission] to conclude that Graña y Montero, S.A. is the parent of Graña y Montero Petrolera S.A., since no documents produced by Peru or otherwise seem to prove these assertions.” Reply, ¶ 120. Aside from the fact that Amorrortu did not request such documents during the document production phase, “the Commission verified that Graña y Montero was the parent company of Graña y Montero Petrolera through the documentation submitted by Graña y Montero for its qualification. Specifically, the independent auditors report prepared by Price Waterhouse Cooper, which indicates that Graña y Montero’s subsidiaries include Graña y Montero Petrolera, or GMP.” See Guzmán Second Witness Statement, ¶ 57.

²¹⁹ SoD, ¶¶ 152-156.

²²⁰ SoD, ¶ 156; Vizquerra First Expert Report, ¶ 105.

PeruPetro unconstitutionally amended the Terms and the Law by arbitrarily interpreting that Article 3 of the Regulation on the Qualification of Oil Companies—applicable exclusively to foreign parent corporations as non-domiciled entities—was also applicable to a domestic company such as Graña y Montero Petrolera S.A., even though it is neither foreign nor the parent of Graña y Montero Petrolera S.A.²²¹

133. In Amorrortu’s and Ms. Yaya’s opinion, this purported modification is unacceptable because the Commission’s consultation, which resulted in Memorandum No. LEGL-0584-2014, was made *sua sponte*, as opposed to being prompted by GyM via article 6.5.1 of the Bidding Rules.²²² The Reply conspicuously omits the complete factual account surrounding Memorandum No. LEGL-0584-2014—an account which exposes this argument as nothing more than a red herring.

134. On 21 August 2014, the Commission received GMP’s Letter of Interest in the Bidding Process for Block III, listing GyM as its parent company.²²³ As with all letters of interests that it received, the Commission proceeded to review the submission and, on 21 August 2014, decided that it “[t]he request for a legal opinion” from Perupetro’s Legal Management “was necessary because [...] [t]he Commission had not dealt with this situation previously.”²²⁴ Thus, “to ensure that the Commission acted consistently with legal framework, Legal Management was consulted on 29 August 2014”²²⁵ in the following terms:

For the purposes of the classification of an oil company that is a corporation incorporated in Peru and that is part of a corporate group whose parent company is also a corporation incorporated in Peru, should the qualification be granted to the parent company or corporation, as provided in Article 3 of the Regulations on the

²²¹ Reply, ¶ 121.

²²² Reply, ¶ 119.

²²³ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-20 (2014) (C-219), pp. 12-19 [PDF]. Although dated 19 August 2014, it was received by Perupetro and the Commission on 20 and 21 August 2014, respectively. See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-20 (2014) (C-219), p. 12 [PDF]; Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-22 (2014) (C-221), p. 42 [PDF].

²²⁴ Guzmán Second Witness Statement, ¶ 55.

²²⁵ Guzmán Second Witness Statement, ¶ 55.

Qualification of Oil Companies, approved by Supreme Decree No. 030-2004-EM?²²⁶

135. Before receiving a response from Legal Management, however, GyM submitted a superseding Letter of Interest on 5 September 2014.²²⁷ At this juncture, GMP's submission of 21 August 2014 and the Commission's related inquiry to Legal Management was rendered moot. The Commission evaluated GyM's submission on 18 September 2014, finding that it met the Minimum Indicators.²²⁸ This submission by GyM was the basis of its advancement to the next phase of the Bidding Process where it substantiated its declarations regarding the Minimum Indicators, allowing it to submit a bid which ultimately won.

136. On 19 September 2014—where Amorrortu and Ms. Yaya's narrative conveniently begins—the Commission received a response from Legal Management in the form of Memorandum No. LEGL-0584-2014.²²⁹ Based on the Commission's Minute No. 7, Ms. Yaya observes²³⁰ that the memorandum concluded that it was possible to evaluate a corporation or the parent company of a domestic firm in the same manner as a foreign one.²³¹ As Mr. Guzmán explains, however, “it was ultimately unnecessary to have the legal opinion regarding the possibility of evaluating [GMP] based on data from its parent company. Thus, the Commission

²²⁶ Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-22 (2014) (C-221), p. 43 [PDF] (translation provided by Counsel. In the original Spanish: “*Para efectos de la Calificación de una Empresa Petrolera que sea una sociedad constituida en el Perú y que forme parte de una corporación cuya matriz sea igualmente una sociedad constituida en el Perú, ¿la Calificación deberá otorgarse a la casa matriz o corporación, según lo establecido en el artículo 3° del Reglamento de Calificación de Empresas Petroleras, aprobado por Decreto Supremo N° 030-2004-EM?*”).

²²⁷ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-20 (2014) (C-219), pp. 2-7 [PDF]. Although dated 1 September 2014, it was received by Perupetro and the Commission on 5 and September 2014. See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-20 (2014) (C-219), p. 2 [PDF]; Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-22 (2014) (C-221), p. 1 [PDF].

²²⁸ Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-22 (2014) (C-221), Acta No. 6, ¶ 2, Annex 1 on p. 3 [PDF].

²²⁹ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-22 (2014) (C-221), p. 5 [PDF]; Acta No. 07 – 0187 (23 September 2014) (Yaya-93).

²³⁰ Yaya Second Expert Report, ¶ 33.

²³¹ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-22 (2014) (C-221), p. 5 [PDF] (¶ 1).

only received and took note of the Memorandum, but did not make any decision based on that document or give it any other use.²³²

137. The Commission’s decision to consult Legal Management—far from suspect—is yet another demonstration of its diligence and commitment to compliance with the governing legal framework. It is also ultimately immaterial. Neither the Bidding Rules nor its outcome were modified or otherwise affected by the consultation of Legal Management or the contents of Memorandum No. LEGL-0584-2014. Amorrortu’s and Ms. Yaya’s related arguments therefore amount to nothing more than a straw man.

5. Amorrortu has failed to prove that the 20 October 2014 modifications to the Bidding Rules were unlawful or designed to favor GyM

138. With respect to the modifications to the Bidding Rules adopted on 20 October 2014—which the Reply erroneously designates as “Modification 3”²³³—Peru established in its SoD that they were technically and legally justified, communicated to the public in a timely manner, and, critically, had no bearing on the outcome of the Bidding Process, including GyM’s and Baspetrol’s respective evaluations.²³⁴

139. Peru specifically showed that Amorrortu failed to (i) particularize how the modifications purportedly favored GyM (they did not); (ii) provide the “entire communication process” he relied on for this argument; and (iii) indicate why GyM should have incorporated Block III production numbers in its sworn statement in the Bidding Process,²³⁵ yet the Reply offers no compelling responses. Instead, relying on Ms. Yaya, Amorrortu now argues that the modifications were “illegal in both form and substance”²³⁶ based on a series of new arguments.

²³² Guzmán Second Witness Statement, ¶ 56.

²³³ Reply, p. 50 (emphasis added). As Peru already established in §§ II.B.3 and II.B.4 *supra*, the update to the Block’s proven hydrocarbon reserves and the Commission’s evaluation of GyM did not constitute modifications to the Bidding Rules.

²³⁴ See SoD, ¶¶ 112-127.

²³⁵ SoD, ¶¶ 120-123.

²³⁶ Reply, ¶ 124.

This latest attempt to salvage his claims by moving the goalpost once again is no more effective than the last.

140. According to Ms. Yaya, the modifications were “illegal in [...] form” because articles 6.5.1 and 6.6 of the Bidding Rules provide that “the oil companies’ observations regarding their evaluation had to be raised and addressed directly by the participants [to] the [Commission] and never with Perupetro Management, as described in paragraph 1.3 of Legal-Technical Report No. 128-2014 of October 17, 2014”²³⁷—the report that assessed the modifications’ technical and legal adequacy.

141. At the outset, Article 6.5.1 of the Bidding Rules provides:

Comments from interested EPs or Consortia regarding their evaluation pursuant to Section 7.2 of the Bidding Rules may be submitted to the Commission, which must respond within two (2) business days. If the Commission does not accept the comments, the interested EPs or Consortia may appeal to the General Management of PERUPETRO within two (2) business days from the date of notification of the results, and the General Management of PERUPETRO must issue a decision within two (2) business days.²³⁸

²³⁷ Reply, ¶ 124. Ms. Yaya further seeks to discredit the modifications by calling into question the technical legal analysis that approved them—Technical Legal Report No. 0128-2014. She specifically argues that (i) the report “was prepared by officials who were professionally dependent on Perupetro and politically dependent on the power exercised by former President Ollanta Humala and his wife Nadine Heredia through the Ministers of State” and (ii) “Jannine Delgado, the official [...] who signed said report in her capacity as Legal Manager, could not guarantee independence in her professional conduct either” because she would go on to work for a “private institution” of which Mr. Swayne was a Director and GyM a part. *See* Yaya Second Expert Report, ¶¶ 89-95. Regarding the former, Ms. Yaya offers no basis for her implicit position that Perupetro was required to retain external “technicians” to prepare its own reports—a proposition that is plainly untenable. Yaya Second Expert Report, ¶ 89. As to the latter, Peru notes that Ms. Yaya fails to provide the sources on which she relies, thereby precluding the Republic from fully engaging with her assertions. *Compare* Yaya Second Expert Report, notes 39-40 and Index of Yaya Second Expert Report. Peru reserves all its rights in this regard. In any event, even if her factual claims were supported by evidence, her argument would remain meritless. That one of five authors of a technical legal report subsequently obtained employment at a private organization with some connection to GyM and Mr. Swayne falls far short of the causal nexus required to establish corruption. *See* § V.B *infra*.

²³⁸ Perupetro’s Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (R-22), Art. 6.5.1 (translation provided by Counsel. In the original Spanish: “*Las observaciones de las EP o Consorcio interesados relativas a su evaluación en aplicación del numeral 7.2 de las Bases, podrán ser planteadas ante la Comisión, la que deberá responder dentro del plazo de dos (2) días útiles. En caso que las observaciones no sean acogidas por la Comisión, las EP o Consorcio interesados podrán apelar ante la Gerencia General de PERUPETRO dentro del plazo de dos (2) días útiles contados a partir de la*”).

142. As for Article 6.6, it indicates, in relevant part:

Communications from the EP or Consortium regarding the Bidding Process must be submitted in writing to the Commission [...] Communications regarding appeals in accordance with sections 6.5.1 and 6.5.2 must be addressed to the General Management of PERUPETRO at the address indicated above. Communications submitted by the EP or Consortium that do not comply with the foregoing shall be deemed not to have been submitted for the purposes of the Bidding Process.²³⁹

143. Contrary to Ms. Yaya's argument, these provisions are inapplicable to the circumstances set out at paragraph 1.3 of Technical Legal Report No. 0128-2014 which, as shown below, did not concern the Commission's "evaluation [of a specific company] pursuant to Section 7.2 of the Bidding Rules"²⁴⁰—this being the scope of Articles 6.5.1 and 6.6. of the Bidding Rules—but the presentation and promotion of the Bidding Rules and Bidding Process, generally:

The Promotion and Communications Department, through Memorandum No. PRCO-GFPC-0102-2014 dated 16.10.2014, submitted to the General Management of PERUPETRO S.A. a set of issues and suggestions that arose during the meetings to present the Bidding Rules to oil companies that could be potential participants in [the Bidding Process]. In this regard, the Commission established by Memorandum No. GGRL-CONT-0122-2014 conducted the corresponding review, the results of which are presented in this Report and in the Bidding Rules.²⁴¹

notificación de los resultados, debiendo la Gerencia General de PERUPETRO resolver en el plazo de dos (2) días útiles.”) (emphasis added).

²³⁹ Perupetro's Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), Art. 6.6 (translation provided by Counsel. In the original Spanish: “*Las comunicaciones de la EP o Consorcio referidas a la Licitación deberán ser dirigidas de manera escrita a la Comisión [...] Aquellas comunicaciones referidas a apelaciones, de conformidad con los numerales 6.5.1 y 6.5.2, serán dirigidas a la Gerencia General de PERUPETRO, a la dirección antes indicada. Las comunicaciones presentadas por las EP o Consorcio que no cumplan con lo antes señalado, se tendrán por no presentadas para efectos de la Licitación.*”).

²⁴⁰ Perupetro's Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), Art. 6.5.1 (translation provided by Counsel. In the original Spanish: “*evaluación en aplicación del numeral 7.2 de las Bases.*”).

²⁴¹ Informe Técnico-Legal No. CONT-0128-2014 (17 October 2014) (**Yaya-31**), ¶ 1.3 (translation provided by Counsel. In the original Spanish: “*La Gerencia de Promoción y Comunicaciones mediante Memorando No. PRCO-GFPC-0102-2014 de fecha 16.10.2014 presentó a la Gerencia General de PERUPETRO S.A. un conjunto de temas*

144. Ms. Yaya’s argument that the companies’ “issues and suggestions” referenced in paragraph 1.3 of Technical Legal Report No. 128-2014 should have been raised with the Commission as “[c]omments [...] regarding their evaluation”²⁴² under the Bidding Rules mischaracterizes both the factual record and the “issues and suggestions”²⁴³ themselves. As Technical Legal Report No. 128-2014 makes clear, the companies did not approach the Promotion and Communications Department regarding the Commission’s evaluations of their respective bids. Rather, they submitted comments on the Bidding Process, generally, in the context of promotional events. Those comments were then subjected to a technical and legal review—the conclusions of which are set out in Technical Legal Report No. 128-2014—and subsequently approved by the Board of Directors,²⁴⁴ in full conformity with the governing legal framework.

145. Nor is it illegal, as Ms. Yaya maintains²⁴⁵—and Amorrortu therefore repeats²⁴⁶—for the Promotion and Communications Department to have conducted these events. Perupetro’s Regulations on Organization and Functions (“**ROF**”) in effect during the Bidding Process explicitly provides that the Promotion and Communications Department’s responsibilities include, *inter alia*:

- “Establishing and maintaining inter-company and inter-institutional relationships with potential investors in the sector.

y sugerencias que fueron motivo de las reuniones de presentación de Bases, realizadas a las empresas petroleras que pudieran ser potenciales participantes en la Licitación Pública Internacional [...]. En ese sentido, la Comisión conformada mediante Memorando No. GGRL-CONT-0122-2014, procedió a la revisión correspondiente, cuyo resultado se presenta en este Informe y en las Bases de la Licitación Pública [...].” (emphasis added).

²⁴² Perupetro’s Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), Art. 6.5.1 (translation provided by Counsel. In the original Spanish: “*Las observaciones de las EP o Consorcio interesados relativas a su evaluación.*”).

²⁴³ Informe Técnico-Legal No. CONT-0128-2014 (17 October 2014) (**Yaya-31**), ¶ 1.3 (translation provided by Counsel. In the original Spanish: “*temas y sugerencias*”).

²⁴⁴ See Perupetro’s Board of Directors, *Agreement No. 108-2014, Approval of amendments to the Bidding Rules of the International Public Tender No. PERUPETRO-001-2014* (20 October 2014) (**R-34**), pp. 1-2.

²⁴⁵ Yaya Second Expert Report, ¶ 36 (“It should be noted that the Principle of Legality set forth in Constitutional Court Ruling No. 2939-2004-AA/TC prohibits public officials from engaging in any activity for which they are not expressly authorized.”) (footnote omitted).

²⁴⁶ Reply, ¶¶ 124-1255.

- Participating in promotional and outreach activities to carry out the selection processes for oil companies or bidding processes for oil blocks, in conjunction with the relevant departments [...] [and]
- Conducting public relations activities to promote the activities of PERUPETRO S.A. and the hydrocarbons industry.”²⁴⁷

146. The Promotion and Communications Department did not violate the law by conducting promotional events concerning the Bidding Process and transmitting the “issues and suggestions”²⁴⁸ it received at those events with Perupetro’s General Management. To the contrary, in doing so, it fulfilled its responsibilities under Perupetro’s ROF.

147. As for the substance of the modifications, Ms. Yaya contends that they are illegal because they benefitted GyM.²⁴⁹ As “proof,”²⁵⁰ she points to the fact that the contents of Envelope 1, containing the participant’s Technical Offer, were now to be included in Envelope 2.²⁵¹ According to Ms. Yaya, this “in practice meant eliminating the possibility of appeal” because a participant’s complaint had to be registered at the ceremony, where they would have limited time to evaluate the winning bid.²⁵² Ms. Yaya’s position is premised on two significant fallacies.

148. *First*, it assumes that all appeals were necessarily based on or prompted by the contents of the winning bid’s technical offer—a narrow and unfounded assumption. As Amorrortu’s own claims in this arbitration demonstrate, a participant could have taken issue with different aspects of the Bidding Process. For all but the single example Ms. Yaya cites, a participant would have had ample time to identify the issue well before the ceremony at which it needed to register its complaint. For instance, had Baspetro availed itself of the comment and

²⁴⁷ Perupetro, Board of Directors Agreement No. 006-2013 (21 January 2013) (**R-74**), Arts. 5.1.1 (b)-(c), 5.1.2(a), fourth bullet on pp. 37-38 [PDF] (translation provided by Counsel).

²⁴⁸ Informe Técnico-Legal No. CONT-0128-2014 (17 October 2014) (**Yaya-31**), ¶ 1.3 (translation provided by Counsel. In the original Spanish: “*temas y sugerencias*”).

²⁴⁹ Reply, ¶ 125 *citing* Yaya Second Expert Report, ¶ 37.

²⁵⁰ Reply, ¶ 125 *citing* Yaya Second Expert Report, ¶ 37.

²⁵¹ Reply, ¶ 125 *citing* Yaya Second Expert Report, ¶ 37.

²⁵² Reply, ¶ 125 *citing* Yaya Second Expert Report, ¶ 37.

appeal process under the Bidding Rules, it could have attended the ceremony—assuming it was able to advance to the final phase of the Bidding Process (*quod non*)²⁵³—and registered a complaint regarding the update to the Block’s proven hydrocarbon reserves, which had occurred three months earlier. Likewise, the 20 October 2014 modifications to the Bidding Rules were adopted nearly two months before the ceremony took place.

149. Even assuming that a participant’s appeal was premised on the winning bid’s technical proposal, as Ms. Yaya assumes would be the case for all appeals, nothing in the modifications precluded a participant from reviewing the technical offer at the ceremony and, if it deemed appropriate, registering a complaint.

150. Ms. Yaya’s argument is thus meritless. The 20 October 2014 modifications did not “in practice mean[] eliminating the possibility of appeal.”²⁵⁴

151. *Second*, neither Ms. Yaya nor Amorrortu provide any particularization regarding how the modifications allegedly favored GyM. In this respect, the Reply fails to engage with Peru’s argument in the SoD proving that the modifications to Form 1 did not affect whether Baspetro or any other company could advance to the second phase of the Bidding Process.²⁵⁵ It therefore remains undisputed that the modifications, regardless of their purported illegality, did not change the outcome of the Bidding Process.

²⁵³ Perupetro’s Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), Art. 7.6 (“The submission of Envelope No. 1, ‘Technical Proposal,’ and Envelope No. 2, ‘Financial Proposal,’ will take place at a public ceremony [...] [with] representatives of the participating public enterprises in attendance [...]. Once the ceremony has concluded, the corresponding minutes will be drafted and signed.”) (translation provided by Counsel. In the original Spanish: “*La presentación del Sobre N° 1 ‘Propuesta Técnica’ y Sobre N° 2 ‘Propuesta Económica’ se llevará a cabo en acto público [...] [con] la presencia de los representantes de las EP participantes [...]. Concluido el acto, se procederá a elaborar y suscribir el acta respectiva.*”).

²⁵⁴ Reply, ¶ 125 citing Yaya Second Expert Report, ¶ 37. Ms. Yaya’s and Amorrortu’s argument is further contradicted by their own statements that at least two companies were able to exercise their rights of appeal, *i.e.*, Omega’s and Upland. See Yaya Second Expert Report, ¶¶ 11, 192; Reply, ¶ 116.

²⁵⁵ SoD, ¶¶ 114-117. Rather than engage with Peru’s arguments, the Reply now points to a complaint lodged by another company, Upland. See Reply, ¶¶ 62-63, 85; Yaya Second Expert Report, ¶¶ 44-51.

152. Amorrortu separately invokes a complaint filed by Upland Oil & Gas LLC (“**Upland**”) on 9 December 2014 as purported corroboration that the modifications were designed to benefit GyM. According to the Reply, Upland “lodged a Technical Complaint protesting for the decision by PeruPetro to change the original bid criteria in order to accommodate the GyM request.”²⁵⁶ Amorrortu specifically quotes Upland’s letter as asserting that Form 1 was modified “so that production levels are measured not only at the control/fiscalization point (as the current regulations provide) but also at the wellhead, which again allows a given bidder to artificially increase demonstrable production levels” and that “it artificially creates non-technical conditions that allow a bidder who would not have been able to qualify.”²⁵⁷ Amorrortu and Ms. Yaya present this complaint as independent corroboration of their manipulation theory. It is nothing of the sort.

153. To begin, Upland itself was disqualified because it failed to substantiate its declaration regarding the Minimum Indicators.²⁵⁸ In other words, Upland’s complaint about modified criteria was lodged by a company that could not have qualified under any version of the Bidding Rules—original or modified. Moreover, the modification that Upland protested—the inclusion of natural gas production in BOE calculations—was, as already demonstrated above, the product of a formal institutional process: it was supported by Technical-Legal Report No. CONT-0128-2014,²⁵⁹ approved by the Board of Directors via Agreement No. 108-2014,²⁶⁰ and publicly communicated through Circular No. 4 on 3 November 2014—before the deadline for Letters of Interest on 14 November 2014.²⁶¹

154. Crucially, the question of BOE conversion was not unique to GyM: BPZ Exploracion & Produccion independently adopted the same interpretation as GyM before the 20

²⁵⁶ Reply, ¶ 85 (footnote omitted).

²⁵⁷ Reply, ¶ 63.a-b.

²⁵⁸ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-92 (2014) (**C-291**), p.1. See also SoD, Table No. 15 on pp. 54-55; Guzmán Second Witness Statement, ¶¶ 45-48.

²⁵⁹ See Informe Técnico-Legal No. CONT-0128-2014 (17 October 2014) (**Yaya-31**).

²⁶⁰ See Perupetro’s Board of Directors, *Agreement No. 108-2014, Approval of amendments to the Bidding Rules of the International Public Tender No. PERUPETRO-001-2014* (20 October 2014) (**R-34**).

²⁶¹ See SoD, ¶¶ 113, 124–128.

October 2014 modifications. Indeed BPZ considered that production should be expressed in BOE, noting that “for the sake of consistency, we consider that the daily production average should be expressed, as in the case of reserves, in barrels of oil equivalent using a conversion factor of 6,000 cubic feet per BOE.”²⁶² The modification was thus a clarification of general applicability, not a bespoke accommodation—and Upland’s complaint cannot alter that reality.

155. In any event, what matters is GyM’s actual evaluation, and the record is unequivocal. The Commission’s evaluation report confirmed that, upon documentary substantiation through Annex 3, GyM met all three Minimum Indicators: Production (MBOED) was accredited as 3.24 against a minimum of 2.89, Development Wells were accredited as 117 against a minimum of 90, and Proven Reserves (MMBOE) were accredited as 22.6 against a minimum of 18.27.²⁶³ The OCI control report independently confirmed this.²⁶⁴ Amorrortu’s theory thus fails: the conversion methodology was public and uniform, while the Commission’s evaluation of GyM was independently conducted and verified by the OCI.

156. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁶

²⁶² Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-21 (2014) (C-220), p. 12 [PDF] (translation provided by Counsel. In the original Spanish: “*Por principio de consistencia, entendemos que el promedio diario de producción debe expresarse, como en el caso de las Reservas, en barriles equivalentes utilizando un factor de 6,000 pies cúbicos por BOE.*”).

²⁶³ See Report No. LPI-PERUPETRO-001-2014/IE/002 (27 November 2014) (R-40), Table No. 2

²⁶⁴ See Perupetro, *Report evaluating complaint re alleged irregularities during the granting of the Blocks’ Licence Agreements No. 2-4654-2015-010* (22 June 2016) (R-49), p. 15 [PDF].

²⁶⁵ Reply, ¶ 127.

²⁶⁶ See Reply, ¶ 127.a-b; Yaya Second Expert Report, ¶ 40. On 3 November 2014, the Commission took note of the modifications which had been approved by Perupetro’s Board of Directors. See Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the*

157. Amorrortu and his expert cannot rewrite the factual record, however brazenly they might try. The record is clear: the modifications were adopted on 20 October 2014,²⁶⁷ that is, seven and 11 days before the meetings to which Amorrortu and Ms. Yaya refer. More importantly, those meetings did not concern Perupetro, the Blocks, the Bidding Processes, or the Bidding Rules—let alone the modifications thereto. [REDACTED]

[REDACTED] It is telling that neither Amorrortu nor Ms. Yaya acknowledge this fact in their discussion.

6. Baspetro was afforded the same treatment as the other participants in the Bidding Process for Block III

158. Amorrortu alleges in his Reply that Baspetro’s Letter of Interest submitted on 31 October 2014 “differed a great deal from the treatment received by different companies” in the Bidding Process for Block III.²⁶⁹ This allegation is untrue.

159. As Peru already explained,²⁷⁰ the record proves that the Commission assessed Baspetro’s submission during one of its periodic meetings,²⁷¹ just as it did for all other participants, and concluded that Baspetro “did not meet any of the Technical Indicators for the Bidding Process” and had also failed to “indicate the information on [Baspetro’s] net worth, current assets and operating cash flows.”²⁷² As Mr. Guzmán reaffirms in his second witness

Exploitation of Hydrocarbons in Block III (3 November 2014) (**R-36**), ¶ 1; Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-22 (2014) (**C-221**), p. 15 [PDF], ¶ 1.

²⁶⁷ See Perupetro’s Board of Directors, *Agreement No. 108-2014, Approval of amendments to the Bidding Rules of the International Public Tender No. PERUPETRO-001-2014* (20 October 2014) (**R-34**).

²⁶⁸ See § II.C.1 *infra*.

²⁶⁹ Reply, ¶ 81.

²⁷⁰ See SoD, ¶¶ 135-141.

²⁷¹ The Commission reviewed Baspetro’s submission during its 3 November 2014 meeting. See Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**).

²⁷² See Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**), ¶ 2 (translation provided by Counsel. In the Original Spanish: “Al respecto, la Comisión observó que la empresa BASPETROL SAC no cumple con ninguno de los Indicadores Técnicos para la presente Licitación [...] y, de otra

statement, “Baspetro’s case is different because its Letter of Interest did not include any of the technical or financial details that were required under the Bidding Rules.”²⁷³ In Baspetro’s case, it was not a matter of doubt on the part of the Commission regarding the amounts declared by the company, but rather a total absence of the required information.”²⁷⁴

160. Baspetro received a formal response from the Commission on 3 November 2014, spelling out the reasons for its disqualification.²⁷⁵ There was nothing unusual, let alone discriminatory, about this treatment. It was the standard procedure applied uniformly to all participants. Amorrortu nor Baspetro ever responded to the Commission’s notice.²⁷⁶

161. Tellingly, the Reply is entirely silent on the deficiencies in Baspetro’s submission, offering neither counterarguments nor explanations as to how the Commission could have reached any other conclusion. That silence is dispositive: no such arguments or explanations exist.

162. Instead, the Reply advances a series of baseless arguments and inapposite comparisons between Baspetro and other participants in a transparent but futile attempt to distract the Tribunal from the central fact: Baspetro’s own conduct led to its disqualification.

a. The purported modifications to the Bidding Rules did not affect Baspetro’s outcome in the Bidding Process

163. Amorrortu maintains that it is “nonsensical” to argue, as Peru does, that Baspetro’s Letter of Interest was unaffected by the update to the proven hydrocarbon reserves and

parte, no indica la información del Patrimonio Neto, Activo Corriente y Flujo de Caja operativo.”). See also SoD, ¶¶ 135-141; Guzmán First Witness Statement, ¶¶ 28-31.

²⁷³Baspetro, *Presentación Formal de Formatos 1, 2 y 3* (31 de octubre de 2014) (R-35).

²⁷⁴ Guzmán Second Witness Statement, ¶ 64.

²⁷⁵ See Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetro) (3 November 2014) (C-15).

²⁷⁶ See Guzmán Second Witness Statement, ¶ 64.

purported modifications because “some of [these] were issued *after* Amorrortu submitted his Proposal.”²⁷⁷ This argument is unavailing for two independent reasons.

164. *First*, Baspetrol’s Letter of Interest would have failed regardless of whether any of the purported modifications had been adopted. As Mr. Guzmán explained in his First Witness Statement, Baspetrol’s Form 1 “consisted of a single paragraph for each of the two general categories (Technical Indicator and Economic Indicator) but did not respond to the information requested.”²⁷⁸ Rather than providing the specific technical and economic data requested—average annual oil production, number of exploratory and development wells drilled, proven hydrocarbon reserves, net worth, current assets, and operating cash flow—“most of the narrative concerned Mr. Amorrortu’s personal experience, his future plans to work with unidentified individuals and a reference to a document submitted to PERUPETRO on 28 May 2014.”²⁷⁹ Indeed, Baspetrol’s Form 1 stated in no uncertain terms that Baspetrol was a petroleum company that “ha[d] not yet carried out operations.”²⁸⁰ No alleged modification could have altered the outcome for a company that provided none of the required information. The modifications were thus irrelevant to Baspetrol’s disqualification, which rested on the entirely unresponsive nature of its submission.

165. *Second*, even if Amorrortu or Baspetrol considered that the update to the Block’s proven reserves on 12 September 2014 or the modifications to Bidding Rules on 20 October 2014 warranted a different approach from the one reflected in Baspetrol’s 31 October 2014 submission, it had ample time to prepare a revised submission. As noted above, Baspetrol was informed that its Letter of Interest did not meet any of the requirements on 3 November 2014, the same day that

²⁷⁷ Reply, ¶ 104 (emphasis in original).

²⁷⁸ See Guzmán First Witness Statement, ¶ 30. See also Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (R-35); SoD, ¶¶ 139-140.

²⁷⁹ See Guzmán First Witness Statement, ¶ 30. See also Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (R-35); SoD, ¶¶ 139-140.

²⁸⁰ See Guzmán First Witness Statement, ¶ 30 citing Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (R-35), p. 5 [PDF]. See also SoD, ¶¶ 139-140.

the modifications to the Bidding Rules were announced and made publicly available, including the extension of the deadline for the Letters of Interest until 14 November 2014.²⁸¹

166. This gave Baspetro no less than 11 days to cure the deficiencies identified by the Commission in its 3 November 2014 letter and revise its approach in any way it deemed necessary as a result of the updated reserves and modifications to the Bidding Rules; a fact unwittingly admitted in the Reply.²⁸² At the very least, it gave Baspetro 11 days to ask the Commission for an extension, clarification, or any other remedy it considered appropriate. Yet neither Amorrortu nor Baspetro took any such step, remaining idle instead—an omission that is difficult to reconcile with the suggestion that each of the alleged modifications somehow prejudiced Baspetro.

b. Amorrortu’s comparisons with other participants are inapposite

167. Amorrortu also deflects from the fundamental inadequacy of Baspetro’s submission by attempting to draw comparisons with the treatment afforded to other participants in the Bidding Process, namely, Perenco, Olympic Peru Inc. (“**Olympic**”), Omega Energy International S.A (“**Omega**”), and GyM. Each of these comparisons is inapposite.

168. With respect to Perenco, Amorrortu and Ms. Yaya maintain that it was allowed to “cure any deficiencies in [its] bid” even though this same opportunity was not afforded to Baspetro.²⁸³ There are fundamental differences between the two circumstances that the Reply fails

²⁸¹ See Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**); Perupetro, *Circular No. 4 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-37**).

²⁸² Reply, ¶ 81 (“when [the Commission’s] letter was sent on November 3, 2014, the process remained open and ongoing.”).

²⁸³ Reply, ¶ 81; Yaya Second Expert Report, ¶ 40. The Reply cites three documents in alleged support of this argument. See Reply, note 117 (“See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-23 (2014) (1 January 2014) (**C-222**); Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-30 (2014) (**C-229**), p. 98); Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-33 (2014) (**C-232**), pp. 29,30”) (emphasis removed). Exhibit C-222 is a 156 page document and the Reply does not specify which portion of it purportedly supports Amorrortu’s argument. See *Id.* As in numerous other instances in the Reply, Peru is thus precluded from properly engaging Amorrortu’s position and reserves all its rights accordingly. As for page 98 of Exhibit C-229, it contains the Commission’s letter to Perenco

to acknowledge, including the fact that the instance invoked by Ms. Yaya refers to Perenco's participation in the Bidding Process for Block IV. In any event, as Peru already established, Baspetro failed at the very first step: its declaration did not satisfy the Minimum Indicators because it provided no responsive data, let alone data that met the applicable thresholds. Perenco, by contrast, had successfully cleared that first hurdle—its Form 1 demonstrated compliance with the Minimum Indicators—and was therefore entitled under the Bidding Rules to proceed to the second step, which involved the submission of supporting documentation (Annex 3) to substantiate its sworn declarations. This distinction is critical.

169. As Mr. Guzmán explains, “Perenco was already in a different situation than Baspetro, given that it had already surpassed the initial phase by declaring amounts that met the Minimum Indicators.”²⁸⁴ Thus, when the Commission reviewed Perenco's Annex 3 documentation on 12 November 2014, it identified that Perenco had not submitted certain sworn declarations required by Article 5 of the Qualification Regulation and that its table of hydrocarbon exploration and exploitation activities covered the years 2010, 2011, and 2012, but not 2013. The Commission therefore agreed to request Perenco to complete its documentation as long as it was submitted within the deadline established in the Bidding Rules.²⁸⁵ Although Baspetro was not explicitly told to submit a new Letter of Interest, the Commission did not preclude him from doing so and, as Mr. Guzmán notes, “Baspetro could have submitted a new Letter of Interest after receiving the Commission's decision because the deadline for submitting letters of interest remained open. Had it done so, the Commission would have evaluated its Letter of Interest again.”²⁸⁶

170. In any event, the Commission's treatment of Perenco is yet more proof that the Bidding Processes were not designed to favor GyM, as Amorrortu maintains. Had the Commission's illicit mandate been to ensure GyM's victory, it would have made far more sense

informing it that it qualified to proceed the final phase of the Bidding Process; it does not ask Perenco to cure any deficiency.

²⁸⁴ Guzmán Second Witness Statement, ¶ 62.

²⁸⁵ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-33 (2014) (C-232), pp. 29-30 [PDF].

²⁸⁶ Guzmán Second Witness Statement, ¶¶ 61, 64.

to simply reject Perenco on the basis of its missing documentation rather than invite it to submit the outstanding materials. The fact that the Commission took the opposite course demonstrates that the Commission's objective was, as Mr. Guzmán has consistently stated, to ensure the competitiveness and transparency, and award the Blocks to the best candidate.

171. Elsewhere in the Reply, Amorrortu points to Olympic, and states as follows:

Olympic Peru Inc, received a denial letter but had the opportunity to file an appeal which the State company addressed timely only 3 days later, and then again responded 5 days after that (December 1st appeal, December 4th initial response, and December 9th response). This correspondence included a reasoning. Amorrortu was not given this courtesy, or any document response regarding disqualification for that matter, despite an ongoing direct negotiation. When PeruPetro finally wrote to Amorrortu to tell him he did not qualify (during a process that had not yet culminated), he was not offered specifics nor an opportunity to cure.²⁸⁷

172. Amorrortu's argument is replete with errors and contradictions.

173. *First*, Amorrortu appears to conflate Perupetro's conduct *vis-à-vis* the Alleged Proposal with that of the Commission *vis-à-vis* Olympic's submission in the context of the Bidding Process. An expression of interest that fails to satisfy the requirements to trigger a direct negotiation is plainly distinguishable from a submission in the context of a public tender. Indeed, even if the Alleged Proposal met the legal requirements to trigger a direct negotiation (*quod non*),²⁸⁸ the two would still be subject to different procedures. Amorrortu's attempt to equate the Alleged Proposal with Olympic's Letter of Interest in the Bidding Process is yet another example of his failure to understand governing legal frameworks.

174. *Second*, Olympic's case actually confirms that the Commission treated it the same as Amorrortu. Olympic, like Baspetrol, failed to meet the Minimum Indicators at the first

²⁸⁷ Reply, ¶¶ 130-131 (footnotes omitted).

²⁸⁸ See § II.A.2 *supra*.

step of the Bidding Process and was informed as much in a letter nearly identical to the one sent to Baspetrol.²⁸⁹

175. *Third*, Olympic's decision to contest the Commission's pronouncement noted directly above is precisely what distinguishes its case from Baspetrol's. Unlike Baspetrol, Olympic chose to exercise its rights by submitting comments on the Commission's decision to disqualify it from the Bidding Process.²⁹⁰ As mandated by the Bidding Rules, Olympic first wrote to the Commission on 1 December 2014,²⁹¹ who promptly responded on 4 December 2014, explaining the basis for its decision.²⁹² Olympic then appealed the Commission's decision on 9 December 2014 before Perupetro's General Manager who responded accordingly, again in line with the procedure set out in the Bidding Rules.²⁹³ Peru has maintained since its SoD that this is precisely what Amorrortu and/or Baspetrol could and should have done.

176. It is thus unclear what Amorrortu's complaint consists of. The point is straightforward: Baspetrol chose not to contest the Commission's decision such that Perupetro was not dutybound to provide any response beyond the Commission's letter of 3 November 2014. That the Commission and Ms. Tafur responded to Olympic's comments and appeal, respectively, with detailed explanations is evidence of a functioning, transparent process—not of discrimination against Baspetrol.²⁹⁴

²⁸⁹ Compare Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-18 (2014) (C-217), p. 1 [PDF], with Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetrol) (3 November 2014) (C-15).

²⁹⁰ See Guzmán Second Witness Statement, ¶ 61.

²⁹¹ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-18 (2014) (C-217), pp. 6-7 [PDF].

²⁹² See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-18 (2014) (C-217), pp. 11-12 [PDF].

²⁹³ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-18 (2014) (C-217), pp. 26-29 [PDF].

²⁹⁴ To the extent that Amorrortu's argument is based on the fact that Ms. Tafur did not respond to the two letters that he sent directly to her in December 2014 and February 2015 (Perupetro, *Process GFCN-002, Management of the Bidding Process-Bidding Contracting (v.1.0)* (9 December 2011) (R-16) and Perupetro's Board of Directors, *Agreement No. 002-2012, Approving that in all cases of expiration of the term of Hydrocarbon contracts, these shall be subject to new selection processes* (12 January 2012) (R-17))—an argument not clearly articulated in the Reply but that Peru nevertheless addresses for good order—the difference lies precisely in Amorrortu's failure to follow the

177. *Finally*, contrary to Amorrortu’s argument, the Commission in fact “offered specific[]”²⁹⁵ reasons for why Baspetro did not qualify, namely, that it failed to meet any of the technical indicators and did not provide the required financial information.²⁹⁶ Amorrortu’s mischaracterization of the record, however brazen, cannot alter it.

178. Amorrortu’s final attempt to prove that Baspetro was treated differently is perhaps his most perfunctory. The Reply asserts in conclusory fashion that GyM, Perenco, and Omega had “hydrocarbon reserve[s] and financial statements dissimilar to Amorrortu’s,” yet “were treated better.”²⁹⁷ As a threshold matter, and at the risk of stating the obvious, this comparison between GyM, Perenco, and Omega, on one hand, and Amorrortu, in his personal capacity, on the other, is irrelevant. Despite his repeated attempts to insert himself into the equation, Amorrortu’s individual experience has no bearing on the Bidding Process.

179. Even if Amorrortu intended to compare these companies with Baspetro, his argument is laid bare by the Reply’s own failure to compare the hydrocarbon reserves and financial statements declared by each company. As Peru has repeatedly established—and Amorrortu has

governing procedure under the Bidding Rules. Baspetro should have raised any complaints with the Commission and, if it did not accept the Commission’s response, only then with Ms. Tafur. *See* Perupetro’s Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), Art. 6.6 (“Communications from the EP or Consortium regarding the Tender must be submitted in writing to the Commission [...] Communications regarding appeals in accordance with sections 6.5.1 and 6.5.2 shall be addressed to the General Management of PERUPETRO at the address indicated above. Communications submitted by the EP or Consortium that do not comply with the foregoing shall be deemed not to have been submitted for the purposes of the Tender.”) (translation provided by Counsel. In the original Spanish: “*Las comunicaciones de la EP o Consorcio referidas a la Licitación deberán ser dirigidas de manera escrita a la Comisión [...] Aquellas comunicaciones referidas a apelaciones, de conformidad con los numerales 6.5.1 y 6.5.2, serán dirigidas a la Gerencia General de PERUPETRO, a la dirección antes indicada. Las comunicaciones presentadas por las EP o Consorcio que no cumplan con lo antes señalado, se tendrán por no presentadas para efectos de la Licitación.*”). In this respect Ms. Yaya herself indicates that public servants are legally prohibited from conducting any activity that they are not expressly authorized to undertake. *See* Yaya Second Expert Report, ¶ 36.

²⁹⁵ Reply, ¶ 131.

²⁹⁶ *See* Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetro) (3 November 2014) (**C-15**).

²⁹⁷ Reply, ¶ 132 (emphasis added). Amorrortu’s argument with respect to Perenco’s supplemental submissions are addressed above.

not disputed—Baspetro’s Letter of Interest contained no responsive information whatsoever regarding its proven reserves or financial capacity.²⁹⁸

INDICADOR TÉCNICO	
Producción promedio anual de petróleo	BASPETROL SAC es una EP que no ha realizado operaciones aún, sin embargo según lo mencionado, Bacilio Amorrortu cuenta con una vasta experiencia en la producción de petróleo y estará acompañado de un gran equipo de Ingenieros de petróleo y Geólogos petroleros peruanos y extranjeros de reconocida trayectoria. BASPETROL SAC es una EP que operará el Lote III con el apoyo de una reconocida empresa petrolera internacional, mediante un contrato petrolero, tal como se indicó en la "Propuesta de BASPETROL SAC a PERUPETRO S.A. para operar los Lotes petroleros III y IV del Nor-Oeste del Perú" presentada a PERUPETRO S.A. el 28 de mayo del 2014.
Pozos exploratorios perforados	
Líneas sísmicas 2D registradas	
Líneas sísmicas 3D registradas	
Pozos de desarrollo perforados	
Reservas probadas de hidrocarburos	

INDICADOR ECONÓMICO	
Patrimonio Neto	BASPETROL SAC, es una empresa petrolera activa con más dos años de existencia legal, constituida con un capital social inicial de S/. 200,000 nuevos soles. Anteriormente, Bacilio Amorrortu fue Presidente y Accionista de la EP con experiencia que ganó la Licitación Pública Internacional de este mismo Lote III en el año 1992 y operó el Lote III en el período de los años 1993-1995, tal como se indicó en la sección "ANTECEDENTES" de la "Propuesta de BASPETROL SAC a PERUPETRO S.A. para operar los Lotes petroleros III y IV del Nor-Oeste del Perú" presentada a PERUPETRO S.A. el 28 de mayo de 2014.
Activo Corriente	
Flujo de Caja Operativo	

180. The deficiencies in Baspetro’s submission become incontrovertible when it is compared—as Amorrortu purports to do—with the submissions of GyM, Perenco, and Omega, reproduced respectively below:²⁹⁹

²⁹⁸ Baspetro, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (R-35) / Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-23 (2014) (1 January 2014) (C-222), p. 37 [PDF].

²⁹⁹ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-20 (2014) (C-219), pp. 4-5 [PDF] (GyM); Perenco S.A., *Letter of interest to participate in the International Public Tender No. PERUPETRO-001-2014* (5 September 2014) (R-28), p. 2 [PDF]; Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-30 (2014) (C-229), p. 2 [PDF] (Perenco); Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-31 (2014) (C-230), p. 2 [PDF] (Omega).

NOMBRE DE LA EMPRESA	Graña y Montero S.A.A.
NOMBRE DE LA EMPRESA MATRIZ (de ser el caso)	
AÑOS DE ANTIGÜEDAD EN ACTIVIDADES DE EXPLOTACIÓN DE HIDROCARBUROS	21 años (**)
PAIS DE PROCEDENCIA	Perú
DIRECCIÓN PARA LA CORRESPONDENCIA	Av. Paseo de la República 4675 Surquillo, Lima
COTIZA EN BOLSA (Sí/No)	Sí

INDICADOR TÉCNICO(*)	
Producción promedio anual de petróleo (1), BPD	1,497 (**)
Pozos exploratorios perforados (2)	
Líneas Sísmicas 2D registradas (2)	
Líneas Sísmicas 3D registradas (2) (3)	
Pozos de desarrollo perforados (2)	119 (**)
Reservas probadas de hidrocarburos (en millones de barriles equivalentes , MMBOE (4) (5)	22.6 (**)

(*) Se refiere únicamente a indicadores costa adentro

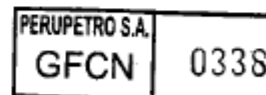
(**) Antigüedad en Actividades de Explotación de Hidrocarburos e Indicadores Técnicos corresponden a la subsidiaria Graña y Montero Petrolera S.A. (GMP S.A.), constituida el 05 de Noviembre de 1984.

(1) Producción promedio de los últimos dos años (2013 y 2012)

(2) Información de la sumatoria de las actividades realizadas en los cinco (5) últimos años (2009 al 2013).

(3) Para efectos de la Licitación, un (1) kilómetro cuadrado de sísmica 3D equivale a tres (3) kilómetros de sísmica 2D.

(4) Para efectos de conversión, se utilizará un ratio de conversión de BOE de 6000 pies cúbicos de gas natural.



(5) Información de las reservas probadas al término del último año.

INDICADOR ECONÓMICO	2013	2012	Promedio de los dos (2) últimos años
Patrimonio Neto	1,143.36 MMUS\$	699.04 MMUS\$	921.20 MMUS\$
Activo Corriente	1,394.87 MMUS\$	1,182.75 MMUS\$	1,288.81 MMUS\$
Flujo de Caja Operativo	-131.50 MMUS\$	212.75 MMUS\$	40.63 MMUS\$

NOMBRE DE LA EMPRESA	Perenco S.A. (a la fecha Perenco S.A. no ha decidido el vehículo o vehículos que suscribirían el Contrato de Licencia como contratistas en caso de resultar adjudicado con la Licitación)
NOMBRE DE LA EMPRESA MATRIZ (de ser el caso)	Perenco S.A.
AÑOS DE ANTIGÜEDAD EN ACTIVIDADES DE EXPLOTACIÓN DE HIDROCARBUROS	8 años
PAÍS DE PROCEDENCIA	Bahamas
DIRECCIÓN PARA LA CORRESPONDENCIA	Av. República de Panamá N° 3030 Piso 14, San Isidro Lima 27
COTIZA EN BOLSA (Si/No)	No

INDICADOR TÉCNICO (*)	
Producción promedio anual de petróleo (1)	47,087,000 bopd
Pozos exploratorios perforados (2)	24
Líneas sísmicas 2D registradas (2)	2237 km
Líneas sísmicas 3D registradas (2) (3)	931 km2
Pozos de desarrollo perforados (2)	287
Reservas probadas de hidrocarburos (en millones de barriles equivalentes, MMBOE) (4) (5)	220 MMboe

(*) Se refiere únicamente a indicadores costa adentro.

(1) Producción promedio de los últimos dos años (2013 y 2012).

(2) Información de la sumatoria de las actividades realizadas en los cinco (5) últimos años (2009 al 2013).

NOMBRE DE LA EMPRESA	Omega Energy International S.A.
NOMBRE DE LA EMPRESA MATRIZ (de ser el caso)	Omega Energy International S.A.
AÑOS DE ANTIGÜEDAD EN ACTIVIDADES DE EXPLOTACIÓN DE	14 años
PAÍS DE PROCEDENCIA	Panamá (Sucursal, oficina principal en Colombia)
DIRECCIÓN PARA LA CORRESPONDENCIA	Avenida Carrera 9 #115-06, Oficina 1808, Edificio Tierra Firme, Bogotá, Colombia.
COTIZA EN BOLSA (Si / No)	No

INDICADOR TÉCNICO (*)	
Producción promedio anual de petróleo (1)	1.515.518 Barriles (4.152BOPD)
Pozos exploratorios perforados (2)	18
Líneas sísmicas 2D registradas (2)	3.176km
Líneas sísmicas 3D registradas (2) (3)	2.717km
Pozos de desarrollo perforados (2)	11
Reservas probadas de hidrocarburos (en millones de barriles equivalentes, MMBOE) (4) (5)	32.04 MMBOE

(*) Se refiere únicamente a indicadores costa adentro.

(1) Producción promedio de los últimos dos años (2013 y 2012)

(2) Información de la sumatoria de las actividades realizadas en los cinco (5) últimos años (2009 al 2013).

(3) Para efectos de la Licitación, un (1) kilómetro cuadrado de sísmica 3D equivale a tres (3) kilómetros de sísmica 2D.

(4) Para efectos de conversión, se utilizará un ratio de conversión de BOE de 6000 pies cúbicos de gas natural.

(5) Información de las reservas probadas al término del último año.

181. Whereas Baspetrol offered only a narrative conceding its lack of experience—seeking to fill that void with Amorrortu’s personal background and unsubstantiated promises of association with “international firms”—GyM, Perenco, and Omega declared concrete, responsive data upon which the Commission could conduct a meaningful evaluation. There is accordingly no basis to draw the comparison that Amorrortu attempts, much less arrive at his implied conclusion that Baspetrol possessed superior proven reserves and financials relative to other companies.

182. In sum, Baspetrol was afforded the same treatment as the other participants in the Bidding Process. None of the comparisons Amorrortu attempts to draw withstand scrutiny. Baspetrol failed at the earliest possible stage because its submission was entirely unresponsive to the required criteria. The other companies were at different stages and in materially different circumstances. The Commission applied the Bidding Rules consistently and transparently to all participants, and Baspetrol’s elimination was the inevitable consequence of its own shortcomings—not of any discriminatory treatment by Peru.

7. Amorrortu tellingly fails to engage with arguments and evidence that are fatal to his allegations concerning the bidding process

183. Amorrortu’s Reply is notable not only for what it says, but for what it omits. In his attempt to sustain the claim that the Bidding Processes were manipulated to favor GyM, Amorrortu studiously avoids engaging with critical arguments and evidence presented in Peru’s SoD that undermine his case. These omissions speak volumes about the weakness of his claims.

184. At the outset, Amorrortu fails to address the substance of the two reports issued by Perupetro’s OCI.³⁰⁰ For its first report—issued pursuant to its routine oversight activities³⁰¹—the OCI appointed an observer who oversaw the entirety of the Bidding Processes and concluded that no circumstances “were detected that, in [his] judgment [], constitute risks that could affect

³⁰⁰ See SoD, ¶¶ 161-164, 195-198. Amorrortu dismisses these reports as “rubberstamp[ing]” government conduct without engaging with their findings. See Reply, ¶ 489. As Peru explains in § II.C.2 *infra* this argument is meritless.

³⁰¹ See Perupetro, Board of Directors Agreement No. 006-2013 (21 January 2013) (**R-74**), p. 32, ¶ 3.1.a, c-d.

transparency, probity, compliance with the applicable regulations, compliance with the objectives of Perupetro S.A., or attempts at corruption.”³⁰² In a second report, issued in response to a specific complaint filed by one of PETROPERU’s trade unions,³⁰³ the OCI conducted a thorough factual and legal analysis before reaching a conclusion that is even more relevant here: the Blocks were awarded to GyM, who “complied with the indicators and requirements established in the [Bidding] Rules.” Amorrortu’s silence on these independent findings is deafening.

185. Amorrortu also ignores a modification to the Bidding Rules that directly contradicts his theory that the process was rigged in GyM’s favor. As Peru demonstrated in its SoD, the Commission extended the deadline for companies to submit their Letters of Interest from 31 October 2014 to 14 November 2014, a modification that resulted in four additional companies participating in the Bidding Process.³⁰⁴ If, as Amorrortu maintains, the Bidding Processes were “rigged” to benefit GyM, there would be no logical reason for the Commission to extend the deadline and thereby invite greater competition. Amorrortu also disregards the fact that the extension followed requests from companies other than GyM,³⁰⁵ confirming that the Commission knew the extension would increase competition for the very company Amorrortu claims it favored. His failure to engage with this evidence is unsurprising: it is entirely inconsistent with his theory.

186. Moreover, Amorrortu fails to respond to Peru’s argument that he nor Baspetro ever availed themselves of the proper channels to challenge the outcome, be it due to the alleged irregularities he now claims plagued the Bidding Process or because he believed Baspetro had a superseding right based on the Alleged Proposal.³⁰⁶ He could have pursued remedies in the context

³⁰² Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**), ¶ 6.3 (translation provided by Counsel. In the original Spanish: “*No se apreciaron situaciones que a juicio del suscrito, constituyan riesgos que podrían afectar la transparencia, la probidad, el cumplimiento de la normativa correspondiente, el cumplimiento de los objetivos de Perupetro S.A., así como intentos de corrupción.*”).

³⁰³ See Perupetro, Board of Directors Agreement No. 006-2013 (21 January 2013) (**R-74**), p. 32, ¶ 3.1(h), (d).

³⁰⁴ See SoD, ¶¶ 128-129.

³⁰⁵ See Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-21 (2014) (**C-220**), p. 7 [PDF] (letter from Upland to the Commission requesting an extension of the deadline); Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-52 (2014) (**C-251**), p. 81 [PDF] (letter from Petrona Carigali SDN BHD to the Commission requesting an extension of the deadline).

³⁰⁶ See SoD, ¶¶ 165-166.

of the Bidding Process, in line with what Ms. Tafur informed him would be appropriate,³⁰⁷ or through the judicial system.³⁰⁸ He did neither.

187. But the most telling omission in Amorrortu's Reply is the decision not to engage with Section II.C.3 of Peru's SoD, wherein Peru provided a detailed, step-by-step description of each phase of the Bidding Process, including the evaluation of the twelve companies that submitted Letters of Interest, the reasons each was disqualified at various stages of the process, and the basis on which GyM was ultimately adjudicated the Blocks as the sole remaining qualified bidder following a transparent and rules-based tender. Rather than confront this granular evidence—which demonstrates that the Commission carried out the Bidding Process in strict compliance with the Bidding Rules—Amorrortu resorts to blanket, unsupported allegations of wrongdoings by Perupetro and the Commission that crumble under the weight of the record. His refusal to grapple with the substance of Peru's defense is itself a concession that he cannot refute it.

188. As will be shown below, this same pattern of evasion and unsubstantiated assertions pervades Amorrortu's claims regarding corruption.

C. The Evidence from the *Lava Jato* Special Team's Investigations Does Not Support Amorrortu's Allegations of Corruption

189. In its SoD, Peru demonstrated that the evidence regarding GyM's corrupt conduct relates to projects and circumstances unrelated to the Blocks and does not support Amorrortu's theory of a corrupt agreement between GyM and Nadine Heredia relating to their adjudication. Since then, Peru has produced the Confidential Documents from the *Lava Jato* Special Team's investigations. Despite the considerable attention the Reply devotes to these documents, Amorrortu has failed to identify any evidence—in the Confidential Documents or

³⁰⁷ Tafur First Witness Statement, ¶ 38. *See also* Vizquerra First Expert Report, ¶ 24, note 16.

³⁰⁸ *See* Vizquerra First Expert Report, ¶ 101, note 13.

elsewhere—proving that corruption tainted the Bidding Processes of the Blocks, let alone Perupetro’s prior decision to adjudicate the Blocks through an international public tender.

190. [REDACTED]

[REDACTED] Unable to point to concrete evidence of corruption, Amorrortu resorts to a two-pronged strategy. *First*, he misrepresents the Confidential Documents through reckless, unsupported, and hyperbolic assertions. *Second*, he attacks the integrity and effectiveness of Peru’s anti-corruption institutions in an effort to explain away the absence of any findings in connection with the Blocks. Both strategies fail.

191. As this Section demonstrates, Amorrortu’s use of the Confidential Documents is reckless because [REDACTED]

[REDACTED] Moreover, the *Lava Jato* Special Team’s work is effective, independent, and reliable, including with respect to the Blocks (**Section 2**).

1. Amorrortu’s use of the Confidential Documents is grossly misleading

192. Amorrortu and Ms. Yaya are plainly irresponsible in their use of the Confidential Documents,³⁰⁹ misrepresenting them through unsupported and hyperbolic assertions that find no basis in the findings contained therein. The Reply’s treatment of these documents is telling: it fails to cite specific Confidential Documents in support of Amorrortu’s arguments, much less identify the particular pages or passages. Instead, Claimant’s arguments are left either entirely unsupported³¹⁰ or, in the rare instances where a citation appears, accompanied by a blanket reference to the eight Confidential Documents as a set.³¹¹ The Confidential Documents span nearly

³¹⁰ See, e.g., Reply, ¶ 17 [REDACTED] without any reference to which Confidential Document, let alone part thereof, purportedly supports this statement.). See Reply, notes 15, 16, 49, 52, 54, 61, 64, 73, 74, 78, 227, 274.

³¹¹ See, e.g., Reply, notes 15, 16, 49, 52, 54, 61, 64, 73, 74, 78, 227, 274.

1,000 pages. This lack of specificity does more than undermine the persuasiveness of Amorrortu's case—it precludes Peru from meaningfully engaging with his arguments and exercising its right of defense. Such conduct should not be countenanced by the Tribunal and Peru reserves all its rights in this respect.

193. In any event, as this Section demonstrates, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a. The Confidential Documents do not prove that GyM was part of a corrupt scheme “to get any contract it desired”

194. The Reply's first failure in its use of the Confidential Documents is its complete omission of any information regarding their general content and context in which they were created. This context is critical for the Tribunal's proper understanding and assessment of the Confidential Documents as evidence in this proceeding because it defines the findings of the *Lava Jato* Special Team that produced them.

195. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
196. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

197. Nor is it Peru's position that the Contracts for the Blocks are the only ones untouched by corruption, as Amorrortu claims.³¹⁵ Rather, Peru maintains that [REDACTED]
[REDACTED]

[REDACTED] Anything beyond that is sheer speculation. One need only review GyM's 2014 Annual Report to confirm that GyM had deep and longstanding ties to the public sector and numerous State contracts which are not alleged or confessed to be the product of corruption, including with respect to Peru's oil and gas industry.³¹⁶ GyM's success in the Bidding Processes is rather explained by the fact that, as of 2014, it was a company with extensive experience in the hydrocarbons industry³¹⁷ and solid financial backing,³¹⁸ regardless of its illicit activities in the construction industry.

198. In this light, it is Amorrortu's burden to prove that the Contracts, specifically, are the product of corruption; a burden he has failed to discharge.

³¹² Second Witness Statement of Rafael Ernesto Vela Barba (14 July 2026) (**RWS-06**) ("Vela Second Witness Statement"), ¶ 25.

³¹³ Reply, ¶ 2. *See also* Reply, ¶ 19.

³¹⁴ Reply, ¶ 2.

³¹⁵ Reply, ¶¶ 2, 17-18.

³¹⁶ *See* Grupo Graña y Montero, Memoria Anual 2014 (**R-77**), pp. 28, 76-77, 144-150, 156-162, 185, 201, 229-231, 244, 303.

³¹⁷ *See* Grupo Graña y Montero, Memoria Anual 2014 (**R-77**), pp. 15, 22-23, 26, 28, 216, 230, 455

³¹⁸ *See* Grupo Graña y Montero, Memoria Anual 2014 (**R-77**), p. 87 (indicating that GyM's consolidated total assets stood at S/.7,729,899 (over US \$2 billion) and its total consolidated equity stood at S/.3,179,922 (approximately US\$1 billion)); *Id.*, p. 10 (listing GyM's consolidated revenues as S/.7,008,680 (over US \$2 billion)). *See also Id.*, pp. 77, 135, 137, 348, 358.

b. [REDACTED]
[REDACTED]
[REDACTED]

199. In his Reply, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] In any event, a simple review of the very references invoked by Amorrortu exposes the claim for what it is: a sweeping allegation based on innocuous evidence.

200. The *first*, *sixth*, and *seventh* references repeat the same information and, in the case of the *sixth* and *seventh* purported references, even cite the same piece of evidence.³²³ [REDACTED]

[REDACTED]

³¹⁹ Reply, ¶ 17. *See also* Reply, ¶¶ 20, 58.

³²⁰ Reply, ¶ 20 (emphasis removed). Although the Reply points to an “eighth” reference, it addresses a single item under the heading of “fourth and fifth express reference.” *See* Reply, p. 12. Moreover, the “seventh” and “eighth” purported references concern the same evidence: the 10 February 2015 meeting noted on page 21 of Exhibit C-167. *See* Reply, p. 13, ¶¶ 24-25.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³²³ *See* Reply, p. 13, ¶¶ 24-25 *relying on* [REDACTED]
[REDACTED]

³³⁴ Reply, ¶ 24.

206. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

208. [REDACTED]

[REDACTED] [REDACTED]

³³⁵ Reply, ¶ 25; [REDACTED]
[REDACTED]

³³⁶ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³³⁷ Reply, ¶ 20 (emphasis removed).

- [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

209. This is everything that Amorrortu could find in the Confidential Documents to support his claim that “Blocks III and IV were at the center of the corrupt relationship between Graña y Montero and the presidential couple.”³³⁸

210. Such a dearth of evidence plainly fails to prove that GyM won the Contracts through a corrupt scheme, much less what that scheme specifically consisted of. Indeed, the Reply fails to respond to basic questions regarding Amorrortu’s theory such as, *inter alia*: At what point did Nadine Heredia’s proven animosity towards GyM cease? When did she agree to use her influence to favor GyM in the Bidding Processes? How did Ms. Heredia ensure that GyM won? Who helped them carry out this scheme? How much did GyM pay, if anything, in exchange for the Contracts?

211. The Reply offers no answers, but its lack of particularization is no coincidence. There is simply no evidence, in the Confidential Documents or elsewhere, for Amorrortu to fill any of these gaps in his narrative. The rest of Amorrortu’s arguments regarding the alleged corrupt scheme, which Peru addresses below for completeness, are even more tenuous.

³³⁸ Reply, ¶ 17. *See also* Reply, ¶ 20.

c. Amorrortu's remaining arguments based on the Confidential Documents and other purported evidence also fail to support his theory

212. In a final attempt to salvage his case, Amorrortu advances a series of arguments based on the Confidential Documents and other purported evidence to support his theory that the Blocks were adjudicated through a corrupt scheme.³³⁹ None withstands scrutiny.

213. [REDACTED]

[REDACTED]
[REDACTED] What Amorrortu means by this is unclear. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³³⁹ Peru notes that the only single argument that Amorrortu had presented in the SoC to purportedly prove that corruption plagued the Bidding Processes—that GyM sought and obtained the removal of PETROPERU from the Blocks' operation—is notably missing from the Reply, thereby leaving Peru's arguments in the SoD unchallenged. This is unsurprising given that the Confidential Documents do not support Amorrortu's theory.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁴¹ Reply, ¶ 28 (emphasis added).

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁴³ See Reply, ¶ 28 ([REDACTED])

[REDACTED]
[REDACTED]
[REDACTED] (emphasis added).

214.

S

Aside from the fact that the Bidding Processes did not officially commence until after this period,³⁴⁶ Ms. Yaya’s argument requires a logical leap that conflates possibility with proof. It must be rejected accordingly.

215. *Third*, Amorrortu and his expert contend that it is “reasonable that the visits made by Graña group executives to the former Minister of Energy and Mines” had the same criminal purpose as the meeting between Ms. Tafur and Mr. Swayne addressed above,³⁴⁷ which Peru has established is grossly misleading itself. To this end, Ms. Yaya creates a “timeline” depicting meetings on (i) 30 April 2014 between Rodolfo Prialé de la Peña and Renato Caballero of the General Directorate of Mining Regulations of the MINEM; (ii) 22 August 2014 between Mr. Prialé and Mr. Caballero; (iii) 30 December 2014 between Mr. Graña and the MINEM

³⁴⁴ Although Amorrortu initially claimed that Mr. Ortigas was, at the time of the Bidding Processes, “following direct orders from the offices of Humana and Heredia to ensure that Graña y Montero was awarded the contracts” on the basis that he had been investigated as part of the GSP project, the factual underpinnings of this argument have not been developed further in the Statement of Claim and Reply. *See* NoA, ¶ 58, note 31. In any case, for the sake of completeness, Peru notes that, on 7 November 2025, the criminal investigation against Luis Enrique Ortigas Cuneo—tied exclusively to his role as MINEM’s Vice Minister of Energy and the GSP project, not as President of Perupetro—was dismissed. *See* National Superior Court of Specialized Criminal Justice of the Republic of Peru, Sixth National Preliminary Investigation Court, Resolution No. 19 (7 November 2025) (**R-100**).

³⁴⁵ *See* Reply, ¶ 31 *citing* Yaya Second Expert Report, ¶ 114.

³⁴⁶ The Bidding Processes were formally launched on 14 July 2014. *See* Perupetro S.A., Press Release (14 July 2014) (**C-12**).

³⁴⁷ *See* § II.B.2 *supra*.

Minister; and (iv) 5 February 2015 between Mr. Swayne and the MINEM Minister.³⁴⁸ There are numerous reasons why this argument fails.

216. At the outset, Ms. Yaya does not identify the sources for this timeline.³⁴⁹ Even piecing together that it derives from Exhibits Yaya-100, Yaya-101, and Yaya-102 leaves the timeline without adequate support. Those exhibits consist of partial screenshots pasted into a Word document bearing either no source attribution³⁵⁰ or a source that “has no legal value.”³⁵¹ As with Exhibit Yaya-94,³⁵² these are inherently untrustworthy and the complete information tells an entirely different story than the one she tries to construct.

217. For instance, with respect to the 30 April 2014 meeting between Rodolfo Prialé de la Peña and Renato Caballero de la Rosa, Ms. Yaya misleads the Tribunal by relying on a partial extract—copied onto a Word file—of the relevant registry of visitors such that only Mr. Prialé’s entry is shown.³⁵³ The full registry reveals that the following employees of Peruvian mining company MINSUR S.A. and its subsidiary, Marcobre S.A.C., were also present at the meeting: Juan Carlos Corazao Gallegos (Environmental and Permitting Manager³⁵⁴), Janeth Pizarro Ramos (Environmental Permits Coordinator³⁵⁵) and Jonathan Farfán Quispe (Environmental and Permits

³⁴⁸ See Yaya Second Expert Report, p. 27.

³⁴⁹ See Yaya Second Expert Report, ¶ 124. The Reply maintains that the timeline is “based on Confidential Documents” but merely cites Ms. Yaya’s Second Expert Report, generally, and the nine Confidential Documents, without any particularization. See Reply, p. 59 (title to Figure 3), note 227). Moreover, Ms. Yaya’s exhibits suggest that she did not, in fact, rely on the Confidential Documents. See Visitas de “El Lobysta” Rodolfo Prialé de la Peña al Ministerio de Economía y Finanzas (**Yaya-100**); Visita del 30.12.15 registrada en la página oficial del Ministerio de Energía y Minas (**Yaya-101**); Visitas 05/02/2016 (**Yaya-102**).

³⁵⁰ See Visitas de “El Lobysta” Rodolfo Prialé de la Peña al Ministerio de Economía y Finanzas (**Yaya-100**); Visitas 05/02/2016 (**Yaya-102**).

³⁵¹ See Manolo Rocks, Website disclaimer (**R-114**) (translation provided by Counsel. In the original Spanish: “*no tiene valor legal*”).

³⁵² See § II.B.2 *supra* (establishing that the screenshot pasted into Exhibit Yaya-94 excludes relevant information regarding other participants in the meeting between Ms. Tafur and Mr. Swayne).

³⁵³ See Annex 9 - Visits by “The Lobbyist” Rodolfo Prialé de la Peña to the Ministry of Economy and Finance (**Yaya-100**). See also Yaya Second Expert Report, p. 27.

³⁵⁴ See LinkedIn, Juan Carlos Corazao Gallegos, *available at*: <https://www.linkedin.com/in/juancarloscorazao/> (last accessed: 9 April 2026) (**R-105**).

³⁵⁵ See LinkedIn, Janeth Pizarro, *available at*: <https://www.linkedin.com/in/janeth-pizarro-a1583a45/> (last accessed: 9 April 2026) (**R-106**).

Lawyer³⁵⁶).³⁵⁷ A complete and objective review of the evidence therefore does not support Ms. Yaya’s misrepresentation that the meeting concerned the Bidding Processes; rather, it suggests that the meeting concerned a matter related to mining, specifically the Mina Justa Project.

218. Similarly, the 22 August 2014 meeting was not just attended by Mr. Prialé and Mr. Caballero, as Ms. Yaya’s indicates³⁵⁸ based on yet another partial extract of the registry of visitors.³⁵⁹ Héctor Cucho Mendoza, Managing Director of *HCM Abogados*,³⁶⁰ was also present at that meeting.³⁶¹

219. More generally, Mr. Prialé is not a “Graña group executive,” as noted by Ms. Yaya herself.³⁶² [REDACTED]

[REDACTED] Furthermore, the General Directorate of Mining Regulations has no bearing on the hydrocarbons sector or Perupetro’s activities.³⁶⁵

220. As for Mr. Graña’s meeting with Minister Mayorga on 30 December 2014, there is nothing remarkable about a GyM and GMP executive holding a meeting with the head of the ministry that oversees one of the industries in which it operates. But this is especially the case

³⁵⁶ See LinkedIn, Jonathan Farfán Quispe, *available at*: <https://www.linkedin.com/in/jonathan-farf%C3%A1n-quispe-531a6448/> (last accessed: 9 April 2026) (R-107).

³⁵⁷ See Visits to the Ministry of Energy and Mines of Peru (30 April 2014) (R-81).

³⁵⁸ See Yaya Second Expert Report, p. 27.

³⁵⁹ See Annex 9 - Visits by “The Lobbyist” Rodolfo Prialé de la Peña to the Ministry of Economy and Finance (Yaya-100).

³⁶⁰ See LinkedIn, Hector Cucho Mendoza, *available at*: <https://www.linkedin.com/in/hector-cucho-mendoza-21917921/> (last accessed: 9 April 2026) (R-108).

³⁶¹ See Visits to the Ministry of Energy and Mines of Peru (22 August 2014) (R-84).

³⁶² See Reply, ¶ 33 *citing* Yaya Second Expert Report, ¶ 123.

³⁶³ See LinkedIn, Renato Caballero La Rosa, *available at*: <https://www.linkedin.com/in/renato-caballero-la-rosa-07b95625/> (last accessed: 28 April 2026) (R-117).

³⁶⁵ See Supreme Decree No. 025-2013-EM (25 July 2013) (R-75).

when, as here, representatives of another company, namely Shell, were also present for at least part of the meeting³⁶⁶—a fact that Ms. Yaya’s timeline and corresponding exhibit conspicuously omit.³⁶⁷

221. Finally, Ms. Yaya’s reference to the 5 February 2015 meeting between Mr. Swayne and Minister Mayorga is similarly misleading.³⁶⁸ Also present at the meeting were Raúl Jacob Ruisanchez (Vice-President of Finance and CFO of Southern Peru Copper Corporation³⁶⁹), Carlos Ernesto Gálvez Pinillos (Vice-President and CFO of the *Buenaventura* mining company and Director of *Minera el Brocal*³⁷⁰), and Pedro Lerner Rizo Patrón (Managing Director of CELEPSA³⁷¹). Crucially, all four attended on behalf of the National Society of Mining, Petroleum and Energy (SNMPE) given that, in January 2015, Mr. Pinillos had been elected president of the SNMPE, with Messrs. Ruisánchez, Swayne, and Rizo serving as vice-presidents.³⁷² Indeed, the full visitors registry, which Ms. Yaya again excluded from her corresponding exhibit,³⁷³ corroborates as much: Messrs. Ruisánchez, Swayne, and Rizo all signed in as visitors on behalf of the SNMPE, as can be seen in the “Entity” column of the complete registry.³⁷⁴

³⁶⁶ See Visits to the Ministry of Energy and Mines of Peru (30 December 2014) (**R-86**); LinkedIn, Edgar Zamalloa, *available at*: <https://www.linkedin.com/in/edgarzamalloa/> (last accessed: 9 April 2026) (**R-109**); LinkedIn, Mehdi Chennoufi, *available at*: <https://www.linkedin.com/in/mehdi-chennoufi-378933/details/experience/> (last accessed: 9 April 2026) (**R-110**).

³⁶⁷ See Visita del 30.12.15 registrada en la página oficial del Ministerio de Energía y Minas (**Yaya-101**).

³⁶⁸ See Yaya Second Expert Report, p. 27; Annex 11 – 05/02/2016 (**Yaya-102**).

³⁶⁹ See LinkedIn, Raúl Jacob Ruisánchez, *available at*: <https://www.linkedin.com/in/ra%C3%BAI-jacob-ruis%C3%A1nchez-67b3b6147/> (last accessed: 9 April 2026) (**R-111**).

³⁷⁰ See LinkedIn, Carlos Galvez, *available at*: <https://www.linkedin.com/in/carlos-galvez-8595b8121/> (last accessed: 9 April 2026) (**R-112**).

³⁷¹ See LinkedIn, Pedro Lerner, *available at*: <https://www.linkedin.com/in/pedro-lerner-07075261/> (last accessed: 9 April 2026) (**R-113**).

³⁷² See Gestión, “Who’s who in the new SNMPE board,” *available at*: <https://gestion.pe/economia/nuevo-directorio-snmpe-75171-noticia/> (30 January 2015) (**R-87**).

³⁷³ See Yaya Second Expert Report, p. 27; Annex 11 – 05/02/2016 (**Yaya-102**).

³⁷⁴ See Visits to the Ministry of Energy and Mines of Peru (5 February 2015) (**R-88**).

222. Ms. Yaya’s attempt to depict these meetings as proof of a corrupt agreement between GyM and Peruvian public officials is therefore bereft of any supporting evidence. Her attempts to mislead the Tribunal must be rejected accordingly.

223. In any case, neither Amorrortu nor his expert particularize how these meetings purportedly furthered the corrupt scheme between GyM and Nadine Heredia. Their sole offering in this respect is the assertion that they took place “on dates that were important” for the Bidding Processes³⁷⁵—an invitation for the Tribunal to infer a connection where none has been proven. That is not argument; it is speculation, and it falls far short of proving corruption.³⁷⁶

224. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] While these findings have no bearing on the Bidding Processes or the Blocks—and thus fail to advance Amorrortu’s claims—his reliance on them unwittingly confirms Peru’s position on three key points:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁷⁵ Yaya Second Expert Report, ¶ 124.

³⁷⁶ See § V.B *infra*.

³⁷⁷ See Reply, ¶¶ 38-39. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁷⁸ Reply, ¶ 38. See also Reply, ¶ 39.

³⁷⁹ Reply, ¶ 2.

³⁸⁰ Reply, ¶ 2.

³⁸¹ See § II.C.1.a *supra*.

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

225. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This argument is flawed in several respects.

226. Crucially, PETROPERU was not involved in the GSP project. Even assuming *arguendo* that the GSP project could somehow establish a connection between Nadine Heredia and PETROPERU, it would remain irrelevant to this case because PETROPERU had no role in the adjudication of the Blocks, a function carried out exclusively by Perupetro. Amorrrortu’s conflates the two distinct entities without any explanation.

227. Moreover, the GSP project cannot serve to prove that Nadine Heredia used PETROPERU to favor GyM in any project, including the Blocks. To the contrary, as Peru has already established, the GSP project demonstrates that Nadine Heredia imposed a veto on the company during the very period in which the Bidding Processes were conducted.³⁸⁷

³⁸² See SoD, ¶¶ 170-176; Witness Statement of Rafael Ernesto Vela Barba (29 April 2024) (**RWS-03**) (“**Vela First Witness Statement**”), note 9.

³⁸³ See § II.C.2 *infra*.

³⁸⁴ See Reply, ¶¶ 50-54.

³⁸⁵ See Reply, ¶¶ 52-54.

³⁸⁶ Reply, ¶ 53.

³⁸⁷ See SoD, ¶¶ 201-204, 212; Vela First Witness Statement, ¶¶ 25-28; § II.C.1.a-II.C.1.b *supra*.

228. *Sixth*, the Reply contends that the Contracts for the Blocks “were the ‘big elephants’ of public works”³⁸⁸ and of higher value than “national highway construction projects in Peru,”³⁸⁹ presumably arguing—albeit without stating so—that this made them likely targets of corruption. This argument is also hopeless.

229. On one hand, it contradicts Amorrortu’s and his expert’s own description of the Blocks as “marginal,”³⁹⁰ “[b]rown [f]ields” where the “oil or gas accumulation [...] has matured to a production plateau or even progressed to a stage of declining production,” requiring the operator to find ways “to extend [its] economic producing life.”³⁹¹ On the other hand, Amorrortu grossly overstates the value of the Contracts for the Blocks claiming they are “valued [at] approximately US \$2.5 billion.”³⁹² The Reply offers no support for this assertion, and it is plainly incompatible with Amorrortu’s own position that he is owed US \$266.6 million³⁹³ in damages for his “anticipated equity stake in Blocks III and IV”³⁹⁴—a figure that is itself the product of unreasonable upward bias.³⁹⁵

230. But even if the Contracts for the Blocks were more lucrative than those underlying the construction projects (*quod non*), this does nothing to alter a fundamental reality,

██

██

³⁸⁸ Reply, ¶ 47.

³⁸⁹ Reply, ¶ 46.

³⁹⁰ Reply, ¶ 237. *See also* Reply, ¶ 234. Marginal fields or marginal wells are terms used to denote a field or well that is low producing and marginally economic. *See* Expert Witness Report of Mr. Kurt G. Strunk (NERA) (28 April 2024) (**RER-01**) (“**Strunk First Expert Report**”), ¶ 32, note 53. *See also* Bakertilly, “Marginal and stripper wells: What tax breaks are available to low production oil and gas companies?” *available at*: <https://www.bakertilly.com/insights/marginal-and-stripper-wells-what-tax-breaks-are-available-to-low-production> (last accessed: 10 April 2026) (**R-115**) (“A marginal well, on the other hand, is a well whose production costs are higher than the cost the business earns from selling the gas/oil at its critical point. Because of this, the well can only earn a profit when the price for oil rises above the critical break-even level.”).

³⁹¹ Reply, ¶ 236; Zamalloa Expert Report, ¶ 3.2.4.

³⁹² Reply, ¶ 46.

³⁹³ Reply, ¶ 558.b.

³⁹⁴ SoC, ¶ 397.

³⁹⁵ *See* § VI.B *infra*.

██
██
██

231. *Seventh*, the Reply makes much of the fact that Nadine Heredia was recently sentenced to 15 years in prison for aggravated money laundering, suggesting that this is somehow proof that corruption must have tainted the Bidding Processes and the Blocks.³⁹⁶ This is to Amorrortu’s detriment. A simple review of the conviction confirms what Peru has argued since the SoD and in this Rejoinder: the criminal proceedings against the Nadine Heredia are wholly unrelated to the Blocks—and they affirmatively undermine, rather than support, Amorrortu’s theory that GyM “won” the Contracts through a corrupt scheme.

232. As a threshold matter, the conviction’s subject matter concerns the laundering of illicit funds used to finance the 2006 and 2011 presidential campaigns.³⁹⁷ Critically, there is no finding—not a single passage in 317 pages of meticulous analysis—extending the effect of Odebrecht’s campaign contributions to the activity of Perupetro, the Bidding Processes, or the Blocks. In fact, it does not even mention Graña y Montero. The Reply’s silence on these matters is devastating to Amorrortu’s narrative and entirely consistent with Peru’s position: the corruption that the *Lava Jato* Special Team has successfully uncovered concerns projects and circumstances unrelated to the dispute in this proceeding. Moreover, the court’s findings confirm the effectiveness and thoroughness of Peru’s anti-corruption institutions.³⁹⁸ If the corruption alleged by Amorrortu had in fact occurred, it strains credulity that it would have escaped detection by the same investigative apparatus that dismantled the most extensive corruption scheme in Peruvian history and convicted a former President and his wife.

233. In sum, Nadine Heredia’s conviction does not advance Amorrortu’s case; ██████████
██

³⁹⁶ See, e.g., Reply, ¶¶ 18-19.

³⁹⁷ See National Superior Court of Specialized Criminal Justice of the Republic of Peru, Third National Criminal Court of Appeals, Case of Ollanta No. 249-2015, Judgement (29 April 2025) (**R-98**).

³⁹⁸ See § II.C.2 *infra*.

[REDACTED]

234.

[REDACTED]

[REDACTED] Amorrortu, however, cannot simultaneously invoke the Confidential Documents to support his claims while dismissing the conclusions set out therein as unreliable. He cannot have it both ways and, by cherry-picking from the evidence, he underscores the weakness of his position. [REDACTED]

[REDACTED]

235. According to the Reply, two points purportedly establish that the veto “was a farce.”⁴⁰² [REDACTED]

[REDACTED]

[REDACTED] These, however, are not mutually exclusive with the veto. On the contrary, as Peru has established in the SoD,⁴⁰⁴ the purpose of the meetings was to address Nadine Heredia’s displeasure with GyM and overturn the veto she had instituted against the company for the GSP project. T [REDACTED]

[REDACTED]

236.

[REDACTED]

[REDACTED]

³⁹⁹ See Reply, ¶¶ 147-167.

⁴⁰⁰ Reply, p. 58.

⁴⁰¹ Reply, ¶ 153.

⁴⁰² Reply, ¶ 146.

⁴⁰³ Reply, ¶¶ 147-150, 154.

⁴⁰⁴ SoD, ¶ 202.

⁴⁰⁵ See Reply, ¶ 30.

[REDACTED]

237. [REDACTED]

238. [REDACTED]

[REDACTED]

[REDACTED]

239. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴¹³ Reply, ¶ 30.c.

⁴¹⁴ See Reply, ¶ 148.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

240. [REDACTED]
[REDACTED]
[REDACTED]

241. [REDACTED]
[REDACTED]
[REDACTED]

242. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Indeed, Amorrortu points to nothing more than the existence of the meeting, as he did in the SoC, without any particularization regarding the matters discussed or how it fits into his larger theory of corruption in this case. [REDACTED]

[REDACTED] Amorrortu's theory therefore remains entirely speculative.

243. [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴²³ See SoD, ¶ 205.

[REDACTED]

[REDACTED]

244. [REDACTED]

[REDACTED]

[REDACTED] This is no surprise either. [REDACTED]

[REDACTED]

⁴²⁵ Reply, ¶¶ 150, 152 *citing* Yaya Second Expert Report, ¶ 120.

[REDACTED]

[REDACTED]

245.

[REDACTED]

[REDACTED] This argument confuses attendance at a public ceremonial event with an illicit scheme. [REDACTED]

[REDACTED]

246.

[REDACTED]

[REDACTED]

[REDACTED]

⁴²⁸ Reply, ¶ 154.

[REDACTED]

[REDACTED]
[REDACTED]¹ [REDACTED]
[REDACTED]
[REDACTED]

247. In a brazen display of selective reading, Amorrortu asks the Tribunal to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] yet to disregard those very same documents as evidence of what transpired there and after, as well as its implications for the broader factual record.

248. The second reason offered by Amorrortu to cast doubt on Nadine Heredia’s veto is that the *Lava Jato* Special Team failed to adequately verify its existence, claiming that “the necessary corroborations were not carried out.”⁴³² This charge is baseless.

249. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED].

⁴³² Reply, ¶ 161. *See also* Reply, ¶¶ 158-160.

⁴³³ Vela Second Witness Statement, ¶ 30.

250.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

251. Amorrortu's claim that the prosecutors were not diligent thus collapses under the weight of this record: [REDACTED]

[REDACTED]

252. Contrary to Amorrortu's contention, the Confidential Documents do not constitute "additional tangible and credible evidence (produced by Peru itself) corroborating the complained of corruption Scheme."⁴³⁵ [REDACTED]

[REDACTED]

[REDACTED]

253. Far from supporting Amorrortu's narrative, t

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It is to the effectiveness and diligence of those very investigations, including with respect to the Blocks, that Peru now turns.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴³⁵ Reply, ¶ 49.

2. The *Lava Jato* Special Team’s work was effective, independent, and reliable, including with respect to the Blocks

254. The Reply devotes considerable attention to attacking the integrity, diligence, and effectiveness of the *Lava Jato* Special Team’s investigation, arguing that the prosecutors’ work was ineffective, politically motivated, and insufficiently rigorous—particularly as it relates to the adjudication of Blocks III and IV.⁴³⁶ Ms. Yaya’s Second Expert Report underpins these attacks—mirroring the platform she used during her recent political campaign for a seat in Peru’s senate⁴³⁷—, questioning the reliability of the effective collaboration mechanism, the scope of the *Lava Jato* Special Team’s investigation, and the personal credibility of Dr. Vela.⁴³⁸

255. Substituting volume for authority and personal attacks for advocacy, Amorrortu reaches for an old shortcut: making it about the individuals instead of the evidence. The purpose of these attacks is plain. If Amorrortu can cast doubt on the *Lava Jato* Special Team’s work and those who led its efforts, [REDACTED]

[REDACTED] and no evidence of such corruption has surfaced despite years of investigation. As demonstrated below, these arguments are without merit.

⁴³⁶ See Reply, ¶¶ 37, 133–166.

⁴³⁷ See R. Cevallos, “INTERVIEW | Mónica Yaya: ‘It is necessary to review the addendum to the Matarani port concession contract’” *Altavoz*, available at: <https://altavoz.pe/entrevistas/entrevista-monica-yaya-es-necesario-revisar-la-adenda-del-contrato-de-concesion-del-puerto-de-matarani/> (27 December 2025) (R-101) (“Finally, why should people vote for you for Senate? ‘Because I have the will and the experience to defend state resources and fight corruption. I have confronted powerful figures like Martín Vizcarra, Aníbal Torres, and Nadine Heredia. I was threatened and sued for denouncing them. The fight against corruption is fundamental so that money reaches education, health, and security, and isn’t stolen by a few.’”) (translation provided by Counsel. In the original Spanish: “Finalmente, ¿por qué votar por usted para el Senado? Porque tengo la voluntad y la experiencia para defender los recursos del Estado y luchar contra la corrupción. Me he enfrentado a personajes poderosos como Martín Vizcarra, Aníbal Torres y Nadine Heredia. Fui amenazada y enjuiciada por denunciarlos. La lucha anticorrupción es fundamental para que el dinero llegue a educación, salud y seguridad, y no se lo roben unos pocos.”).

⁴³⁸ See Yaya Second Expert Report, ¶¶ 52-63, 115-145.

a. The *Lava Jato* Special Team’s track record refutes any claim of ineffectiveness

256. The *Lava Jato* Special Team’s track record of over nearly a decade of operations demonstrates the diligence, professionalism, and effectiveness of Peru’s anti-corruption prosecution. Far from being a deficient institution, as Amorrortu and Ms. Yaya maintain, the Special Team has achieved results that are unprecedented in Peruvian history. Established in 2016 by the *Fiscalía de la Nación* with exclusive dedication to corruption cases involving Odebrecht and other construction companies, the Special Team has achieved remarkable success. Quantitative benchmarks demonstrate the scope and rigor of its work.

257. [REDACTED]

[REDACTED]

258. Moreover, the Special Team’s work has been conducted without political favoritism, reaching the highest levels of government and industry. [REDACTED]

[REDACTED]

⁴³⁹ See Vela Second Witness Statement, ¶ 12.

⁴⁴⁰ See Vela Second Witness Statement, ¶ 13.

⁴⁴¹ See Vela Second Witness Statement, ¶ 14.

[REDACTED]

259. Notably, Dr. Vela himself directed the prosecution of former President Ollanta Humala and his wife Nadine Heredia, both sentenced to 15 years' imprisonment for aggravated money laundering,⁴⁴³ that is, the very individual whose veto is central to this arbitration. The prosecutor who secured her conviction cannot credibly be accused of protecting that administration.

260. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

261. The *Lava Jato* Special Team's work has thus been far-reaching, objective, and effective. Moreover, collaboration agreements are independently reviewed and approved by the judiciary.⁴⁴⁶ This means that not only the prosecutors, but also the Peruvian judiciary, independently validate the reliability of the effective corroboration process.

262. Since Peru's SoD, the *Lava Jato* Special Team has been restructured. On 22 September 2025, the Board of Supreme Prosecutors designated Dr. Tomás Aladino Gálvez

⁴⁴² See Vela Second Witness Statement, ¶ 14.

⁴⁴³ See Vela Second Witness Statement, ¶ 15.

⁴⁴⁴ See Vela Second Witness Statement, ¶ 16. See also Vela First Witness Statement, ¶ 29.

⁴⁴⁵ See Vela Second Witness Statement, ¶ 16.

⁴⁴⁶ See Regulations for Legislative Decree No. 1301 (7 April 2017) (**R-90**), Arts. 33-34; Legislative Decree No. 957, Criminal Procesal Code (29 July 2004) (**RV-2**), Art., 477(5); Supreme Court of Justice of the Republic of Peru, Permanent Criminal Chamber, Decision on Appeal No. 3120-2022/VENTANILLA (23 October 2023) (**R-96**), pp. 7-8; Supreme Court of Justice of the Republic of Peru, Permanent Criminal Chamber Appeal No. 75-2022 (7 December 2022) (**R-94**), ¶ 6.9. [REDACTED]

[REDACTED]

[REDACTED]

Villegas as *Fiscal de la Nación*, or lead prosecutor, who initiated a restructuring of the Public Ministry.⁴⁴⁷ On 5 January 2026, the *Fiscal de la Nación* ordered the deactivation of the *Lava Jato* Special Team, transferring its caseload to the specialized anti-money laundering prosecutors' offices to ensure continuity.⁴⁴⁸

263. The experienced prosecutors from the *Lava Jato* Special Team were reassigned to the specialized divisions, bringing their accumulated expertise to the permanent institutional structure.⁴⁴⁹

264. The *Lava Jato* Special Team's record of convictions, reparations, and high-profile prosecutions refutes any suggestion that Peru's anti-corruption efforts have been ineffective or lacking in diligence.

b. The *Lava Jato* Special Team has demonstrated to possess deep institutional knowledge of how corruption schemes are perpetuated

265. In this light, Ms. Yaya's claim that the *Lava Jato* Special Team demonstrated a "lack of understanding of corruption mechanisms" is plainly absurd.⁴⁵⁰ As Peru established in Section II.C.1.c *supra* and the Confidential Documents, the prosecutors conducted extensive and well-documented investigations. Her narrow additional criticism regarding "valuations" does not withstand scrutiny.

266. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Ms. Yaya claims that, "[a]s a specialist in Government

⁴⁴⁷ See Vela Second Witness Statement, ¶ 7.

⁴⁴⁸ See Vela Second Witness Statement, ¶ 9.

⁴⁴⁹ See Vela Second Witness Statement, ¶ 8.

⁴⁵⁰ Reply, ¶¶ 143-144.

⁴⁵¹ Yaya Second Expert Report, ¶¶ 136-137.

Procurement, [she] can attest that a large part of the bribes paid to public officials depends on the approvals those officials grant to the valuations submitted by contractor companies.”⁴⁵²

267. Her criticism fails for at least two reasons. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

268. *Second*, Ms. Yaya’s criticism is speculative. She offers no evidence that bribes were in fact paid in connection the with valuations of the Blocks such that her general observation about how procurement corruption can work does not establish that it did work that way here. The prosecutors’ conclusions were based on what the evidence and the effective collaborators actually revealed, not on abstract possibilities.

269. Ms. Yaya’s charges amount to an assertion that the prosecutors should have found corruption where no evidence of corruption existed. The prosecutors’ mandate is to follow the evidence—and the evidence did not support her hypothesis.

c. The Effective Collaboration mechanism is reliable

270. Relying on Ms. Yaya, Claimant attempts to undermine the Effective Collaboration mechanism, arguing that it allows “groups to reach an agreement amongst themselves and selectively tell portions of the truth in order to jointly receive the benefit of a

⁴⁵² Reply, ¶ 143 citing Yaya Second Expert Report, ¶ 136.

⁴⁵³ See Vela Second Witness Statement, ¶ 34. [REDACTED]

[REDACTED]

reduced criminal sanction.”⁴⁵⁴

271. This argument betrays a fundamental misunderstanding of the legal framework governing Effective Collaboration. As Dr. Vela explains, “the legislation establishes rigorous filters to verify that the information provided by the Effective Collaborator is true. According to Article 473.5 of the Code of Criminal Procedure, all statements by an aspiring Effective Collaborator must be corroborated by various means of evidence before an agreement is finalized.”⁴⁵⁶ Critically, “[i]nterviews with collaborators are conducted separately and confidentially with all the appropriate safeguards so that their testimony is not influenced in any way by the investigating body.”⁴⁵⁷ The scenario Ms. Yaya hypothesizes—where multiple collaborators agree among themselves to tell a coordinated, partial truth—therefore lacks basis under Peruvian law and the *Lava Jato* Special Team’s practices.

272. Moreover, effective collaborators are protected against self-incrimination only for those illicit acts they actually disclose.⁴⁵⁸ The omission of information or failure to disclose

⁴⁵⁴ Reply, ¶ 141.

⁴⁵⁵ Reply, ¶ 141 *citing* Yaya Second Expert Report, ¶ 134.

⁴⁵⁶ See Vela Second Witness Statement, ¶ 38. See also Code of Criminal Procedure (29 July 2004) (R-70), Art. 473.5 (“5. The applicant is required to provide all relevant information in his or her possession, as well as all necessary means for its corroboration. Failure to do so, or the provision of false information, will affect the viability of the agreement, depending on the significance of the omission or falsehood. If the falsehood is discovered after the agreement has been judicially approved, the prosecutor will request its revocation in accordance with the provisions of Article 480. If the agreement is revoked, the prosecution of the defendant will continue under the rules of criminal procedure, as appropriate.”) (translation provided by Counsel. In the original Spanish: “5. *El aspirante está obligado a proporcionar toda la información relevante que posea, así como todos los medios necesarios para su corroboración. De no hacerlo o de proporcionar información falsa afectará la viabilidad del acuerdo, dependiendo de la importancia de la omisión o de la falsedad. Cuando la falsedad se descubra con posterioridad a la aprobación judicial del acuerdo, el Fiscal solicitará su revocación de acuerdo con lo establecido en el artículo 480. En caso de que se revoque el acuerdo, se continuará con el procesamiento del imputado bajo las reglas del proceso penal, según corresponda.*”).

⁴⁵⁷ See Vela Second Witness Statement, ¶ 38.

⁴⁵⁸ Ver Supreme Decree No. 007-2017-JUS (R-119), Art. 25(2) (“A refusal to reach an agreement has the following consequences: a. Charges are filed against the accused for the purpose of prosecuting and bringing them to justice. b. In the event of statements made in bad faith against innocent third parties, a notice must be sent to them. c. Statements made by the cooperating witness against himself are deemed null and void.”) (translation provided by Counsel. In the original Spanish: “*La denegación de acuerdo, genera los siguientes efectos: a. Iniciar cargos contra los sindicados*”).

illicit acts constitutes cause for nullification of the collaboration agreement, exposing the collaborator to criminal prosecution without any protection.⁴⁵⁹ This creates a powerful incentive to disclose all illicit conduct, which runs directly contrary to Ms. Yaya's hypothesis that collaborators would agree to provide fragmented information.

273. Claimant's suggestion that the Graña executives and GyM colluded to withhold information regarding the Blocks is thus implausible on its face. If they had withheld such information, they would have risked the revocation of their agreements and the loss of all benefits obtained. As detailed above, the stakes were extremely high. No rational collaborator would take that risk.

274. [REDACTED]

[REDACTED] Finally, it is important to note that the prosecutors cannot suggest, influence, or provoke a confession if the collaborator has not indicated the existence of the illicit act:

[T]he Office of the Prosecutor of the Nation cannot suggest, influence or provoke a confession to a crime if the Effective Collaborator himself has not indicated the existence of that unlawful act. The negotiation of the collaboration agreement begins with the applicant's expression of willingness to become an Effective Collaborator. The Prosecutor's Office listens to the story offered by the collaborator and evaluates, with the discretion it enjoys, whether the information is useful to it. Generally, this evaluation revolves around whether the account is new. All the information provided by the Effective Collaborator on which the prosecutor decides to rely must be corroborated with other elements of conviction. Only when a fact provided by an Effective Collaborator has been corroborated

con la finalidad de procesarlos y perseguirlos. b. En caso de declaraciones de mala fe contra terceros inocentes, se les debe cursar comunicación. c. Las declaraciones del colaborador contra sí mismo, se toman como inexistentes.”).

⁴⁵⁹ See Vela Second Witness Statement, ¶ 37.

⁴⁶⁰ See Vela Second Witness Statement, ¶ 40.

is it transcribed to be incorporated as evidence in the prosecutorial files of the corresponding investigations.⁴⁶¹

275. The effective collaboration framework is designed to elicit complete and truthful disclosures through strong legal incentives, independent corroboration requirements, and the threat of agreement nullification. Neither Ms. Yaya’s academic speculation nor Amorrortu’s recycled factual arguments undermine the reliability of the evidence obtained and conclusions drawn (or not drawn) by the *Lava Jato* Special Team.

d. The absence of admissions regarding the Blocks is highly probative

276. Against this backdrop, Amorrortu seeks to dismiss the evidentiary significance of the fact that the *Lava Jato* Special Team found no evidence of corruption in the adjudication of the Blocks. He specifically claims that “[i]t is of no moment that the *Lava Jato* Special Team has not individually (at this moment) adjudicated corruption regarding the Blocks or the Bidding Process.”⁴⁶² This argument attempts to invert the logical import of the prosecutors’ findings

277. The absence of findings is not a gap in the record—it is the record. Neither GyM, its former executives, participants in its corrupt acts in other projects, witnesses, nor any other effective collaborator admitted any culpability for acts of corruption related to the Blocks or the Bidding Processes. The negative inference is particularly powerful given the scope of what the collaborators did disclose.⁴⁶³ Yet across this entire body of confessions and corroborated evidence—not to mention the rest of the *Lava Jato* Special Team’s investigations—there is no evidence of corruption as alleged by Claimant in this arbitration.⁴⁶⁴

278. Strikingly, Amorrortu himself has never filed a criminal complaint or any other type of report with the *Lava Jato* Special Team or other office with the Public Ministry regarding the adjudication of the Blocks, despite the fact that it maintains an institutional process for

⁴⁶¹ See Vela Second Witness Statement, ¶¶ 41-42.

⁴⁶² Reply, ¶ 470.

⁴⁶³ See § II.C.2.a *supra*.

⁴⁶⁴ Vela Second Witness Statement, ¶¶ 44-47.

receiving complaints and is obligated to investigate such complaints.⁴⁶⁵ If Amorrortu held such a firm conviction that corruption occurred, it is noteworthy that he availed himself of an international arbitration but never once used the accessible mechanisms Peru provides for any citizen—Peruvian or foreign—to report suspected corruption.

279. Amorrortu further argues that “[t]he OCI of Comptroller General and the Lava Jato do not serve as ‘effective’ measures against corruption if they rubberstamp the acts of government officials or are blind to any corruption that occurs.”⁴⁶⁶ The factual premise of this argument—that Peru’s anti-corruption institutions have been ineffective—is contradicted by the extensive record set out above and unsupported by any evidence in the Reply.

280. The absence of any finding of corruption by the *Lava Jato* Special Team regarding Blocks III and IV, combined with the absence of any complaint by Amorrortu or anyone else, is not evidence of prosecutorial failure. It is evidence that the corruption Amorrortu alleges did not occur.

e. Dr. Vela’s testimony does not “show an egregious lack of honesty” and Amorrortu’s and Ms. Yaya’s *ad hominem* attacks against him are baseless

281. Unable to refute the substance of Dr. Vela’s testimony on the merits, Amorrortu and Ms. Yaya resort to *ad hominem* attacks on his independence and honesty. The Reply specifically alleges that Dr. Vela has an undisclosed, indirect relationship with the Peruvian State that undermines his independence.⁴⁶⁷ Amorrortu specifically points out that Dr. Vela’s brother has worked at the Central Hospital of the Air Force of Peru since 1997.⁴⁶⁸ Moreover, Amorrortu argues that Dr. Vela and his brother reportedly jointly purchased real estate without explanation of the

⁴⁶⁵ Vela Second Witness Statement, ¶¶ 45-47.

⁴⁶⁶ Reply, ¶¶ 487-489.

⁴⁶⁷ Reply, ¶ 140. *See also* Yaya Second Expert Report, ¶¶ 130-132.

⁴⁶⁸ Reply, ¶ 140. *See also* Yaya Second Expert Report, ¶ 130.

origin of the funds used, while Ms. Yaya “evaluate[s] [his] financial situation” noting that there is a “possible financial imbalance.”⁴⁶⁹ These attacks are baseless and must be rejected.

282. The fact that Dr. Vela’s brother is a public-sector employee does not create a conflict of interest, and neither Claimant nor his expert cite any authority suggesting otherwise. The suggestion that a prosecutor and witness in this arbitration is compromised because a family member holds a government job—at a hospital, no less, an institution with no connection to the matters at issue—is a *non sequitur*. Dr. Vela’s statement in this proceeding regarding his lack of conflicts of interest is, in any case, consistent with his brother’s employment:

I confirm that I do not have and have not had any relationship with the **representatives** of the Parties to this arbitration, except for meetings during the preparation of my statement and my participation in another arbitration. Nor do I have any relationship with any member of the Arbitral Tribunal. The extent of my relationship with the Respondent, as a public official, is detailed in Section I. I do not have and have not had any relationship with the Claimant.⁴⁷⁰

283. As for the allegation of a “possible financial imbalance,”⁴⁷¹ it is impermissible innuendo, not evidence. The sole piece of evidence on which Ms. Yaya relies is a YouTube video lacking in investigative safeguards, let alone bearing the weight of legal findings of wrongdoing. The suggestion that Dr. Vela engaged in some form of illicit activity is thus unwarranted and unprofessional.⁴⁷² Not only does it consist of a personal attack based on an online news segment, without more, but it relates to matters that have no bearing on this case or the quality of Dr. Vela’s work.

284. The *ad hominem* nature of Amorrortu’s arguments only underscores the weakness of his position and the Tribunal should disregard such tactics.

⁴⁶⁹ Yaya Second Expert Report, ¶ 145.

⁴⁷⁰ Vela First Witness Statement, ¶ 2 (emphasis added) (footnotes omitted).

⁴⁷¹ Yaya Second Expert Report, ¶ 145.

⁴⁷² Reply, ¶ 140.

285. The factual record is clear. Amorrortu never conducted proper due diligence, never commenced a direct negotiation, and never submitted a proposal that met the most basic legal requirements. When given the opportunity to participate in the Bidding Process, Baspetro's submission was so deficient that it failed to provide any information with which to measure its satisfaction of a single Minimum Indicator—and then did nothing when informed of those deficiencies. In both instances, Amorrortu expected the Blocks to be handed to him on a silver platter, without having to comply with any of the applicable legal requirements. When they were not, he launched a crusade premised on the fiction that Peru must have cheated him, but the record shows the opposite.

286. There were a multitude of indications available to Amorrortu that should have made clear that the Blocks would not be adjudicated through a direct negotiation, including an explicit communication from Mr. Ortigas to that very effect. Amorrortu cannot blame Peru for his unyielding but baseless insistence that the Blocks be assigned to Baspetro, a company with no prior experience, based on his own misconceptions about the applicable legal framework. This is all the more so given that Amorrortu himself participated in the Bidding Process for Block III—a process he has failed to prove was anything other than a legitimate exercise of Perupetro's authority.

287. His allegations of corruption, meanwhile, rest on nothing more than speculation and systematic misrepresentations of the Confidential Documents, which affirmatively undermine his case. The Tribunal should therefore reject Amorrortu's factual claims in their entirety.

III. AMORRORTU’S REQUESTS REGARDING PERU’S PRODUCTION MUST BE REJECTED

288. Amorrortu advances two miscellaneous requests in Sections III and IV of the Reply. In the first request, Amorrortu asks the Tribunal to strip certain documents of their confidential designation—notwithstanding that such documents remain protected under Peruvian law and that Amorrortu has not identified any basis for doing so (**Section A**). In the second, Amorrortu requests that the Tribunal draw sweeping adverse inferences from purportedly incomplete document production yet provides no legal and factual bases in support thereof. (**Section B**).

A. Amorrortu’s Request to Strip Confidential Documents of Their Protections Is Unjustified

289. Amorrortu requests that two documents be stripped of the confidentiality protections that the Parties and Tribunal afforded them in Procedural Orders Nos. 6, 7, 9, and 10.⁴⁷³ Claimant’s request is improperly framed, based on mischaracterizations of Peru’s prior submissions, and entirely unjustified.

290. *First*, Claimant contends that Peru’s statements, as recorded in Procedural Order No. 8 (“**PO8**”), support the removal of DOC-OP5-1-001—which corresponds to Exhibit C-162—from the confidentiality regime.⁴⁷⁴ This contention is misleading.

291. At the outset, Peru’s statement recorded in paragraph 34 of PO8 referred to DOC-OP5-1-002—corresponding to Exhibit C-163—not DOC-OP5-1-001. Indeed, Peru’s reference to *El Comercio* concerned DOC-OP5-1-002—[REDACTED]—and stated only that a portion of this document (not the entirety) appeared in the article.⁴⁷⁵ The Tribunal itself recognized this distinction—albeit misled at that point by Claimant’s mischaracterization of the document⁴⁷⁶—noting that DOC-OP5-1-001 “[REDACTED]

⁴⁷³ See Reply, ¶¶ 418-423.

⁴⁷⁴ See Reply, ¶¶ 419-420.

⁴⁷⁵ Peru’s Response to Claimant’s Second Application (23 June 2025), pp. 4-5.

⁴⁷⁶ [REDACTED] See Peru’s Response to Claimant’s Second Application (23 June 2025), p. 4.

i [REDACTED]”⁴⁷⁷ In any event, contrary to Claimant’s assertion,⁴⁷⁸ DOC-OP5-1-001 was not published by *El Comercio*. As far as Peru is aware, [REDACTED] [REDACTED]—has never been made public by any authorized source. Claimant conflates two distinct documents and, in doing so, mischaracterizes the evidentiary record.

292. Even assuming Claimant mistakenly referred to DOC-OP5-1-001 when he intended to reference DOC-OP5-1-002, his request should also be denied. [REDACTED] [REDACTED] than any excerpt that may have appeared in *El Comercio*’s article.⁴⁷⁹ [REDACTED] [REDACTED] that *El Comercio* may have reproduced does not transform the entirety of this sensitive investigative document into public information.

293. Amorrortu’s *second* request references “RP-PO5-95.”⁴⁸⁰ Based on the description provided at paragraph 422 of the Reply—[REDACTED] [REDACTED]—Peru understands that this request corresponds to Exhibit C-164.

294. Amorrortu alleges that, because this document was published on Facebook by a private media outlet, “it should have been produced digitally without a fuss given its public nature” and should now be removed from the agreed-upon confidentiality regime.⁴⁸¹ However, as explained by the former Director of the *Lava Jato* Special Team, Dr. Vela, “[t]he fact that a private party has disclosed a collaboration agreement to the public does not mean that the document is no longer confidential and that its distribution no longer requires authorization from the Prosecutor’s Office.”⁴⁸²

⁴⁷⁷ Procedural Order No. 8 (21 August 2025) (“**PO8**”), ¶ 57 (emphasis added).

⁴⁷⁸ See Reply, ¶ 421.

⁴⁷⁹ See Peru’s Response to Claimant’s Second Application (23 June 2025), pp. 4-5.

⁴⁸⁰ See Reply, ¶ 422.

⁴⁸¹ See Reply, ¶¶ 422-423.

⁴⁸² Vela Second Witness Statement, ¶ 35.

295. Peruvian law is clear: criminal investigation files are protected under Article 324 of Peru’s Code of Criminal Procedure, which provides that “the investigation has a reserved character. Only the parties directly involved and their duly accredited lawyers can have access to its contents.”⁴⁸³ The fact that a media outlet may have leaked a document does not extinguish the relevant protections under Peruvian law—particularly where Peru never authorized the disclosure.

296. Beyond the specific deficiencies in each of Claimant’s requests, there are compelling policy reasons to deny them. Removing confidentiality protections would effectively make the contents of these sensitive documents public, as the information would no longer need to be redacted from materials published on the PCA’s website. The Tribunal recognized in Procedural Order No. 5 that “the PO5 Documents contain sensitive information concerning an ongoing investigation and are currently under seal” and that “exceptional measures are required in order properly to address the risk of undue disclosure in the circumstances of this case.”⁴⁸⁴ These circumstances remain unchanged.

297. Moreover, granting Amorrortu’s request would set a dangerous precedent whereby Peru—or other sovereign States—could be compelled by an investment tribunal to violate their own domestic laws protecting criminal investigation materials. Peru’s obligations under Article 324 of the Code of Criminal Procedure are not optional. As the Tribunal acknowledged in Procedural Order No. 5, Article 324 at its core “seeks to prevent any disclosure of documents to third parties that may jeopardize an ongoing investigation.”⁴⁸⁵ In this respect, the Tribunal further acknowledged that “Peru may wish to protect [other relevant interests] such as the individual rights, legal strategies, and the reputation of the persons under investigation.”⁴⁸⁶ Peru cannot—and should not—be ordered to violate its own laws or disregard those interests requiring protection.

⁴⁸³ Procedural Order No. 5 (6 February 2025) (“**PO5**”), ¶ 32; Peru’s Code of Criminal Procedure (Legislative Decree No. 957) (22 July 2004) (**RLA-207**), Art. 324.

⁴⁸⁴ PO8, ¶ 26, *citing* PO5, ¶¶ 42, 60, 81.

⁴⁸⁵ PO5, ¶ 40.

⁴⁸⁶ PO5, ¶ 40.

298. Perhaps most fundamentally, Claimant has not articulated any reason—let alone a compelling one—for why these documents should be stripped of their confidential designation. He does not allege that he would suffer any prejudice if the documents remain confidential: he, his representatives, and his experts already have full authorization to access and use them in support of his claims in this proceeding.

299. This leads to the inevitable conclusion that Amorrortu does not seek access to these documents to support his claims—he already has access—but rather the Tribunal’s implicit authorization to move forward with their publication. He offers no justification for why publication would serve any legitimate purpose in this arbitration.

300. Finally, Peru recalls that it did not object to the admission of these sensitive documents into the record,⁴⁸⁷ acting in good faith and on the express premise that the documents would receive significant protection given their sensitive nature. As the Tribunal noted, the Confidential Documents “shall be kept strictly confidential by any individual who has access to them throughout the Arbitration, as well as after the Arbitration has concluded.”⁴⁸⁸ Amorrortu’s request nevertheless seeks to undermine the agreement reached by the Parties and Peru’s good faith cooperation without proper justification. It must be denied accordingly.

B. Amorrortu’s Request for Adverse Inferences Lacks Support in Both Fact and Law

301. Amorrortu asks the Tribunal to “draw all adverse inferences it deems necessary from the incomplete information in the Confidential Documents produced by Peru, including that the Tribunal reach a conclusion that [REDACTED]

[REDACTED]”⁴⁸⁹ Amorrortu’s argument amounts to the following: [REDACTED]

[REDACTED] and Amorrortu wants the Tribunal to presume, without more, that whatever was not visible would have not only been damaging to Peru’s position, but also cured the

⁴⁸⁷ See PO8, ¶ 25.

⁴⁸⁸ Procedural Order No. 10 (3 October 2025), ¶ 2.

⁴⁸⁹ Reply, ¶ 427.

significant evidentiary deficiencies underlying his claims.⁴⁹⁰ Amorrortu’s request suffers from a fundamental flaw: it lacks support in both fact and law.

302. Amorrortu cites Article 9 of the IBA Rules on the Taking of Evidence and Articles 27(3) and 30(3) of the UNCITRAL Rules, but does not set out the applicable standard under international law, does not cite a single case in which a tribunal drew an adverse inference, does not reference any academic authority, and does not apply the well-established legal test for adverse inferences to the facts of this case. Moreover, his request offers no particularization regarding the documents underlying his request—Exhibits C-163 and C-170—or circumstances surrounding Peru’s production thereof. In short, Amorrortu’s request is a naked assertion devoid of foundation. As set out below, the law and the facts require its rejection.

303. Requests for adverse inferences are subject to a high standard under international law and seldom granted. The IBA Rules on the Taking of Evidence in International Arbitration, which the Tribunal “may use, as an additional guideline” pursuant to Section 6.1 of Procedural Order No. 1, are permissive—not mandatory—in their treatment of adverse inferences. Article 9(7) provides that a tribunal “may infer” that evidence would be adverse to the interests of a party that fails to make “relevant evidence” available, but only where that party does so “without satisfactory explanation.” The UNCITRAL Rules, for their part, contain no express provision on adverse inferences at all—Article 27(3) empowers the Tribunal to require document production, while Article 27(4) vests the Tribunal with authority to determine the “admissibility, relevance, materiality and weight of the evidence offered.” The authority to draw adverse inferences, to the extent it exists, is inherent in the Tribunal’s discretion over evidence, not a mandatory consequence of alleged deficiencies in production.⁴⁹¹

304. The most widely cited and authoritative framework for evaluating requests for adverse inferences is the five-prong test distilled by Jeremy K. Sharpe from the jurisprudence of

⁴⁹⁰ Reply, ¶ 424. *See also* Reply, ¶ 427.

⁴⁹¹ *See, e.g., Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Decision on Annulment (18 March 2019) (**RLA-230**), ¶ 220 (“while adverse inferences are tools available for tribunals to deter parties from refusing to comply with their orders about the production of evidence, nothing requires that a tribunal grant such inferences.”).

the Iran-U.S. Claims Tribunal, known as the “Sharpe Test.” This test, which has been adopted or endorsed by investment tribunals, requires the satisfaction of five cumulative conditions before an adverse inference may be drawn:

- i. The party seeking the adverse inference must produce all available evidence corroborating the inference sought;
- ii. The tribunal must be satisfied that the requested evidence actually exists and is in the possession, control, or custody of the party against whom the order is directed;
- iii. The inference sought must be reasonable, consistent with the facts in the record, and logically related to the likely nature of the evidence withheld;
- iv. The party seeking the adverse inference must produce *prima facie* evidence in support of its position; and
- v. The non-producing party must know, or have reason to know, of its obligation to produce the evidence in question.⁴⁹²

305. In addition to these five prongs, the requesting party must also specify the precise inference it wishes the tribunal to draw. Crucially, adverse inferences do not shift the burden of proof, nor do they relieve the requesting party of the burden of proving its allegations.⁴⁹³

306. Against this legal framework, investment tribunals are overwhelmingly reluctant to draw adverse inferences, even when the underlying circumstances were arguably more compelling than here.⁴⁹⁴ Indeed, applying the Sharpe Test and the principles set out above, Amorrortu’s request must be denied for the following reasons.

307. *First*, Peru produced what was available to it, and the Tribunal has already addressed this issue. In Procedural Order No. 8, the Tribunal recorded Peru’s position that the

⁴⁹² See J. K. Sharpe, “Drawing Adverse Inferences from the Non-production of Evidence,” in *Arbitration International*, Vol. 22, No. 4 (2006) (RLA-209).

⁴⁹³ See *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/I, Award (16 December 2002) (RLA-4), ¶ 177; M. J Solis, “Adverse inferences in investor-state arbitration,” in *Arbitration International*, 2018, 34 (8 January 2018) (RLA-226), p. 102.

⁴⁹⁴ See, e.g., *Stans Energy Corp. and Kutisay Mining LLC v. Kyrgyz Republic (II)*, PCA Case No. 2015-32, Award (20 August 2019) (RLA-232), ¶¶ 480-481; *Republic of Croatia v. MOL Hungarian Oil and Gas Company Plc*, PCA Case No. 2014-15, Final Award (23 December 2016) (RLA-223), ¶¶ 131-135.

documents in question are “perfectly legible” and, crucially, produced “exactly in the same format and quality as [they are] kept by the Lava Jato Special Team.”⁴⁹⁵ [REDACTED]

[REDACTED] as maintained by that prosecutorial body. This explanation constitutes a “satisfactory explanation” within the meaning of Article 9(7) of the IBA Rules. Where a satisfactory explanation for non-production has been given, the threshold for drawing adverse inferences is not met. Just as the tribunal in *Stans Energy* accepted the producing party’s assurance regarding its reasonable search, this Tribunal should accept Peru’s explanation that it produced what was available. In any case, the Tribunal was already satisfied with Peru’s explanation as evidenced in Procedural Order No. 8, and there is no reason for the Tribunal to revisit this decision.

308. *Second*, and related to the above, Amorrortu fails to satisfy the second prong of the Sharpe Test regarding accessibility. Amorrortu has not demonstrated that more complete versions of these documents exist, let alone that they are within Peru’s possession, custody, or control. The second prong requires the requesting party to establish that the requested party has or should have access to the evidence sought. Amorrortu’s bare assertion that information was “cut off and not included”⁴⁹⁶ does not satisfy this requirement.

309. *Third*, Amorrortu fails to satisfy the third prong concerning reasonableness of the adverse inference requested. The inference Amorrortu requests— [REDACTED]

[REDACTED] is speculative and inconsistent with the record. As established in Sections II.B and II.C *supra* there is no evidence of corruption or illicit activities specifically concerning the Blocks and Bidding Processes. Amorrortu is essentially asking the Tribunal to assume that truncated formatting in documents with innocuous information conceals evidence of corruption that the very entity maintaining those documents has not found to exist. This is precisely the type of reasoning investment tribunals have rejected. The inference sought must be “consistent with facts in the

⁴⁹⁵ PO8, ¶ 34.

⁴⁹⁶ Reply, ¶ 424.

⁴⁹⁷ Reply, ¶ 427.

record and logically related to the likely nature of the evidence withheld.”⁴⁹⁸ Amorrortu’s request satisfies neither requirement.

310. Amorrortu’s request also fails to satisfy the *fourth* prong because he has not adduced any *prima facie* evidence that the specific “missing information” in the Confidential Documents would establish corruption relating to Blocks III and IV. As one commentator explains, the “effectiveness” of an adverse inference is “gaged in the context of the rest of the evidentiary record.”⁴⁹⁹ Here, the evidentiary record shows the opposite of what Amorrortu claims: [REDACTED]

[REDACTED]

[REDACTED]

311. *Fifth*, Amorrortu fails to specify the precise inference sought. Requesting that the Tribunal “draw all adverse inferences it deems necessary” is the quintessential “scatter-gun approach” that tribunals have rejected.⁵⁰⁰ As the Sharpe Test requires, the requesting party must articulate the specific factual inference it seeks the tribunal to make. Amorrortu’s vague request to infer that unspecified “missing information” would “even further corroborat[e]” unspecified “additional meetings and bribes” does not identify a precise fact to be established by the inference.⁵⁰¹ In *UPS v. Canada*, the tribunal emphasized that “[w]hether [a tribunal] does draw such an inference will depend on the circumstances surrounding that issue, which is not a matter that can sensibly be ruled in the abstract.”⁵⁰² Amorrortu’s request is exactly the type of abstract, imprecise demand that tribunals reject.

⁴⁹⁸ S. Greenberg and F.Lautenschlager, “Adverse Inferences in International Arbitration Practice,” in *ICC International Court of Arbitration Bulletin Vol. 22, Num. 2* (2011) (RLA-216), p. 49.

⁴⁹⁹ M. J Solis, “Adverse inferences in investor-state arbitration,” in *Arbitration International*, 2018, 34 (8 January 2018) (RLA-226), p. 91.

⁵⁰⁰ S. Greenberg and F.Lautenschlager, “Adverse Inferences in International Arbitration Practice,” in *ICC International Court of Arbitration Bulletin Vol. 22, Num. 2* (2011) (RLA-216), p. 54.

⁵⁰¹ Reply, ¶ 427.

⁵⁰² See M. J Solis, “Adverse inferences in investor-state arbitration,” in *Arbitration International*, 2018, 34 (8 January 2018) (RLA-226), p. 81.

312. In sum, Amorrortu fails to articulate any cognizable basis or legitimate purpose for his request to strip legally protected documents from their confidentiality designations in this proceeding. Similarly, his request for adverse inferences lacks any legal or factual foundation. Such perfunctory requests must be denied in their entirety.⁵⁰³

IV. AMORRORTU’S CLAIM IS OUTSIDE THE JURISDICTION OF THE TRIBUNAL

313. Amorrortu’s response to each of Peru’s jurisdictional objections fail under the Treaty’s text, lack support in the case law, and rely on mischaracterizations of both the law and Peru’s positions in this arbitration. As demonstrated below, the Tribunal lacks jurisdiction on six independent grounds: Amorrortu’s claim was already time-barred under Article 10.18.1 of the Treaty when he submitted it to arbitration (**Section A**); his dominant and effective nationality was Peruvian at the time of the alleged breach, and his strategic renunciation of that nationality constitutes an abuse of process (**Section B**); Amorrortu did not have a protected investment (**Section C**); the disputed measures are not attributable to Peru because Perupetro did not exercise governmental authority in connection with the adjudication of the Blocks (**Section D**); there is no connection between Peru’s purported Treaty breach and the damages Amorrortu claims (**Section E**); and Amorrortu failed to comply with the procedural prerequisites for submitting a claim to arbitration under Articles 10.15 and 10.16.2 of the Treaty, leaving Peru’s consent to arbitration unperfected (**Section F**).

A. Amorrortu’s Claim was Already Time-Barred When He Submitted it to Arbitration on 21 August 2023

314. In the Statement of Defense, Peru demonstrated that Amorrortu’s claim was time-barred under Article 10.18.1 of the Treaty because he filed it more than three years after he first

⁵⁰³ Peru reserves all its rights with respect to Amorrortu’s requests, including that the Tribunal order Claimant to assume all associated costs.

acquired knowledge of the alleged breach.⁵⁰⁴ Peru’s time-bar objection is grounded on four basic propositions:

- *First*, Amorrortu’s claim is deemed to have been submitted on the date Peru received the Statement of Claim, *i.e.*, on 21 August 2023.⁵⁰⁵
- *Second*, the **Critical Date** — *i.e.*, the earliest possible date on which Amorrortu would be permitted to have acquired knowledge of the alleged Treaty breach for purposes of the limitation period of Article 10.18.1 — is 21 August 2020.⁵⁰⁶ Thus, if Amorrortu first acquired knowledge of the breach and his losses earlier than the **Critical Date**, the claim is time-barred.
- *Third*, Amorrortu’s claim is time-barred because he himself has pled that he first acquired knowledge of the breach and the loss in June 2019, a year earlier than the **Critical Date**.⁵⁰⁷
- *Fourth*, based on Claimant’s own case and evidence, the latest date on which Amorrortu first acquired knowledge of the alleged breach and the loss was **5 February 2015**.⁵⁰⁸ On that date, Amorrortu wrote a letter to Perupetro’s General Manager complaining about the “illegality” of the adjudication of Block III to G&M through a public bid rather than through a direct negotiation with Baspetro.⁵⁰⁹

315. These propositions are undisputed. Amorrortu unequivocally stated in the SoC that he first acquired knowledge of the breach in June 2019.⁵¹⁰ Amorrortu cannot walk away from this

⁵⁰⁴ SoD, ¶¶ 217-219.

⁵⁰⁵ SoD, ¶ 222.

⁵⁰⁶ SoD, ¶ 222.

⁵⁰⁷ SoD, ¶ 219.

⁵⁰⁸ SoD, ¶ 228(v).

⁵⁰⁹ Letter from B. Amorrortu (Baspetro) to I. Tafur Marín (Perupetro) (5 February 2015) (C-16), p. 2.

⁵¹⁰ SoC, ¶¶ 258-259 (“such conduct was in breach of the USPTA was unknown and unknowable to Amorrortu until June 2019 when Graña y Montero finally acknowledged its involvement in the Corruption Scheme undertaken together with Odebrecht in various megaprojects in Peru. [...] Amorrortu did not become aware of the fact that Peru’s prior conduct was unlawful under the USPTA until June 2019 and could not have learned such information earlier with any amount of due diligence.”) (emphasis omitted). *See also Bacilio Amorrortu v. Republic of Peru* [I], PCA Case No. 2020-11, Notice of Arbitration (13 February 2020) (RLA-53), p. 4 (“The evidence of corruption began to surface in June 2019 when Graña y Montero admitted that the company had in fact bribed the government of Peru to obtain several government projects.”).

statement.⁵¹¹ In his Reply, he also concedes that the **Critical Date** for purposes of Article 10.18.1 of the Treaty is 21 August 2020.⁵¹² Because the date Amorrortu first acquired knowledge of the alleged breach, *i.e.* June 2019, is earlier than the **Critical Date**, Amorrortu's claim is time-barred.⁵¹³ The Tribunal need not look beyond Claimant's own pleadings to reach that conclusion.

316. In the Reply, Amorrortu advances two arguments against Peru's time-bar objection.⁵¹⁴ The first argument is that "the statute of limitations period here was tolled by the filing of *Amorrortu I.*"⁵¹⁵ And the second is that "Amorrortu did not gain actual (or constructive) knowledge of the corrupt measure, which are (sic) tied to Peru's Treaty breach until August 31, 2020, the date upon which information became available reflecting the diaries showing that the

⁵¹¹ According to Claimant, Peru "disingenuously relies once more on the last sentence of paragraph 259 of [the] Statement of Claim to suggest that Mr. Amorrortu alleges that he first acquired knowledge of the corruption in 2019." Reply, ¶ 348. This is empty rhetoric. The last sentence of paragraph 259 of the SoC is unequivocal. There, Claimant says: "As a result, **Amorrortu did not become aware of the fact that Peru's prior conduct was unlawful under the USPTA until June 2019 and could not have learned such information earlier with any amount of due diligence.**" (emphasis added). Those are Amorrortu's own words. No matter how hard he tries to obfuscate the issue, those words cannot be erased. In the Reply, Amorrortu tries to climb out of his own grave by claiming that "[o]nly at that point, in 2019, could Amorrortu **begin to suspect** for the first time about the alleged corruption." (emphasis added). See Reply, ¶ 349. It is unclear what the difference is between "becoming aware" or "beginning to suspect." The point is that, as a result of that knowledge, Amorrortu filed a NoI just three months later. See Bacilio Amorrortu's Notice of Intent to Arbitrate Against Peru (19 September 2019) (C-23). Amorrortu would not have filed a NoI if he did not know that there was a breach.

⁵¹² Reply, ¶ 347 ("Peru argues that Amorrortu was 'well-aware' of the alleged breaches **before the August 21, 2020 critical date** because he complained of irregularities, illegalities, and discrimination in 2014 and 2015.") (emphasis added). See also Claimant's Opposition to Bifurcation, ¶ 6 ("Everything before **this date of August 21, 2020** was based upon Mr. Amorrortu's suspicion, which was tangentially corroborated by an incrementally developing investigation. But, as of this date, Peru continues to deny the existence of corruption.") (emphasis added).

⁵¹³ See, e.g., *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA (31 May 2016) (RLA-28), ¶ 200 ("The second step in applying DR-CAFTA Article 10.18.1 requires the Tribunal to determine the date on which the Claimant 'first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.1 6.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b) has incurred loss or damage.' A comparison of that date with the 'critical date' will then enable the Tribunal to decide whether it is competent to hear the claims in this proceeding: **Should the date on which the Claimant acquired actual or constructive knowledge of the alleged breach and of the corresponding damage be earlier than the critical date, the Tribunal would have to conclude that the Claimant's Request for Arbitration was submitted after the expiration of the limitation date and, as a consequence, the Tribunal would have no jurisdiction to hear the Claimant's claims.**") (emphasis added).

⁵¹⁴ Reply, ¶ 336.

⁵¹⁵ Reply, ¶ 336.

First Lady Nadine Heredia met with Graña y Montero’s executives to discuss Lots III and IV[...].”⁵¹⁶

317. Both arguments cannot be reconciled: if Claimant filed the Notice of Dispute in *Amorrortu I* on 13 February 2020,⁵¹⁷ he necessarily learned of the breaches before that date. Therefore, Amorrortu’s assertion that he first acquired knowledge six months later, *i.e.* on 31 August 2020, is plainly false.

318. In any event, Claimant’s arguments against Peru’s time-bar objection still fail. Any tolling or suspension of the limitations period is incompatible with the text of Article 10.18.1 of the Treaty (**Section 1**). But even if tolling or suspension of the limitations period were permitted despite the Treaty’s clear terms, the evidence in the record demonstrates that Amorrortu’s claim was already time-barred when he submitted his Statement of Claim in the *Amorrortu I* case (**Section 2**).

1. The limitations period of Article 10.18.1 is a “clear and rigid” requirement that is not subject to any “suspension, prolongation or other qualification”

319. Claimant’s argument that the *Amorrortu I* case tolled or suspended the running of the limitations period cannot be squared with the text of Article 10.18.1 of the Treaty.

320. Article 10.18.1 provides as follows:

No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.

⁵¹⁶ Reply, ¶ 336.

⁵¹⁷ *Bacilio Amorrortu v. Republic of Peru* [I], PCA Case No. 2020-11, Notice of Arbitration (13 February 2020) (**RLA-53**).

321. Whether the Treaty’s limitation period may be tolled or suspended is a matter of treaty interpretation. Under Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT), “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”⁵¹⁸

322. In his *Renco II* dissent, arbitrator Christopher Thomas underscored four key points about the text of Article 10.18.1:

a. It is clearly worded. b. Its opening words are phrased in peremptory and definitive terms: ‘No claim may be submitted...’. c. It does not express any exceptions to the three-year rule and thus the natural ordinary meaning of the clause is ‘three years means three years’. d. Of critical importance, it confers no power of any type on a tribunal to vary its application depending upon the circumstances of a particular case.⁵¹⁹

323. There is no basis for the suspension of the three-year time limitation in the USPTPA. “No claim” means no claim. Article 10.18.1 admits no exceptions. That is why arbitral tribunals have interpreted similar time-bar provisions as “clear and rigid.”⁵²⁰ The *Grand River* tribunal, for example, held that the time-bar provision is “not subject to any suspension, prolongation or other qualification.”⁵²¹

324. This is consistent with the object and purpose of limitation clauses. As the *Mobil Investments Canada Inc.* tribunal put it, “[b]y preventing claims being brought against a

⁵¹⁸ Vienna Convention on the Law of Treaties (1969) (RLA-1), Art. 31(1) (emphasis added).

⁵¹⁹ *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, Dissenting Opinion of J. C. Thomas (30 June 2020) (RLA-235), ¶ 22.

⁵²⁰ *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction (20 July 2006) (RLA-8), ¶ 29; *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/I, Award (16 December 2002) (RLA-4), ¶ 63; *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA (31 May 2016) (RLA-28), ¶ 192 (“The limitation period clause is written in plain terms and does not contemplate the suspension or ‘tolling’ of the three-year period.”).

⁵²¹ *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction (20 July 2006) (RLA-8), ¶ 29 (emphasis added).

[Contracting Party] after more than three years, [the limitation clause] guarantees for all [Contracting Parties] a degree of certainty and finality.”⁵²²

325. The United States, a Contracting Party to the USPTPA, has consistently interpreted Article 10.18.1 of the Treaty in the same way. For example, in its Non-Disputing Party Submission in the *Renco II* case, the United States explained that:

Article 10.18.1 imposes a *ratione temporis* jurisdictional limitation on the authority of a tribunal to act on the merits of a dispute. As is made explicit by Article 10.18.1, the Parties did not consent to arbitrate an investment dispute if ‘more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach’ and ‘knowledge that the claimant . . . or the enterprise . . . has incurred loss or damage.’ [...] This limitations period is a ‘clear and rigid’ requirement that is not subject to any ‘suspension,’ ‘prolongation,’ or ‘other qualification.’⁵²³

326. Amorrortu is aware that his interpretation of Article 10.18.1 of the Treaty cannot be justified under the VCLT. That is why he relies on general principles of law to read a suspension of the limitations period into Article 10.18.1.⁵²⁴ Specifically, he invokes the “gap-filling capacity” of general principles to correct what he incorrectly perceives as the “Treaty’s silence.”⁵²⁵ But as explained above, there is no silence, let alone a gap to fill: the terms of the Treaty are unambiguous.

⁵²² *Mobil Investments Canada Inc. v. Government of Canada*, ICSID Case No. ARB/15/6, Decision on Jurisdiction and Admissibility (13 July 2018) (**RLA-229**), ¶ 146. See also *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017) (**RLA-33**), ¶ 208 (“While it may be that a continuing course of conduct constitutes a continuing breach, the Tribunal considers that such conduct cannot without more renew the limitation period as this would effectively denude the limitation clause of its essential purpose, namely, to draw a line under the prosecution of historic claims.”).

⁵²³ *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, United States Article 10.20.2 Submission (6 March 2020) (**RLA-40**), ¶¶ 3-4. See also *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, United States of America Written Submission pursuant to Article 10.20.2 of the TPA (21 June 2019) (**RLA-231**), ¶ 6 (“This limitations period is a “clear and rigid” requirement that is not subject to any “suspension,” “prolongation,” or “other qualification.” An investor or enterprise first acquires knowledge of an alleged breach and loss under Article 10.18.1 as of a particular “date.” Such knowledge cannot first be acquired on multiple dates or on a recurring basis.”).

⁵²⁴ Reply, ¶ 340.

⁵²⁵ Reply, ¶ 340.

Amorrortu cannot rely on general principles of law to rewrite the terms of the Treaty.⁵²⁶ Article 10.18.1 is *lex specialis*⁵²⁷ and its operative terms cannot be displaced by general principles.⁵²⁸

⁵²⁶ It is well-established in international law that general principles of law (GPL) cannot be used to displace the operative terms of a treaty. See e.g., Interpretation of Judgments Nos. 7 and 8 (*the Chorzów Factory*), PCIJ Series A. No 13, Dissenting Opinion of Judge Anzilotti (16 December 1927) (RLA-198), p. 27 (“if there be a case in which it is legitimate to have recourse, in the absence of conventions and custom, to ‘the general principles of law recognized by civilized nations’, mentioned in No. 3 of Article 38 of the Statute, that case is assuredly the present one.”) (emphasis added); *Fisheries case, Judgment of December 18th, 1951: I.C.J. Reports 1951, p. 145 (Individual Opinion of Judge Alvarez)* (RLA-199), p. 147 (“In accordance with uniformly accepted doctrine, international judicial tribunals must, in the absence of principles provided by conventions, or of customary principles on a given question, apply the general principles of law. This doctrine is expressly confirmed in Article 38 of the Statute of the Court.”) (emphasis added); *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 101 (Separate Opinion of Judge Fouad Ammoun)* (RLA-203), pp. 131-132 (“[T]here is a lacuna in international law when delimitation is not provided for either by an applicable general convention (Article 38, paragraph 1 (a)), or by a general or regional custom (Article 38, paragraph 1 (b)). There remains sub-paragraph (c), which appears to be of assistance in filling the gap.”). See also *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966, p. 250 (Dissenting Opinion of Judge Tanaka)* (RLA-202), p. 299 (“an important role which can be played by Article 38, paragraph 1 (c), in filling in gaps in the positive sources in order to avoid non liquet decisions, can only be derived from the natural law character of this provision.”); V. Lowe, “How International Law is Made” in *International Law* (OUP 2007) (RLA-213), p. 87 (“[General principles of law] may appear to be inferior to treaties and customary international law: a stop-gap to which judges may revert if they fail to find a rule of treaty or custom that determines an issue before them. There is some truth to this view.”).

⁵²⁷ International Law Commission, UN Doc No. A/CN.4/L.702, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law (18 July 2006) (RLA-210), pp. 8-9 (“(5) General principle. The maxim *lex specialis derogat legi generali* is a generally accepted technique of interpretation and conflict resolution in international law. It suggests that whenever two or more norms deal with the same subject matter, priority should be given to the norm that is more specific [...] in practice treaties often act as *lex specialis* by reference to the relevant customary law and general principles.”). See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14 (27 June 1986) (RLA-65), ¶ 274 (“In general, treaty rules being *lex specialis*, it would not be appropriate that a State should bring a claim based on a customary-law rule if it has by treaty already provided means for settlement of such a claim.”).

⁵²⁸ See e.g., *Dispute Concerning Access to Information Under Article 9 of the OSPAR Convention (Ireland v. United Kingdom)*, XXIII RIAA 59, Final Award (2 July 2003) (RLA-206), ¶ 84. (“It should go without saying that the first duty of the Tribunal is to apply the OSPAR Convention [Convention for the Protection of the Marine Environment of the North-East Atlantic]. An international tribunal, such as this Tribunal, will also apply customary international law and general principles unless and to the extent that the Parties have created a *lex specialis*.”); *Case concerning Right of Passage over Indian Territory (Merits)*, Judgment of 12 April 1960: I.C.J. Reports 1960, p. 6 (RLA-200), pp. 43-44 (“Having arrived at the conclusion that the course of dealings between the British and Indian authorities on the one hand and the Portuguese on the other established a practice, well understood between the Parties, by virtue of which Portugal had acquired a right of passage in respect of private persons, civil officials and goods in general, the Court does not consider it necessary to examine whether general international custom or the general principles of law recognized by civilized nations may lead to the same result [...] Where therefore the Court finds a practice clearly established between two States which was accepted by the Parties as governing the relations between them, the Court must attribute decisive effect to that practice for the purpose of determining their specific rights and obligations. Such a particular practice must prevail over any general rules.”).

327. Arbitral tribunals have repeatedly declined to read into BITs general principles of law on time limits when the treaty itself provides none.⁵²⁹ Under this logic, applying general principles on tolling or suspension is even less defensible where the applicable BIT contains a limitations period in terms that are “clear and rigid” and “not subject to any suspension, prolongation or other qualification.” That logic applies with equal force here.

328. Claimant’s reliance on the majority award in *Renco II* is misplaced.⁵³⁰ As arbitrator Christopher Thomas observed in his dissenting opinion in *Renco II*, “the focus of [the majority] analysis is on what happened when the first claim was submitted to arbitration before the *Renco I* tribunal and a desire to avoid what is regarded to be a manifestly unreasonable result as a consequence of that claim’s dismissal.”⁵³¹ Because the *Renco I* tribunal was “troubled by what it considered to be the late raising of the objection”⁵³² that resulted in the dismissal of the case, it observed that “justice would be served if Peru accepted that time stopped running for the purposes of Article 10.18(1) when Renco filed its Amended Notice of Arbitration on August 9, 2011.”⁵³³

329. The “desire to avoid an unreasonable result” was the driving force behind the majority decision in *Renco II* declaring the tolling of the statute of limitations.⁵³⁴ The exceptional circumstances of the *Renco* saga are not present in this case. In contrast with *Renco I*, it is undisputed that Peru timely filed its waiver objection in the *Amorrortu I* case. The “sentiment

⁵²⁹ *Webuild S.p.A. (formerly Salini Impregilo S.p.A.) v. Argentine Republic (I)*, ICSID Case No. ARB/15/39, Decision on Jurisdiction and Admissibility (23 February 2018) (**RLA-227**), ¶¶ 83-88; *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award (14 December 2023) (**RLA-188**), ¶¶ 352-354.

⁵³⁰ Reply, ¶¶ 337-339

⁵³¹ *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, Dissenting Opinion of J. C. Thomas (30 June 2020) (**RLA-235**), ¶ 16 (emphasis added).

⁵³² *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, Dissenting Opinion of J. C. Thomas (30 June 2020) (**RLA-235**), ¶ 3.

⁵³³ *The Renco Group, Inc. v. Republic of Peru [I]*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction (15 July 2016) (**RLA-147**), ¶ 188.

⁵³⁴ *The Renco Group, Inc. v. Republic of Peru [III]*, PCA Case No. 2019-46, Dissenting Opinion of J. C. Thomas (30 June 2020) (**RLA-235**), ¶ 16.

which [drove] the majority’s analysis” in *Renco II* is legally irrelevant⁵³⁵ and, in any event, simply does not arise here.

330. There is another reason why the *Amorrortu I* arbitration could not have suspended the running of the statute of limitations of the Treaty: the *Amorrortu I* arbitration was never validly submitted because of the defective waiver.

331. The USPTPA establishes that a claim governed by the UNCITRAL arbitration rules is “deemed” to be submitted to arbitration with the submission of both a request for arbitration and a Statement of Claim.⁵³⁶ But the Notice of Arbitration and the Statement of Claim in *Amorrortu I* could not have suspended the three-year limitation period because Mr. Amorrortu lacked a valid waiver.⁵³⁷ As a result, the submission of his claim was invalid, and the Tribunal was “never validly constituted.”⁵³⁸ Arbitrator Christopher Thomas expressed the same view in his dissenting opinion in the *Renco II* case. According to him,

A valid submission to arbitration would have suspended the running of time for the Renco I tribunal because the claim was submitted to arbitration in April 2011 and therefore the events occurring as of the date of the entry into force of the Treaty would fall well within the three-year limitation period applicable to the Renco I proceeding. That would have been the case had the Renco I tribunal been established properly. But that did not occur due to the defective waiver which the Claimant granted in both its original Notice of

⁵³⁵ *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, Dissenting Opinion of J. C. Thomas (30 June 2020) (**RLA-235**), ¶ 17 (“I well understand the sentiment which has driven the majority’s analysis, but it is not legally relevant to an ascertainment of the temporal jurisdiction of this Tribunal. Limitation periods are, by definition and intention, categorical in their application and when applied in the facts of a particular case can be seen to produce harsh consequences for a claimant. But they reflect the choices of legislatures, in the context of municipal law, and the agreement of the State Parties, in the context of an international treaty.”).

⁵³⁶ USPTPA Investment Chapter (**CLA-1**), Art. 10.16.4 (“A claim shall be deemed submitted to arbitration under this Section when the claimant’s notice of or request for arbitration (‘notice of arbitration’): [...] referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent.”).

⁵³⁷ *Bacilio Amorrortu v. Republic of Peru [I]*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 250 (“the Tribunal finds that the Claimant’s defective waiver cannot be cured.”).

⁵³⁸ *Bacilio Amorrortu v. Republic of Peru [I]*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 242.

Arbitration and Statement of Claim and in its Amended Notice of Arbitration and Statement of Claim of 11 August 2011.⁵³⁹

332. Relying on the *Renco I* majority’s analysis, Amorrortu argues that a notice of arbitration with a defective waiver can still be considered as having been properly submitted to arbitration under Article 10.16.4 of the Treaty.⁵⁴⁰ In his view, the notice of arbitration and the statement of claim need only be compliant with the “formal filing requirements of the UNCITRAL Rules.”⁵⁴¹ This argument is without merit. The fact that a “claim shall be *deemed* submitted to arbitration” under Article 10.16.4 when the notice of arbitration and the statement of claim are filed says nothing about the effects of an invalid waiver. Indeed, the waiver requirement is a “condition” of consent to arbitration under a different provision of the Treaty, *i.e.*, Article 10.18.⁵⁴² And consent to arbitration cannot be perfected unless the investor submits a valid waiver.⁵⁴³ This is why Article 10.18.2 of the Treaty states that “No claim” may be submitted to arbitration without a valid waiver.⁵⁴⁴ Once it is established that a claim was submitted without a valid waiver, the claim can no longer be “deemed submitted” to arbitration.⁵⁴⁵

333. Finally, Amorrortu accuses Peru of “ignor[ing] that *Amorrortu I* was subject to a Petition to Vacate” in French courts.⁵⁴⁶ To Amorrortu, this means that “[the *Amorrortu II*] Arbitration was commenced while *Amorrortu I* was still pending.”⁵⁴⁷ Therefore, according to

⁵³⁹ *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, Dissenting Opinion of J. C. Thomas (30 June 2020) (**RLA-235**), ¶ 13.

⁵⁴⁰ Reply, ¶ 342.

⁵⁴¹ Reply, ¶ 342.

⁵⁴² USPTPA Investment Chapter (**CLA-1**), Art. 10.18.

⁵⁴³ *Bacilio Amorrortu v. Republic of Peru [I]*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 250.

⁵⁴⁴ USPTPA Investment Chapter (**CLA-1**), Art. 10.18.2(b).

⁵⁴⁵ *Bacilio Amorrortu v. Republic of Peru [I]*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 234 (“The Claimant’s Memorial was filed on September 11, 2020. Therefore, in accordance with Article 10.16.4, the claim was deemed submitted to arbitration on September 11, 2020. However, on September 11, 2020, no compliant waiver existed. Only the Claimant’s conditional (and invalid) waiver had been submitted. Since a valid waiver is a pre-condition to consent, as at September 11, 2020, the Respondent’s consent was lacking and no arbitration agreement existed.”) (emphasis added).

⁵⁴⁶ Reply, ¶ 353.

⁵⁴⁷ Reply, ¶ 353.

Claimant, “even if *Amorrortu II* was untimely filed, this arbitration would relate back to the still pending *Amorrortu I* for purposes of the limitations period.”⁵⁴⁸ These passages of Claimant’s Reply make clear that the sole purpose of filing a petition to vacate the *Amorrortu I* award in France was to circumvent the limitations period of Article 10.18.1 of the Treaty. This is an admission of abuse of right.⁵⁴⁹ Instead of initiating this arbitration, Claimant should have waited for the result of his petition to vacate. It is because of this abusive conduct that the Tribunal should reject Claimant’s attempts to suspend the running of the statute of limitations in this case.

2. Amorrortu’s claim was already time-barred when he submitted it to the *Amorrortu I* tribunal

334. In any case, the issue of the tolling of the limitation period is irrelevant: Amorrortu’s claim was already time-barred when he submitted it to the *Amorrortu I* tribunal.⁵⁵⁰

335. Claimant suggests that the breaches he knew about in 2014/2015 are different breaches from the alleged corruption scheme that resulted in the adjudication of Blocks III and IV. According to him, this corruption scheme (i) is “the very measure that breached the Treaty” and an “independent measure” relative to the other breaches alleged;⁵⁵¹ and (ii) he could not have acquired knowledge of the alleged corruption prior to 31 August 2020.⁵⁵²

336. None of these contentions withstands scrutiny.

⁵⁴⁸ Reply, ¶ 353.

⁵⁴⁹ *Orascom TMT Investments S.à r.l. v. Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Award (31 May 2017) (**RLA-224**), ¶ 540 (“The doctrine of abuse of rights prohibits the exercise of a right for purposes other than those for which the right was established.”); *WCV World Capital Ventures Cyprus Ltd. & Channel Crossings Ltd. v. Czech Republic*, PCA Case No. 2016-12, Interim Award on Jurisdiction (25 April 2018) (**RLA-228**), ¶ 477 (“The Tribunal shares the Parties’ position that if a claimant in investment arbitration engages in bad faith conduct or an abuse of rights, such behaviour may result in the forfeiture of the investor’s right to treaty protection. There is ample case law confirming this conclusion.”); *Ampal-American Israel Corporation et al. v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Jurisdiction (1 February 2016) (**RLA-221**), ¶ 333 (“the abuse of process constituted by the double pursuit of the MAGL portion of the claim in both proceedings must now be treated as having crystallised.”).

⁵⁵⁰ SoD, ¶¶ 228-234.

⁵⁵¹ Reply, ¶ 355.

⁵⁵² Reply, ¶ 354.

337. *First*, corruption is not a freestanding cause of action under the USPTPA or customary international law.⁵⁵³ Amorrortu’s assertion that “corruption is not permissible by the Treaty and is therefore a breach in itself” has no foundation in the USPTPA’s text or the customary international law minimum standard of treatment incorporated by Article 10.5.⁵⁵⁴ Claimant has consistently failed to offer any legal authority to support the proposition that an act of corruption constitutes a breach of customary international law.⁵⁵⁵

338. *Second*, Amorrortu only alleges one breach in this case: the breach of the Minimum Standard of Treatment (MST) under Article 10.5 of the Treaty.⁵⁵⁶ Amorrortu’s corruption claim is only one of four ways in which he argues that Peru breached the MST.⁵⁵⁷ But the source of that breach, according to Amorrortu, is one single measure: Perupetro’s decision to abort “the direct negotiation process with Baspetro to give the contract to Graña y Montero based on corrupt motives.”⁵⁵⁸ On Claimant’s own case, the alleged corruption was simply the motive behind the measure.⁵⁵⁹

339. But —to use the terms of Article 10.18.1 of the Treaty— Amorrortu “first acquired knowledge of the breach” when Perupetro launched the public bidding for Blocks III and IV, *i.e.*, on 14 July 2014.⁵⁶⁰ The date of the breach is “the one on which the State adopts the disputed

⁵⁵³ SoD, ¶¶ 450-461.

⁵⁵⁴ Reply, ¶ 356.

⁵⁵⁵ SoD, ¶¶ 453-455

⁵⁵⁶ SoD, ¶ 216.

⁵⁵⁷ SoD, ¶ 216.

⁵⁵⁸ NoA, ¶ 90.

⁵⁵⁹ SoD, ¶ 216.

⁵⁶⁰ SoD, ¶ 217.

measure.”⁵⁶¹ Given that Amorrortu submitted a (defective) bid for Block III⁵⁶², it is undisputed that he knew about the measure when it was taken.

340. The *Corona Materials* tribunal observed that, “in order for the limitation period to begin to run, it is not necessary that a claimant be in a position to fully particularize its legal claims (in that they can be subsequently elaborated with more specificity)[...].”⁵⁶³ But in this case, Amorrortu was in a position to “fully particularize” his claim, as evidenced by the complaints he sent to the United States Department of State⁵⁶⁴ and to Perupetro immediately after the Blocks were adjudicated to Graña y Montero.⁵⁶⁵ He sent those letters complaining about discrimination and irregularities in the bidding process because, at that point in time, there were “sufficient (alleged) facts to constitute a cause of action enabling the [investor] to bring a claim.”⁵⁶⁶ Even if all this was motivated by corruption (*quod non*), he did not need to know this in order to bring an Article 10.5 claim for “complete lack of due process and manifest lack of reasons in Peru’s conduct through its neglect of duty to reply to Amorrortu and never detail why any of his filings were deficient to him... instead opting to go straight to public bidding after the filing of his documents in direct negotiation.”⁵⁶⁷ And when Blocks III and IV were adjudicated through a public bid to Graña y Montero in December 2014, Amorrortu had “the first appreciation of loss or damage in

⁵⁶¹ *Philip Morris Asia Limited v. Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility (17 December 2015) (RLA-140), ¶ 530 (citing *Renée Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award (9 January 2015) (RLA-136), ¶ 149).

⁵⁶² SoD, ¶¶ 228(i)-(v), 447-448. See also Baspetro, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (R-35).

⁵⁶³ *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA (31 May 2016) (RLA-28), ¶ 194.

⁵⁶⁴ See SoC, ¶ 88; Witness Statement of Bacilio Amorrortu (18 August 2023) (“**Amorrortu First Witness Statement**”), ¶ 97; SoD, ¶ 230.

⁵⁶⁵ Letter from B. Amorrortu (Baspetro) to I. Tafur Marín (Perupetro) (15 December 2014) (C-17); Letter from B. Amorrortu (Baspetro) to I. Tafur Marín (Perupetro) (5 February 2015) (C-16), p. 2 (translation provided by Counsel. In the original Spanish: “*El que PERUPETRO, hasta el día de hoy, no haya aceptado nuestra Propuesta para operar el Lote III es ilegal y nos afecta, porque lo consideramos una clara discriminación ejecutada por PERUPETRO.*”) (emphasis added). See also SoD, ¶ 228(i)-(v).

⁵⁶⁶ *Seo Jin Hae v. Republic of Korea*, HKIAC Case No. HKIAC/18117, Concurring Opinion of Dr. Benny Lo (21 September 2019) (RLA-37), ¶ 37.

⁵⁶⁷ Reply, ¶ 478. The same applies to Claimant’s legitimate expectations claim. See Reply, ¶¶ 481-482.

consequence of a breach.”⁵⁶⁸ The “first appreciation of loss or damage” is what “starts the limitation clock ticking.”⁵⁶⁹ When the investor becomes aware of the loss or damage, knowledge of the breach cannot be disputed. Thus, by the time Claimant submitted his Statement of Claim in the *Amorrortu I* case in September 2020, his claims was already time-barred.

341. In conclusion, Amorrortu’s claim is time-barred because he submitted it more than three years after he first acquired knowledge of the alleged breach.

B. Amorrortu Is Not Entitled to The Protections of the USPTPA Because His Peruvian Nationality Was His Dominant and Effective Nationality at the Time of the Alleged Breach

342. In its SoD, Peru demonstrated that the Tribunal lacks jurisdiction *ratione personae* because Amorrortu does not satisfy the Treaty’s nationality requirement for dual nationals.⁵⁷⁰ At its core, Amorrortu’s Reply is that “[he] is an American national.”⁵⁷¹ This response misses the mark. Peru has never disputed Amorrortu’s American nationality. Peru’s objection rests on the undisputed fact that, at the time of the alleged breach, he was a dual national of Peru and the United States. The question Amorrortu should have addressed in his Reply is whether, at the time of the alleged breach, his dominant and effective nationality was American. This Section demonstrates that the answer remains “No.”

343. The undisputed legal standard governing dual nationals under the Treaty is the “dominant and effective nationality” test (**Section 1**). Applying that standard, the evidence establishes that Amorrortu’s dominant and effective nationality was Peruvian at the time of the

⁵⁶⁸ *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017) (**RLA-33**), ¶ 213.

⁵⁶⁹ *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017) (**RLA-33**), ¶ 213.

⁵⁷⁰ See SoD, § III.B.

⁵⁷¹ Reply, p. 135.

alleged breach (**Section 2**) and his last-minute renunciation constitutes an abuse of process (**Section 3**).

1. Amorrortu does not dispute the applicable legal standard set out by Peru in its SoD

344. The legal standard applicable to Peru’s nationality objection is undisputed. Under Article 10.28 of the USPTPA, “a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.” This provision reflects the well-established principle that dual nationals cannot invoke their more advantageous nationality where their ties to the other State are stronger. Nationality must be assessed at the time the challenged measures were “adopted or maintained.”⁵⁷²

345. The Reply does not dispute this standard. Instead, Amorrortu maintains that the “*Heemsen* test [...] is reductive in this instance.”⁵⁷³ Amorrortu does not explain what he means by this assertion.

346. Assuming that by “*Heemsen* test” Amorrortu refers to the quote cited by Peru at paragraph 245 of its SoD, he misinterprets Peru’s position. As Peru explained, “[t]o determine which nationality is dominant and effective, tribunals consider a range of factors”⁵⁷⁴ including those listed at paragraph 240. Peru’s reliance on *Heemsen* was one of several examples demonstrating the consistent approach tribunals have taken.⁵⁷⁵ Amorrortu neither acknowledges nor challenges any of these authorities.

⁵⁷² United States and Peru Trade and Promotion Agreement Investment Chapter (“**USPTPA Investment Chapter**”) (12 April 2006) (**CLA-1**), Art. 10.1. The United States has formally confirmed this position. In *Ballantine v. Dominican Republic*, the United States stated that “in order for the dispute to come within the scope of Chapter Ten, the investor must be ‘an investor of another Party’, i.e., a Party other than the respondent Party, at the time of the purported breach.” *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Submission of the United States of America (6 July 2018) (**RLA-159**), ¶ 4 (emphasis in original).

⁵⁷³ Reply, ¶ 386.

⁵⁷⁴ SoD, ¶ 240.

⁵⁷⁵ SoD, note 404.

347. In any event, Amorrortu cannot escape the objective nature of the relevant inquiry. The *Carrizosa v. Colombia* tribunal recently explained the proper approach with precision:

It is one thing to evaluate how an individual might hold himself out to the world on the basis of extrinsic evidence; it is another to base that determination upon the mere subjective feelings, however genuine and deeply held, of the subjects of the enquiry themselves and which it is impossible to test, rather than to weigh any such subjective expressions of association against objectively verifiable indicia. What is required of the Tribunal is that it undertakes an objective factual enquiry.⁵⁷⁶

348. This principle is fatal to Amorrortu’s case. He cannot overcome the evidence of his Peruvian nationality by asserting that he “considered himself” exclusively American. The inquiry is objective, not subjective—it examines how an individual holds himself out to the world, not his internal self-perception. The evidence of how Amorrortu held himself out—to Peruvian authorities, notaries, Perupetro, and electoral officials—overwhelmingly supports the conclusion that his dominant and effective nationality was Peruvian.

2. Amorrortu’s effective and dominant nationality was Peruvian when the alleged breach occurred

349. An objective review of the facts of this case leads to an inescapable conclusion: Amorrortu’s dominant and effective nationality was Peruvian when the alleged breach occurred in July 2014. The evidence—both what Amorrortu offers and what he ignores—compels this result.

350. Before examining the evidence, Peru addresses Amorrortu’s threshold arguments, which fundamentally mischaracterize the relevant inquiry. Amorrortu claims he “[did] not consider himself a dual citizen” and that his failure to formally renounce his Peruvian nationality “does not affect” his nationality, which was “at all times [...] American.”⁵⁷⁷ This argument rests on a fundamental misunderstanding of the applicable legal standard. Because Amorrortu did not renounce his Peruvian nationality until September 2019, he was—as a matter of law—a dual

⁵⁷⁶ *Alberto Carrizosa Gelzis et al. v. Republic of Colombia*, PCA Case No. 2018-56, Award (7 May 2021) (**RLA-236**), ¶ 196 (emphasis added).

⁵⁷⁷ Reply, ¶¶ 373-374, 393.

national at the time of the alleged breaches in 2014.⁵⁷⁸ This dual nationality subjects him to the dominant and effective nationality test under Article 10.28—a test he has not challenged.

351. To be sure, self-interested self-identification cannot alter legal status.⁵⁷⁹ Nor does it advance Amorrortu’s case to emphasize that he has been an American citizen since 2010, long “before the filing of Amorrortu I” and the relevant facts.⁵⁸⁰ Peru acknowledged this fact in its Statement of Defense.⁵⁸¹ But this argument does not address the applicable inquiry under the Treaty and international law: dominant and effective nationality at the time of the breach. American citizenship is a necessary but not sufficient condition. Article 10.28 requires more for dual nationals: they must demonstrate that their American nationality was effective as well as dominant.

352. Amorrortu’s reliance on the Immigration and Nationality Act (“INA”) definition in Annex 1.3(b) of the USPTPA is equally unavailing.⁵⁸² That provision defines who qualifies as a “national” of the United States; it does not override Article 10.28’s dominant and effective nationality test for dual nationals. A dual national may satisfy the INA definition while failing the Article 10.28 test—precisely Amorrortu’s situation.

353. In any case, Amorrortu’s evidence of U.S. nationality is markedly weak. On scrutiny, each alleged piece of evidence on which he relies is either immaterial or affirmatively damaging to his case.

354. Amorrortu points to his U.S. tax payments as purported evidence of American ties.⁵⁸³ This is a red herring: all American citizens must file U.S. taxes regardless of where they reside or their dominant and effective nationality. Amorrortu’s own exhibits reveal that he also

⁵⁷⁸ See SoD, ¶¶ 243-244.

⁵⁷⁹ *Alberto Carrizosa Gelzis et al. v. Republic of Colombia*, PCA Case No. 2018-56, Award (7 May 2021) (**RLA-236**), ¶ 196.

⁵⁸⁰ Reply, ¶¶ 362-364.

⁵⁸¹ See SoD, note 405.

⁵⁸² See Reply, ¶¶ 366-368.

⁵⁸³ See Reply, ¶¶ 369, 380(a).

paid French taxes during this period—evidence that, if anything, undermines his claim of dominant American nationality.⁵⁸⁴

355. Amorrortu's voting evidence fares no better. He offers (i) a voter registration certificate issued in 2016 and sent to him in France and (ii) a voter information card issued in 2023 reflecting his registration since 2018.⁵⁸⁵ Neither document is probative. At most, they establish that—like any American citizen, regardless of dominant and effective nationality—he was authorized to vote. More importantly, both documents postdate the date of the alleged breach (July 2014), and neither proves that Amorrortu actually voted in any U.S. election. By contrast, Peru's evidence demonstrates that he was registered to vote in Peru as of 2014 and actually voted in the Peruvian General and Parliamentary Elections on 10 April 2016.⁵⁸⁶ Indeed, electoral records establish that Amorrortu voted in numerous Peruvian elections from 1995 through at least 2016.⁵⁸⁷ The contrast is stark: Amorrortu offers evidence of U.S. voter registration years after the date of the alleged breach, while the record contains evidence of him actually exercising the right to vote in Peru during and after that period. Voting is a significant expression of national affiliation⁵⁸⁸ and Amorrortu's continued participation in Peruvian elections years after acquiring American citizenship demonstrates where his civic engagement lay.

356. The remaining evidence Amorrortu marshals is either trivial or beside the point. A six-month insurance renewal certificate dated August 2014 listing him as a driver merely proves that he was insured to drive in the U.S.⁵⁸⁹—while by his own admission living in France at the

⁵⁸⁴ See Property Tax Notice in France (30 September 2015) (C-176). Peru notes that Claimant failed to provide a translation of Exhibit C-176 as required by Procedural Order No. 1, ¶ 3.3.2.

⁵⁸⁵ Reply, ¶¶ 372, 380(d); Voter Registration Certificate of Bacilio Amorrortu (5 October 2016) (C-213); Numerous proposals for the Public Bid regarding Lots III & IV produced under number RP-PO4-17 (2014) (C-216).

⁵⁸⁶ See Oficio No. 000667-2020-SG/ONPE (11 June 2020) (R-58), pp. 18, 24, 27.

⁵⁸⁷ See Oficio No. 000667-2020-SG/ONPE (11 June 2020) (R-58), pp. 18-27.

⁵⁸⁸ See, e.g., *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award (3 September 2019) (RLA-169), ¶ 584 (“The Tribunal also considers relevant the fact that the Claimants presented themselves as nationals, e.g. when voting.”).

⁵⁸⁹ See State Farm Renewal Certificate (26 August 2014) (C-211).

time.⁵⁹⁰ A single dentist receipt from 2013 fails to establish regular attendance at U.S. medical appointments and, therefore, has no bearing on his dominant nationality at the time of the breach.⁵⁹¹ The receipt of a request to renew his French residence permit in 2017, listing him as American, does not establish his dominant and effective nationality in 2014 either.⁵⁹² On the contrary, it confirms that, for the entirety of the period relevant to this dispute (2014 through March 2015), Amorrortu did not reside in the country he claims to be his dominant nationality (the U.S.), but rather in a third country (France); a fact he openly admits.⁵⁹³

357. Finally, the information pages from his U.S. passports confirm only that he holds an American passport⁵⁹⁴—which Peru has never disputed—and do not prove exclusive use. This last point is significant. Amorrortu obtained a Peruvian passport in April 2014, two years after gaining American citizenship and one month before submitting the Alleged Proposal to Perupetro. If Amorrortu had truly abandoned his Peruvian nationality “in practical effect” as he claims,⁵⁹⁵ why did he obtain a new Peruvian passport in 2014?

358. While Amorrortu busies himself with a dentist receipt and car insurance, he ignores the overwhelming evidence set forth in Peru’s SoD establishing that his dominant and effective nationality was Peruvian at all times relevant to this dispute. This silence speaks volumes.

359. At the time of Baspetro’s incorporation, Amorrortu declared himself domiciled in Lima, Peru.⁵⁹⁶ He confirmed this years later in a 2015 letter to Ms. Tafur where he explicitly stated

⁵⁹⁰ See Witness Statement of Bacilio Amorrortu (22 December 2025) (“**Amorrortu Second Witness Statement**”), ¶ 33.

⁵⁹¹ See Correspondence Greg A. Linney D.D.S., Inc. Dentist of Bacilio Amorrortu (13 November 2013) (**C-212**).

⁵⁹² See French Residence Card of Bacilio Amorrortu (2014) (**C-191**). Peru notes that Claimant failed to provide a translation of Exhibit C-176 as required by Procedural Order No. 1, ¶ 3.3.2.

⁵⁹³ See Amorrortu Second Witness Statement, ¶ 33 (“I lived in France for a few years (from 2014 to 2018)”).

⁵⁹⁴ See U.S. passport issued to Bacilio Amorrortu (1 March 2010) (**C-25**); U.S. passport issued to Bacilio Amorrortu (21 March 2016) (**C-26**).

⁵⁹⁵ Reply, ¶ 393.

⁵⁹⁶ See Certificate of Incorporation of Baspetro S.A.C. (17 October 2012) (**C-24**), p. 3.

that he constituted Baspetro “upon [his] return to Talara[, Peru] in August 2012.”⁵⁹⁷ Baspetro’s incorporation documents identify its founders, including Amorrortu, as Peruvians without reservation or indication of his American nationality and reference Amorrortu’s Peruvian DNI as his form of identification⁵⁹⁸—not his American passport which he obtained two years earlier.⁵⁹⁹ Amorrortu also identified himself as a Peruvian national in multiple powers of attorney, using his Peruvian DNI rather than any U.S.-issued identification.⁶⁰⁰

360. Most damaging, in the Alleged Proposal submitted to Perupetro in May 2014, Amorrortu described himself as a “successful Peruvian oil businessman from Talara.”⁶⁰¹ This self-identification—made at the very time Amorrortu claims his dominant and effective nationality was American—is perhaps the most telling evidence in the record. It also explains why Amorrortu “recreated” evidence in the course of this arbitration to the opposite effect.⁶⁰²

361. Amorrortu’s description of himself as a Peruvian businessman in the Alleged Proposal⁶⁰³ directly contradicts his claim in this arbitration that he considered himself exclusively

⁵⁹⁷ Letter from B. Amorrortu (Baspetro) to I. Tafur Marín (Perupetro) (5 February 2015) (C-16), p. 1 (emphasis added).

⁵⁹⁸ See Certificate of Incorporation of Baspetro S.A.C. (17 October 2012) (C-24), p. 3.

⁵⁹⁹ See Certificate of Incorporation of Baspetro S.A.C. (17 October 2012) (C-24), pp. 3-4.

⁶⁰⁰ See Oficio No. 4587-2020-SUNARP-Z.R.N°IX/PUB.EXON (28 May 2020) (R-56), pp. 96-101; *Id.*, p. 97 (“BACILIO ANTONIO AMORRORTU TORRES, a Peruvian national [...]”) (Translation provided by Counsel. In the original Spanish: “BACILIO ANTONIO AMORRORTU TORRES, de nacionalidad peruana [...]”); Public Deed No. 171 on Renunciation of Nationality (17 August 2019) (R-54), p. 7 (“BACILIO ANTONIO AMORRORTU TORRES, a Peruvian national [...]”) (Translation provided by Counsel. In the original Spanish: “BACILIO ANTONIO AMORRORTU TORRES, de nacionalidad peruana [...]”).

⁶⁰¹ See Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 8 (Translation provided by Counsel. In the original Spanish: “*exitoso empresario petrolero talareño, Peruano* [...]”).

⁶⁰² See Baspetro Start-up Operations Report (C-184). See also Peru’s Request to Exclude Evidence Purportedly Recreated from Memory (18 March 2025) (R-97), pp. 5-6. As Peru established in § II.A.2 *supra*, the Recreated Evidence lacks all probative weight because it was created after the date of the dispute. See also *Sanum Investments Ltd v. Government of the Lao People’s Democratic Republic* [2016] SGCA 57 (RLA-222), ¶¶ 104, 113; R. F. Petrowski, “Evidence in International Arbitration,” *Arbitration International*, Vol. 22, Issue 3 (September 2006) (RLA-211), pp. 381, 401.

⁶⁰³ See Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), pp. 1, 4, 8.

American.⁶⁰⁴ As the *Ballantine* tribunal warned, tribunals should be skeptical when investors invoke one nationality to bolster their investment while claiming another for arbitration purposes. Here, too, there is “trouble reconciling the fact that the Claimant[‘s] desire was to be viewed as [Peruvian] for purposes of bolstering [his] investment and yet, regarding the application of the protections for foreign investors, [he] contend[s] that such nationality is not as important,”⁶⁰⁵ asking instead to be viewed as a U.S. national. The Reply does not address this warning by the *Ballantine* tribunal, let alone its relevance here.

362. Moreover, Amorrortu was affiliated with at least seven Peruvian companies as of 2020,⁶⁰⁶ demonstrating that his economic center of interest—a factor that tribunals consistently emphasize⁶⁰⁷—remains in Peru. BRG’s Second Expert Report reinforces this conclusion, confirming that the income Baspétrol would have allegedly generated would have remained in Peru rather than been sent to the United States.⁶⁰⁸ Amorrortu’s family ties—another recognized factor⁶⁰⁹—also point to Peru: all three of his children are Peruvian and at least two were domiciled there at the time of Baspétrol’s incorporation.⁶¹⁰

363. The *Heemsen* tribunal’s list of factors qualifying claimants as having the dominant and effective nationality of the host state reads like a description of Amorrortu: birth in the host state, domicile there, having descendants there, constituting companies as a national of the host

⁶⁰⁴ See Reply, ¶ 395; Amorrortu First Witness Statement, ¶ 5.

⁶⁰⁵ *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award (3 September 2019) (**RLA-169**), ¶ 584.

⁶⁰⁶ See Oficio No. 4587-2020-SUNARP-Z.R.N°IX/PUB.EXON (28 May 2020) (**R-56**), p. 18; Company Information of Compañía Pesquera Punta Restin S.A. (**R-65**).

⁶⁰⁷ See *Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction (29 October 2019) (**RLA-170**), ¶ 441; *Alberto Carrizosa Gelzis et al. v. Republic of Colombia*, PCA Case No. 2018-56, Award (7 May 2021) (**RLA-236**), ¶¶ 195-197.

⁶⁰⁸ See Expert Report of Santiago Dellepiane (BRG) (22 December 2025) (**CER-2**) (“**BRG Second Expert Report**”), ¶ 99.

⁶⁰⁹ See, e.g., *Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction (29 October 2019) (**RLA-170**), ¶ 441.

⁶¹⁰ Certificate of Incorporation of Baspétrol S.A.C. (17 October 2012) (**C-24**), p. 3; Public Deed No. 171 on Renunciation of Nationality (17 August 2019) (**R-54**), pp. 8-9. Baspétrol’s incorporation document does not indicate where Sebastian Amorrortu Montenegro was domiciled at the time. See Certificate of Incorporation of Baspétrol S.A.C. (17 October 2012) (**C-24**), p. 3.

state, acting in commercial matters as a national of the host state, and failing to register investments as foreign.⁶¹¹

364. Finally, Amorrortu's attempt to enlist expert Mr. Quiroga in support of his nationality claim fails. Mr. Quiroga opines that "Amorrortu created Baspetrol as a foreign investor."⁶¹² But that Amorrortu was American when Baspetrol was created does not establish that his dominant and effective nationality at the time of the alleged breach was American. Nor does it establish that Amorrortu registered Baspetrol as a foreign investment (he did not). Equally beside the point is Mr. Quiroga's discussion of equal protections under Peruvian law for foreign citizens. Peru's objection turns on which nationality was dominant and effective at the time of the alleged breach pursuant to the Treaty and international law, not the protections afforded to foreigners under Peruvian law.

365. In sum, the evidence overwhelmingly establishes that Amorrortu's dominant and effective nationality was Peruvian at the time of the alleged breach—a conclusion that alone warrants dismissal of his claims. But even if doubt remained, Amorrortu's eleventh-hour attempt to shed his Peruvian nationality provides an independent basis for declining jurisdiction.

3. Amorrortu's renunciation of his Peruvian nationality when a dispute with Peru was foreseeable constitutes an abuse of process requiring the dismissal of his claim

366. The facts surrounding Amorrortu's renunciation of his Peruvian nationality leave no room for doubt as to his motivations. The timeline is damning: Amorrortu renounced his Peruvian nationality on 16 September 2019⁶¹³ and filed his Notice of Intent in *Amorrortu I* on 19 September 2019—three days later.⁶¹⁴ This sequence admits only one explanation: Amorrortu renounced his Peruvian nationality to evade the USPTPA's nationality requirement at a time when

⁶¹¹ See *Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction (29 October 2019) (**RLA-170**), ¶ 441.

⁶¹² Reply, ¶ 394; Quiroga Second Expert Report, ¶¶ 4.27 *et seq.*

⁶¹³ See Public Deed No. 171 on Renunciation of Nationality (17 August 2019) (**R-54**).

⁶¹⁴ See Bacilio Amorrortu's Notice of Intent to Arbitrate Against Peru (19 September 2019) (**C-23**).

he was preparing to file a claim against Peru. The renunciation was not the product of changed “personal circumstances” or a genuine shift in allegiance. It was a calculated legal maneuver executed on the eve of litigation.

367. Amorrortu characterizes his renunciation as “in practical effect since the early 2000s and certainly by 2010,” describing it as merely “check[ing] [a] box” and “a mere formality.”⁶¹⁵ Each element of this argument fails.

368. *First*, Amorrortu does not explain what “practical effect” means, precluding meaningful engagement with his argument. The phrase appears designed to obscure the inconvenient fact that he retained his Peruvian nationality for nearly a decade after acquiring American citizenship—and continued to actively exercise that nationality throughout.⁶¹⁶

369. In any event, the tribunal in *Mihaljevic v. Croatia* established that formal renunciation is necessary; substantial compliance does not suffice.⁶¹⁷ Amorrortu’s attempt to distinguish *Mihaljevic* only underscores the weakness of his position.

370. Contrary to Amorrortu’s assertion,⁶¹⁸ the *Mihaljevic* tribunal’s decision did not turn on the purpose behind the claimant’s renunciation of his Croatian nationality. Rather, it examined whether the formal renunciation process had been completed—focusing on the objective legal status of the claimant, not subjective motivations.⁶¹⁹ This confirms that renunciation is an important objective factor; precisely the opposite of Amorrortu’s characterization of it as “a mere formality.”⁶²⁰ Relatedly, the “tension” between renunciation and arbitration that Amorrortu claims

⁶¹⁵ Reply, ¶¶ 373, 393; Amorrortu Second Witness Statement, ¶ 39.

⁶¹⁶ See § IV.B.2 *supra*.

⁶¹⁷ See *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award (19 May 2023) (RLA-187), ¶¶ 119-122.

⁶¹⁸ Reply, ¶ 384.

⁶¹⁹ *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award (19 May 2023) (RLA-187), ¶¶ 116, 137.

⁶²⁰ Reply, ¶ 373.

does not exist here⁶²¹ is plainly at issue: Amorrortu renounced his Peruvian nationality three days before filing his Notice of Intent in *Amorrortu I*.

371. Amorrortu’s attempt to distinguish *Mihaljevic* based on how long the claimant had lived abroad likewise fails. The parties and tribunal in that case did not focus on the residence abroad because the relevant question—as here—was the process of renunciation. In any event, the *Mihaljevic* claimant had been living abroad in Germany and was born there.⁶²² The tribunal nevertheless declined jurisdiction based on his dual nationality,⁶²³ as this Tribunal should do here.

372. Nor does leaving Peru and acquiring American nationality equate to renouncing his Peruvian nationality. No authority supports such a proposition. If departure from a country and naturalization elsewhere automatically extinguished the original nationality, the formal renunciation procedures that exist under Peruvian and other legal systems would be superfluous. They are not.

373. Perhaps most telling is Amorrortu’s continued refusal to disclose the “personal reasons” surrounding his renunciation.⁶²⁴ It is Claimant’s burden to establish jurisdiction. He has failed to discharge that burden because he has not proven that his renunciation does not constitute an abuse of process. The suspicious timing combined with his refusal to reveal the circumstances underlying his renunciation warrants only one conclusion: those reasons were tactical, not personal.

374. Amorrortu’s final recourse is an attempt to distinguish the authorities Peru cited in its SoD. With respect to *Mobil v. Venezuela*, he claims that Peru argued “a corporate restructuring to assert jurisdiction” occurred⁶²⁵ and contests *Phoenix Action v. Czech Republic* on similar

⁶²¹ See Reply, ¶ 384.

⁶²² See *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award (19 May 2023) (RLA-187), ¶ 93.ii.

⁶²³ *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award (19 May 2023) (RLA-187), ¶¶ 110-115.

⁶²⁴ See Amorrortu Second Witness Statement, ¶ 39.

⁶²⁵ Reply, ¶ 385.

grounds.⁶²⁶ Peru made no such argument.⁶²⁷ Peru invoked *Mobil* and *Phoenix Action*—among numerous other decisions⁶²⁸—for the proposition that a change affecting a claimant’s access to jurisdiction when a dispute is foreseeable—or, as here, known and days away from formal notification—constitutes abuse of process.⁶²⁹ The Reply does not engage with this aspect of those decisions, leaving their application to Amorrortu’s conduct unchallenged.

375. Amorrortu’s own reliance on *Pac Rim v. El Salvador* supports Peru’s objection.⁶³⁰ The *Pac Rim* tribunal held that a legitimate change in nationality must be made “in good faith before the occurrence of any event or measure giving rise to a later dispute.”⁶³¹ His renunciation took place five years after the alleged breach, three days before notifying a dispute under the Treaty, and for undisclosed “personal reasons”⁶³²—the opposite of the good-faith timeline and circumstances *Pac Rim* requires.

376. Recent authority puts the matter beyond doubt. In *Barst and Rodriguez v. Ecuador*, the tribunal applied the dominant and effective nationality principle under general principles of international law even though the BIT was silent on whether dual nationals could bring claims against their own State.⁶³³ The tribunal found the claimants’ dominant and effective nationality was Ecuadorian based on birth, family ties, business connections, social relationships, and their conduct in registering investments as domestic.⁶³⁴ Critically, the tribunal concluded that the

⁶²⁶ See Reply, ¶ 389.

⁶²⁷ See SoD, ¶¶ 255-256.

⁶²⁸ See SoD, note 435.

⁶²⁹ See *Venezuela Holdings, B.V., et al. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction (10 June 2010) (RLA-112), ¶ 205; *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award (15 April 2009) (RLA-105), ¶ 95.

⁶³⁰ See Reply, ¶¶ 387-388.

⁶³¹ *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent’s Jurisdictional Objections (1 June 2012) (RLA-121), ¶ 2.47.

⁶³² See Amorrortu Second Witness Statement, ¶ 39.

⁶³³ *Santiago Romero Barst and María Auxiliadora Rodríguez v. Republic of Ecuador*, PCA Case No. 2023-23, Award on Jurisdiction (3 December 2025) (RLA-246), ¶¶ 218, 236-237, 251.

⁶³⁴ *Santiago Romero Barst and María Auxiliadora Rodríguez v. Republic of Ecuador*, PCA Case No. 2023-23, Award on Jurisdiction (3 December 2025) (RLA-246), ¶¶ 257-260.

claimants' reliance on their Italian nationality to access arbitration under circumstances where their dominant and effective nationality was Ecuadorian constituted an abuse of rights.⁶³⁵ It reasoned that permitting such claims would circumvent the BIT's object and purpose of protecting genuine foreign investment.⁶³⁶ Accordingly, the tribunal declined jurisdiction.

377. The parallels to the present case are unmistakable. Like the *Barst* claimants, Amorrrortu seeks to invoke a nationality that was not his dominant and effective one at the time of the alleged breach, in order to access treaty protections designed for genuine foreign investors.

378. The *Grace v. Mexico* decision provides further support still. In that case, the NAFTA tribunal applied the dominant and effective nationality test to two dual nationals—Mr. Williamson-Nasi and Mr. Cañedo White—who held Mexican nationality alongside United States nationality or permanent residence.⁶³⁷ After an objective factual inquiry, the tribunal determined that Mr. Williamson-Nasi's dominant and effective nationality was Mexican, finding that the strength of his ties to Mexico “were much more significant than those he entertained with the United States.”⁶³⁸ In reaching this conclusion, the tribunal emphasized that Mexico had been the place of his residency, that all three of his children held Mexican citizenship, and that his claims of limited financial exposure to the Mexican economy were unsubstantiated, amongst other factors.⁶³⁹ The tribunal reached an identical conclusion for Mr. Cañedo White, finding that “the centre of gravity of [his] personal and economic affairs has been based in Mexico” and that he had

⁶³⁵ *Santiago Romero Barst and María Auxiliadora Rodríguez v. Republic of Ecuador*, PCA Case No. 2023-23, Award on Jurisdiction (3 December 2025) (**RLA-246**), ¶¶ 399-402, 409-414.

⁶³⁶ *Santiago Romero Barst and María Auxiliadora Rodríguez v. Republic of Ecuador*, PCA Case No. 2023-23, Award on Jurisdiction (3 December 2025) (**RLA-246**), ¶¶ 413-414.

⁶³⁷ *Alicia Grace et al. v. United Mexican States*, ICSID Case No. UNCT/18/4, Final Award (19 August 2024) (**RLA-241**), ¶¶ 473-477.

⁶³⁸ *Alicia Grace et al. v. United Mexican States*, ICSID Case No. UNCT/18/4, Final Award (19 August 2024) (**RLA-241**), ¶ 490.

⁶³⁹ *Alicia Grace et al. v. United Mexican States*, ICSID Case No. UNCT/18/4, Final Award (19 August 2024) (**RLA-241**), ¶¶ 486-489.

been “deeply embedded in the economic, political and cultural life of the country.”⁶⁴⁰ Accordingly, the tribunal declined jurisdiction *ratione personae* over both claimants.⁶⁴¹

379. The *Grace* tribunal’s reasoning applies with equal force here. Notably, the tribunal expressed concern that Mr. Williamson-Nasi “may have attempted to distance himself from his Mexican nationality as a result of ‘pragmatic considerations’”⁶⁴²—similar to Amorrortu’s decision to renounce his Peruvian nationality for “personal reasons” a mere three days before filing his Notice of Intent in *Amorrortu I*. Moreover, the objective factors that proved dispositive in *Grace*—residence in the host state, family ties there, deep business connections, self-identification as a national of the host state, and participation in its civic and political life—are equally pronounced in Amorrortu’s case.

380. The Tribunal should therefore reach the same conclusion here and decline jurisdiction.

381. In sum, Peru’s objection rests on undisputed documentary evidence showing that for many years—including at the time of the alleged breach—Amorrortu repeatedly exercised his Peruvian nationality through voting, powers of attorney, domicile declarations, and self-identification, including to bolster his alleged investment at the center of this dispute. He renounced that nationality only on the eve of initiating claims against Peru under the USPTPA. Amorrortu’s attempt to counter this evidence with a handful of irrelevant documents, while failing to explain why he repeatedly exercised Peruvian nationality or the timing of his renunciation, is insufficient.

382. The Tribunal should thus decline jurisdiction over Amorrortu’s claim on independent but mutually reinforcing grounds: at the time of the alleged breach (July 2014),

⁶⁴⁰ *Alicia Grace et al. v. United Mexican States*, ICSID Case No. UNCT/18/4, Final Award (19 August 2024) (RLA-241), ¶¶ 497-498.

⁶⁴¹ *Alicia Grace et al. v. United Mexican States*, ICSID Case No. UNCT/18/4, Final Award (19 August 2024) (RLA-241), ¶¶ 491, 501.

⁶⁴² *Alicia Grace et al. v. United Mexican States*, ICSID Case No. UNCT/18/4, Final Award (19 August 2024) (RLA-241), ¶ 485.

Amorrortu's dominant and effective nationality was Peruvian, not American, and his last-minute renunciation of Peruvian nationality constitutes an abuse of process.

C. The Tribunal Lacks Jurisdiction *Ratione Materiae* Because Amorrortu Did Not Have a Protected Investment

383. Peru's SoD established that the Tribunal lacks jurisdiction *ratione materiae* because Amorrortu does not have a "covered investment" within the meaning of Article 10.28 of the USPTPA. Specifically, Peru demonstrated that: (i) Amorrortu never obtained a legally binding agreement with Perupetro to operate the Blocks; (ii) even assuming the direct negotiation commenced (*quod non*), mere negotiations and pre-investment activities do not constitute "covered investments" under the Treaty; (iii) Amorrortu's alleged contributions to Baspetro are unproven and, in any event, represent pre-investment activities that do not meet the Treaty's definition of "investment"; and (iv) any rights purportedly acquired belonged to Baspetro as a separate legal entity, not to Amorrortu personally.⁶⁴³ The Reply does nothing to overcome the absence of a covered investment and leaves each of these conclusions intact.

384. Amorrortu's chief response is that, pursuant to the doctrine of *res judicata*, the *Amorrortu I* tribunal's findings preclude Peru from re-arguing that no direct negotiation commenced.⁶⁴⁴ He further contends that "[i]n any event, Amorrortu, through the Baspetro Proposal, did commence a direct negotiation with PeruPetro."⁶⁴⁵ As set out below, Peru is not estopped from arguing that no direct negotiation procedure was commenced based on the tribunal's findings in *Amorrortu I*. Contrary to what Amorrortu alleges, the *Amorrortu I* Award does not produce *res judicata* effects because it did not decide the substance of any of the disputed issues.⁶⁴⁶ Peru has also established that Baspetro did not commence a direct negotiation with Perupetro because:

⁶⁴³ See SoD, § III.C.

⁶⁴⁴ See Reply, § II.B.b.

⁶⁴⁵ Reply, p. 88. See also Reply, ¶¶ 228-237.

⁶⁴⁶ See § V *infra*.

- The Alleged Proposal failed to meet legal requirements set out in the Qualification Regulation and Qualification Procedure;
- The Alleged Proposal did not trigger Procedure 8;
- The Blocks were not available for direct negotiation;
- Perupetro was under no obligation to inform Baspetro of the deficiencies in its Alleged Proposal;
- The Recreated Evidence and Zamalloa's opinion based on it has no probative value, let alone the ability to cure the defects in Baspetro's Alleged Proposal; and
- Neither Amorrortu nor Baspetro gained any rights through the purported direct negotiation.⁶⁴⁷

385. Another way of illustrating the many flaws in Baspetro's Alleged Proposal is to compare it to a request by an established and experienced oil company. Tullow's Letter of Interest of 7 August 2017 illustrates how to properly initiate direct negotiations with Perupetro.⁶⁴⁸ Tullow not only requested to be qualified as an oil company, but it also submitted the relevant information required by the applicable laws and regulations to allow Perupetro to make that assessment. In that case, the contract was ultimately adjudicated because Tullow was a qualified oil company and also because the blocks that Tullow requested were available for direct negotiation.⁶⁴⁹

386. Amorrortu's remaining responses to Peru's *ratione materiae* objection also fail. Even assuming *arguendo* that the Alleged Proposal triggered a direct negotiation and/or Baspetro acquired rights through it (*quod non*), the Tribunal nevertheless lacks jurisdiction *ratione materiae* for four independent reasons: direct negotiations or appurtenant rights are not covered investments under the Treaty (**Section 1**); Amorrortu's alleged contributions to Baspetro remain entirely unproven and do not constitute a covered investment in any event (**Section 2**); any rights purportedly acquired belonged to Baspetro, not Amorrortu (**Section 3**); and Baspetro abandoned

⁶⁴⁷ See § II.A.2 *supra*.

⁶⁴⁸ See Tullow, Letter of Interest (7 August 2017) (**R-91**).

⁶⁴⁹ See § II.A.2 *supra*.

any such rights by voluntarily participating in the Bidding Process and failing to pursue available remedies (**Section 4**).

1. Direct negotiations or appurtenant rights are not covered investments

387. Amorrortu maintains that “[t]he *Amorrortu I* tribunal’s finding that Amorrortu did, in fact, commence a Direct Negotiation Procedure (through Baspetro and with PeruPetro) proves that Baspetro is a covered investment.”⁶⁵⁰ This is an unsophisticated view of the implications of the *Amorrortu I* Award—a matter addressed in Section V of this Rejoinder—and conflates two fundamentally distinct concepts: a direct negotiation under Peruvian law and a covered investment under the Treaty and international law. Even if the *Amorrortu I* tribunal concluded that Baspetro commenced a direct negotiation (*quod non*), the question before this Tribunal is different: whether such negotiations, or any appurtenant rights, constitute a “covered investment” that Amorrortu can claim under Article 10.28. They do not, and the *Amorrortu I* Award has no bearing on that question.

388. As Peru demonstrated in its SoD, direct negotiations or appurtenant rights are insufficient because they do not guarantee a contract with Perupetro, which is required to constitute a covered investment.⁶⁵¹ The Reply does not respond to this central argument, but the support for Peru’s position is well established in the case law.⁶⁵² This principle has been consistently applied even where parties have signed agreements confirming their intent to conclude a binding

⁶⁵⁰ Reply, ¶ 249.

⁶⁵¹ See SoD, § III.C.2.

⁶⁵² See SoD, ¶¶ 277-278 citing *Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award (15 March 2002) (**RLA-80**); *ST-AD GmbH (Germany) v. Republic of Bulgaria*, PCA Case No. 2011-06, Award on Jurisdiction (18 July 2013) (**RLA-131**); *William Nagel v. The Czech Republic*, SCC Case No. 049/2002, Final Award (9 September 2003) (**RLA-83**); *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award (16 September 2003) (**RLA-84**); *Christian Doutremepuich and Antoine Doutremepuich v. Republic of Mauritius*, PCA Case No. 2018-37, Award on Jurisdiction (23 August 2019) (**RLA-168**); *Petrobart Limited v. The Kyrgyz Republic*, SCC Case No. 126/2003, Arbitral Award (29 March 2005) (**RLA-89**).

agreement.⁶⁵³ Amorrortu’s own authority—*White Industries v. India*⁶⁵⁴—confirms Peru’s position. That tribunal recognized that “rights arising from contracts may amount to investments.”⁶⁵⁵ The operative word is “contracts.” Baspetrol never held contracts or other legally binding agreements with Perupetro. Amorrortu’s reliance on *White Industries* thus confirms, rather than undermines, Peru’s position, as does the Reply’s concession that “[i]t is beyond dispute that rights arising from contracts may amount to investments.”⁶⁵⁶

389. Amorrortu’s “bundle of rights” argument is similarly futile because it is premised on his confusion of the terms “investor” with “investment.”⁶⁵⁷ Amorrortu insists that his investment consists of “a bundle of rights, all of which are protected investments,”⁶⁵⁸ yet he conspicuously fails to identify what these rights are.

390. More fundamentally, Amorrortu continues to conflate the Treaty’s definition of “investor” with its definition of “investment”—an error that Peru identified since its SoD.⁶⁵⁹ It is beyond dispute that, while the USPTPA defines “investor” as one who “attempts through concrete action to make, is making, or has made an investment,”⁶⁶⁰ this language does not appear in the definition of “investment.” This distinction is dispositive. Even if pre-investment activities make Amorrortu an “investor” under the Treaty’s definition, he still requires—but does not have—a

⁶⁵³ See *ST-AD GmbH (Germany) v. Republic of Bulgaria*, PCA Case No. 2011-06, Award on Jurisdiction (18 July 2013) (**RLA-131**), ¶ 273; *William Nagel v. The Czech Republic*, SCC Case No. 049/2002, Final Award (9 September 2003) (**RLA-83**), ¶¶ 320, 328-329; *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award (16 September 2003) (**RLA-84**), ¶ 18.9; *Christian Doutremepuich and Antoine Doutremepuich v. Republic of Mauritius*, PCA Case No. 2018-37, Award on Jurisdiction (23 August 2019) (**RLA-168**), ¶¶ 149-155; *Thomas Gosling et al. v. Republic of Mauritius*, ICSID Case No. ARB/16/32, Award (18 February 2020) (**RLA-173**), ¶¶ 99, 144-146, 230-242.

⁶⁵⁴ See Reply, ¶ 267 citing *White Industries Australia v. the Republic of India*, UNCITRAL, Final Award (30 November 2011) (**CLA-140**).

⁶⁵⁵ *White Industries Australia v. the Republic of India*, UNCITRAL, Final Award (30 November 2011) (**CLA-140**), ¶ 7.4.1.

⁶⁵⁶ Reply, ¶ 269 (emphasis added).

⁶⁵⁷ See Reply, ¶ 250.

⁶⁵⁸ Reply, ¶ 250.

⁶⁵⁹ See SoD, ¶ 284.

⁶⁶⁰ USPTPA Investment Chapter (**CLA-1**), Art. 10.28.

protected “investment” for the MST violation he claims.⁶⁶¹ The Treaty’s protections under Article 10.5 are owed to “covered investments,” not merely to “investors.”⁶⁶² The Reply offers no response to Peru’s argument in this respect.

391. Amorrortu’s reference to *Mason Capital v. Korea* and *EDF v. Romania* further illustrates his failure to grasp this basic distinction.⁶⁶³ The *Mason Capital* tribunal did not extend the BIT’s definition of investment to pre-investment activities but rather its coverage of persons—*i.e.*, investors—who had engaged in pre-investment activities. Indeed, the covered investment in *Mason Capital* consisted of company shares—not pre-investment activities.⁶⁶⁴ Similarly, as the Reply expressly acknowledges,⁶⁶⁵ the *EDF* claimant’s investment consisted of two joint venture companies with “[c]ertificates of [i]nvestor”⁶⁶⁶ and a series of contracts to provide services at the relevant airports.⁶⁶⁷

392. In sum, Amorrortu cannot satisfy the Treaty’s jurisdictional requirements by pointing to his status as an “investor” while failing to establish the existence of a protected “investment.” The distinction between these two concepts is not a mere technicality; it is embedded in the Treaty’s text, and no amount of relabeling can overcome it.

2. Amorrortu’s alleged contributions to Baspetrol remain unproven and, in any event, do not constitute a covered investment

393. Amorrortu contends that Baspetrol, as an enterprise, is a covered investment, and that the cases relied upon by Peru are inapposite because they are ICSID decisions subject to the

⁶⁶¹ See SoD, ¶ 284.

⁶⁶² See USPTPA Investment Chapter (CLA-1), Art. 10.5 (“Each Party shall accord to covered investments treatment in accordance with customary international law [...]”) (emphasis added).

⁶⁶³ See Reply, ¶¶ 273-276.

⁶⁶⁴ *Mason Capital L.P. and Mason Management LLC*, PCA Case No. 2018-55, Final Award (11 April 2024) (CLA-183), ¶ 249.

⁶⁶⁵ See Reply, ¶¶ 273-274.

⁶⁶⁶ *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (CLA-4), ¶ 46.

⁶⁶⁷ *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (CLA-4), ¶¶ 47-64.

Salini test, which does not apply to this PCA arbitration.⁶⁶⁸ This argument fundamentally mischaracterizes Peru’s position. Peru did not invoke the *Salini* test. Peru invoked the Treaty’s own definition of investment as “every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.”⁶⁶⁹ Notably, Amorrortu acknowledges these requirements elsewhere in the Reply.⁶⁷⁰

394. Because the Treaty’s definition includes requirements similar to some of the *Salini* factors—commitment of capital or other resources, expectation of gain or profit, and assumption of risk—the cases cited by Peru are relevant to how those factors have been interpreted by investment tribunals, regardless of whether they arose under the ICSID Convention or, as here, the Treaty itself. In any event, non-ICSID tribunals have applied similar standards.

395. In *Alps Finance v. Slovakia*, the tribunal observed that, although it was “not an ICSID tribunal [such that] its conclusion under the BIT could be viewed as sufficient for denying jurisdiction [...] the BIT definition of investment is not an entirely self-standing concept, but refers to a more general concept given by international law rules.”⁶⁷¹ With respect to contractual relationships, specifically, it noted as “common ground that the necessary conditions or characteristics to be satisfied for attributing the quality of ‘investment’ to a contractual relationship include: (a) a capital contribution to the host-State by the private contracting party, (b) a significant duration over which the project is implemented and (c) a sharing of operational risks inherent to the contribution together with long-term commitments.”⁶⁷²

396. In any case, Amorrortu has not proven that Baspetrol meets the Treaty’s requirements. He has not demonstrated “the commitment of capital or other resources, the

⁶⁶⁸ Reply, ¶¶ 259-261

⁶⁶⁹ USPTA Investment Chapter (CLA-1), Art. 10.28 (emphasis added).

⁶⁷⁰ See, e.g., Reply, ¶ 296.

⁶⁷¹ *Alps Finance & Trade AG v. Slovak Republic*, UNCITRAL, Award (5 March 2011) (RLA-16), ¶ 240.

⁶⁷² *Alps Finance & Trade AG v. Slovak Republic*, UNCITRAL, Award (5 March 2011) (RLA-16), ¶ 241.

expectation of gain or profit, or the assumption of risk” with respect to Baspetrol. The Treaty’s requirements are not merely theoretical hurdles—they must be proven with evidence.

397. Yet the Reply contains only unsubstantiated assertions that Amorrortu has a protected investment which was “comprised of significant contributions, know-how, and operational risk, going far beyond ‘a preliminary stage,’”⁶⁷³ without any degree of particularization or evidence to support these blanket statements. Despite Peru having identified these deficiencies in its SoD,⁶⁷⁴ Amorrortu still does not offer any of the following:

- Contemporaneous documentation of the alleged US\$500,000 in “hard costs” that Amorrortu claims to have invested in Baspetrol.
- Legal or documentary support for human rights claims as a “covered investment” for purposes of these arbitration proceedings.⁶⁷⁵
- Proof that Propetsa’s debt was waived in favor of Baspetrol.
- Objective evidence concerning the specific components of the “experience and know how” purportedly contributed.
- Proof of employment of the technical team that Baspetrol allegedly hired.⁶⁷⁶

398. In fact, with respect to this last point, the Witness Statements of Messrs. Francia and Chavez suggest the opposite of what Amorrortu claims. Mr. Chavez indicates that he “was Head of Geology at Petromar, Petro Tech, and Savia Peru from 1985 to February 2015.”⁶⁷⁷ He further states that he merely “participated” in Baspetrol’s project for the Blocks and that, upon

⁶⁷³ Reply, ¶ 262. *See also id.*, ¶¶ 286, 292.

⁶⁷⁴ *See* SoD, note 502.

⁶⁷⁵ As Peru indicated in § II.A *supra*, Amorrortu’s human rights claim against Peru in Texas federal court is unrelated to this dispute and any purported investment via Baspetrol.

⁶⁷⁶ *See, e.g.*, Reply, ¶¶ 286, 294.

⁶⁷⁷ Witness Statement of Mario Chavez Cerna (22 December 2025) (“**Chavez Witness Statement**”), ¶ 2 (emphasis added).

start of Baspetrol's operations, he would hold a position with the company because he was, at the time, working for Savia Peru.⁶⁷⁸

399. Similarly, Mr. Francia indicates that Amorrortu contacted him to join Baspetrol, but tellingly does not indicate that he was employed by the company.⁶⁷⁹ This is in line with his LinkedIn profile which does not list any past experience with Baspetrol or other role that could be interpreted as employment with the company during the relevant time.⁶⁸⁰ On the contrary, Mr. Francia's LinkedIn profile indicates that from March 2012 through March 2016, he was exclusively employed by Schlumberger.⁶⁸¹ Neither do Mr. Francia or Mr. Chavez provide any contemporary documents to support the conclusion that they were hired by Baspetrol such as employment contracts, pay stubs, internal Baspetrol correspondence.

400. In this light, Mr. Francia's statement that "[f]rom 2014 to date, [he has] been a consultant with the Baspetrol S.A.C. team," and Messrs. Francia's and Chavez's respective signature lines of their witness statements listing a job title associated to Baspetrol are simply not credible.

401. Nor does the Recreated Evidence cure these deficiencies, as Amorrortu would hope.⁶⁸² This is because the Recreated Evidence has no probative value.⁶⁸³ Even taken at face value (*quod non*), the Recreated Evidence does not contain proof of employment of the alleged technical

⁶⁷⁸ See Chavez Witness Statement, ¶¶ 3, 5. Mr. Chavez also admits that Mr. Oscar Nieto, another purported employee of Baspetrol, was actually working for Savia Peru at the time. See *id.*, ¶ 6.

⁶⁷⁹ See Witness Statement of Rigoberto Francia Gonzaga (22 December 2025), ¶ 5.

⁶⁸⁰ LinkedIn, Rigoberto Francia Gonzaga, *available at*: <https://br.linkedin.com/in/rigoberto-francia-gonzaga-708b4143> (last accessed: 17 April 2026) (**R-116**). Messrs. Francia and Chavez do not provide CVs with their witness statements.

⁶⁸¹ LinkedIn, Rigoberto Francia Gonzaga, *available at*: <https://br.linkedin.com/in/rigoberto-francia-gonzaga-708b4143> (last accessed: 17 April 2026) (**R-116**). Messrs. Francia and Chavez do not provide CVs with their witness statements.

⁶⁸² See Reply, ¶ 293. Although the Reply cites the Recreated Evidence as "further evidence[]" of "Claimant's investment," it does not particularize how these documents specifically support Amorrortu's claim or analyze their substance more generally. Peru therefore reserves all its rights to modify and/or expand its arguments, as appropriate.

⁶⁸³ See § II.A.2 *supra*.

team, allocation of “hard costs,” or any of the other categories that Amorrortu alleges constitutes pre-investment contributions.

402. The case law invoked in the Reply does not assist Claimant, as it does not establish protection over Amorrortu’s alleged pre-investment activities.⁶⁸⁴ As Amorrortu himself acknowledges,⁶⁸⁵ the claimant in *Lemire v. Ukraine* proved he made specific contributions with “capital originat[ing] from abroad,”⁶⁸⁶ to “an existing company, which already had a radio licence.”⁶⁸⁷ Moreover, it was undisputed that he held shares in the operating company.⁶⁸⁸

403. As for the decision in *Bosca v. Lithuania*,⁶⁸⁹ Amorrortu misrepresents its findings and relevance by selectively quoting paragraph 166 of the award in a manner that excludes the critical first sentence and second half of the tribunal’s reasoning. The full paragraph states:

For the reasons that follow, the Tribunal concludes that the Claimant made an investment in Lithuania when he concluded and realized the Service Agreement. In the Tribunal’s view, winning the tender in the Alita privatization and negotiating the SPA—the subject of the present dispute—was an associated activity, as described in Paragraph 1 of the Protocol, subject to the same protection as any investment falling within Article 1 of the [underlying BIT]. **The Tribunal need not decide whether the [underlying BIT] allows it to take jurisdiction over disputes concerning activities in advance of the establishment of an investment** since it finds that the Claimant had an investment at the relevant time and that the disputed activity was associated

⁶⁸⁴ See Reply, ¶¶ 265-292. With respect to *EDF v. Romania* and *Mason Capital v. Korea*, see § IV.C.1 *supra*.

⁶⁸⁵ See Reply, ¶¶ 265-266.

⁶⁸⁶ See *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Liability (14 January 2010) (CLA-26), ¶¶ 56-58.

⁶⁸⁷ See *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Liability (14 January 2010) (CLA-26), ¶ 52 (emphasis added).

⁶⁸⁸ See *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Liability (14 January 2010) (CLA-26), ¶ 54.

⁶⁸⁹ See Reply, ¶¶ 270-272.

with it in such a way as to bring it under the protection of the Agreement’s substantive provisions.⁶⁹⁰

404. Thus, far from undermining Peru’s position, the *Bosca* decision supports it. Similarly, in *Parkerings-Compagniet v. Lithuania*,⁶⁹¹ the claimant had an actual concession agreement with the city of Vilnius.⁶⁹² These decisions are thus clearly distinguishable from Amorrortu’s case because Baspetro had no such binding agreement with Perupetro.

405. Amorrortu’s remaining case law fares no better.

406. In *Westwater Resources v. Turkey*,⁶⁹³ the tribunal found that the claimant met “the first prong of the *Salini* test (‘a contribution of money or assets’)” because it had “paid for its investment in the form of its Treasury Shares” and “considerable uranium mining expertise and know-how as well as USD 1,283,000 in development expenditures.”⁶⁹⁴ The record in that case established that the claimant had “made [...] investments in [the company’s] exploration and regulatory activities,”⁶⁹⁵ completed technical and feasibility studies,⁶⁹⁶ conducted presentations at training events, paid the salary of multiple staff members,⁶⁹⁷ and “spent over USD 1.2 million, including paying license fees.”⁶⁹⁸ Notably, the *Westwater* claimant had licenses which were subsequently cancelled.⁶⁹⁹ Amorrortu’s case is unquestionably distinguishable. Baspetro did not have a license or other similar agreement with Perupetro and there is no evidence in the record like that in *Westwater* with which Amorrortu can satisfy the Treaty’s requirement that the asset in

⁶⁹⁰ *Luigiterzo Bosca v. Republic of Lithuania*, PCA Case No. 2011-5, Award (17 May 2013) (CLA-46), ¶ 166 (emphasis added).

⁶⁹¹ See Reply, ¶¶ 280-282.

⁶⁹² *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award (11 September 2007) (CLA-142), ¶¶ 81-82.

⁶⁹³ Reply, ¶ 285.

⁶⁹⁴ *Westwater Resources Inc. v. Türkiye*, ICSID Case No. ARB/18/46, Award (3 March 2023) (CLA-145), ¶ 148.

⁶⁹⁵ *Westwater Resources Inc. v. Türkiye*, ICSID Case No. ARB/18/46, Award (3 March 2023) (CLA-145), ¶ 130.

⁶⁹⁶ See *Westwater Resources Inc. v. Türkiye*, ICSID Case No. ARB/18/46, Award (3 March 2023) (CLA-145), ¶ 143. See also *id.*, § 3.C-D.

⁶⁹⁷ *Westwater Resources Inc. v. Türkiye*, ICSID Case No. ARB/18/46, Award (3 March 2023) (CLA-145), ¶ 144.

⁶⁹⁸ *Westwater Resources Inc. v. Türkiye*, ICSID Case No. ARB/18/46, Award (3 March 2023) (CLA-145), ¶ 144.

⁶⁹⁹ See *Westwater Resources Inc. v. Türkiye*, ICSID Case No. ARB/18/46, Award (3 March 2023) (CLA-145), § 3.F.

question have “the characteristics of an investment, including such characteristics as the commitment of capital or other resources.”⁷⁰⁰

407. Amorrortu’s reference to *Malaysian Historical Salvors v. Malaysia, Bayindir v. Pakistan*, and *Deutsche Bank v. Sri Lanka* in support of “the notion that know-how of economic value, when bundled with other inputs, constitutes a qualifying investment” is also unavailing.⁷⁰¹ The *Malaysian Hotel Salvors* claimant executed its contractual obligations concerning “survey and salvage efforts [over] almost four years” resulting in 24,000 pieces of “recoverable cargo.”⁷⁰² The dispute concerned the amount that the claimant was entitled to from the sale price of those pieces such that it was “not in dispute that the Claimant has expended its own funds, whether in the form of equipment, know-how or personnel, or in the performance of the Contract in its entirety, without any cash payment or other financial assistance from the Respondent.”⁷⁰³ Far from executing contractual obligations requiring know-how, expertise, and financial risk over a number of years, Baspetrol did not have a binding agreement to begin with, nor has Amorrortu proven that it committed similar resources even in the absence of an agreement.

408. The *Bayindir* tribunal, for its part, found that it could “not be seriously disputed” that the claimant had “trained approximately 63 engineers, and provided significant equipment and personnel.”⁷⁰⁴ Moreover, “Bayindir provided bank guarantees equivalent to [30% of the contract price as an advance payment]” and “incurred bank commission charges in excess of USD 11

⁷⁰⁰ USPTPA Investment Chapter (CLA-1), Art. 10.28.

⁷⁰¹ Reply, ¶ 289. *See also id.*, ¶¶ 288, 290. Although Claimant cites to the *Bayindir v. Pakistan* award, Peru understands that the correct citation is to that tribunal’s decision on jurisdiction. *See id.*, note 443.

⁷⁰² *Malaysian Historical Salvors, SDN, BHD v. Malaysia*, ICSID Case No. ARB/05/10, Award on Jurisdiction (17 May 2007) (CLA-146), ¶¶ 7-13.

⁷⁰³ *Malaysian Historical Salvors, SDN, BHD v. Malaysia*, ICSID Case No. ARB/05/10, Award on Jurisdiction (17 May 2007) (CLA-146), ¶¶ 14, 109.

⁷⁰⁴ *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction (14 November 2005) (RLA-208), ¶¶ 115-116.

million.”⁷⁰⁵ Likewise, the evidence in *Deutsche Bank* confirmed that the claimant made a substantial contribution by:

- concluding an agreement and “immediately committed to pay USD 2.5 million” such that “the immediate effect of the transaction was to allow [its contractual counterpart] to purchase oil over the following twelve months at a price substantially below both the current market price and the forward curve” and reduce the respondent’s “exposure to oil price volatility and improv[ing] the predictability of their cash-flow;”
- making payments “of USD 35,523.81 [...] pursuant to the terms of the transaction;” and
- “commit[ing] resources of substantial economic value to Sri Lanka” evinced by claimant’s “employees[‘] engage[ment] in over two years of regular meetings, negotiations and correspondence with [its contractual counterpart] and the Central Bank” and “invest[ment of] substantial resources in seeking to mitigate the costs.”⁷⁰⁶

409. Amorrortu made no similar contributions, whether in the form of know-how, training, equipment, or finance.

410. *Blusun v. Italy* is also inapposite. There, the tribunal determined that the “speculative character of an investment at an early stage” may be “resolved by substantial measures of implementation, including assumption of financial risk.”⁷⁰⁷ The claimant had progressed through “substantial measures of implementation” with permits and approvals,⁷⁰⁸ and the threshold was crossed, at least in part, by the Italian authorities’ “repeated acts of approval” of the project.⁷⁰⁹ By contrast, not only did Baspetro never execute a binding agreement with Perupetro, but it obtained no certifications, permits, or other approvals whatsoever.

⁷⁰⁵ *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction (14 November 2005) (**RLA-208**), ¶¶ 118-119. *See also id.*, ¶ 17 (defining “Mobilisation Advance” as used in paragraph 119).

⁷⁰⁶ *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award (31 October 2012) (**CLA-147**), ¶¶ 298-300.

⁷⁰⁷ *Blusun v. Italy*, ICSID Case No. ARB/14/3, Award (27 December 2016) (**CLA-143**), ¶ 269 (emphasis added).

⁷⁰⁸ *Blusun v. Italy*, ICSID Case No. ARB/14/3, Award (27 December 2016) (**CLA-143**), ¶ 269.

⁷⁰⁹ *Blusun v. Italy*, ICSID Case No. ARB/14/3, Award (27 December 2016) (**CLA-143**), ¶ 268.

411. Moreover, as Peru established in its SoD, tribunals applying the very same treaty as this case—the USPTPA—have declined jurisdiction over pre-investment activities when, as in *Latam Hydro v. Peru*, they “did not proceed beyond the preliminary stage” and did not “entail the ‘commitment of capital or other resources’ or ‘the assumption of risk’ as required by” the USPTPA.⁷¹⁰ Similarly, in *Eyre* the tribunal rejected jurisdiction because the claimant’s contributions “remained at best aspirational” and “rose only to the pre-investment level”—they “did not face the operational risk necessary [...] to qualify as a protected investment.”⁷¹¹

412. Amorrortu contends that the situation in *Latam Hydro* is “simply inapposite”⁷¹² to his for three reasons. *First*, the Reply asserts that:

Claimant did not unilaterally characterize costs as preparation for an investment. The investment at issue was presented to the president of PeruPetro in the form of a Proposal, which was done at the behest of PeruPetro. Therefore, it is reasonable that an investor would (as Amorrortu did) undertake costs in preparation for such a Proposal and any actions to effectuate the planned investment.⁷¹³

413. Yet he provides no evidence to support his “unilateral or internal characterization” of the costs and efforts purportedly undertaken, failing even to specify what they consist of. Thus, while it may be “reasonable that an investor would”⁷¹⁴ prepare for a planned investment, Claimant has not established that this characterization applies to him in the circumstances of this case.⁷¹⁵

414. *Second*, Amorrortu argues that, unlike the claimant in *Latam Hydro* whose “proposal [...] did not include the ‘commitment of capital or other resources’ or the ‘assumption of risk’” required by the Treaty, “Baspetro committed capital, sweat, and time beyond that

⁷¹⁰ *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 December 2023) (RLA-189), ¶¶ 538, 552.

⁷¹¹ *Raymond Charles Eyre and Montrose Developments (Private) Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/16/25, Award (5 March 2020) (RLA-174), ¶¶ 296, 302.

⁷¹² Reply, ¶ 296.

⁷¹³ Reply, ¶ 295 (emphasis added).

⁷¹⁴ Reply, ¶ 295.

⁷¹⁵ Peru presents this argument without prejudice to its rejection of Amorrortu’s account of his meeting with Mr. Ortigas in May 2014. See § II.A.2 *supra*; SoD, ¶¶ 68-73.

considered by the tribunal.”⁷¹⁶ According to the Reply, the *Latam Hydro* is “factually distinct” from this case because the Alleged Proposal “went beyond a mere feasibility study, and was a fleshed-out Business Plan submitted to PeruPetro as a serious contender.”⁷¹⁷ This is incorrect. At the outset, Amorrortu provides no evidence of the “capital, sweat, and time”⁷¹⁸ purportedly committed by Baspetro; rendering his statements mere “unilateral or internal characterizations.”⁷¹⁹

415. Moreover, whereas the *Latam Hydro* claimant at least conducted a feasibility study, developed a conceptual design for the project, and made presentations for prospective investors⁷²⁰—nevertheless insufficient to establish jurisdiction *ratione materiae*⁷²¹—the Alleged Proposal consisted of an 18-page document focused almost exclusively on narrating Amorrortu’s personal experience and his desire to recover Block III.⁷²² To the limited extent that it purported to provide “Technical Support,” it did so through unsupported, generic statements regarding Baspetro’s intent to be supported by qualified personnel, which it did not identify.⁷²³ Indeed, the Alleged Proposal fails to include or even refer to any technical analysis or data that could come close to a feasibility study or “fleshed-out Business Plan.”⁷²⁴ The only purported Business Plan on the record is part of the Recreated Evidence which was never submitted to Perupetro because it was “recreated from memory” years after the relevant facts.⁷²⁵

⁷¹⁶ Reply, ¶ 296.

⁷¹⁷ Reply, ¶ 297.

⁷¹⁸ Reply, ¶ 296.

⁷¹⁹ Reply, ¶ 295.

⁷²⁰ See *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 December 2023) (**RLA-189**), ¶¶ 545, 550.

⁷²¹ See *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 December 2023) (**RLA-189**), ¶¶ 547, 556.

⁷²² See Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**).

⁷²³ See Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), § IV.

⁷²⁴ Reply, ¶ 297.

⁷²⁵ See Peru’s Request to Exclude Evidence Purportedly Recreated from Memory (18 March 2025) (**R-97**).

416. Amorrortu’s attempt to distinguish *Eyre* on the basis that the claimant in that case was a company, whereas here it is Amorrortu in his individual capacity, is also futile. Peru did not rely on that case for the parties’ respective positions, as the Reply disingenuously maintains.⁷²⁶ Rather, Peru invoked the tribunal’s finding that, despite the claimants’ claims of having made financial contributions and arranged feasibility studies⁷²⁷—as Amorrortu does here—the tribunal could not “ignore the patent lack of credible evidence documenting” the claimants’ statements or purported risk associated with the funds that could be verified, such that the alleged contributions “remained at best aspirational.”⁷²⁸

417. In sum, Peru does not dispute that know-how, expertise, personnel, and other forms of specific evidence can, in some cases, satisfy the Treaty’s requirement that the investment be characterized by the “commitment of capital or other resources.”⁷²⁹ Rather, its position rests on the fact that, unlike the claimants in the cases on which he relies, Amorrortu provides no probative evidence that he satisfies this requirement. His alleged contributions to Baspetroil thus amount to mere pre-investment activities akin to those in *Latam Hydro v. Peru* and *Eyre v. Sri Lanka*, which are insufficient to establish jurisdiction *ratione materiae*.

⁷²⁶ See Reply, ¶ 298.

⁷²⁷ *Raymond Charles Eyre and Montrose Developments (Private) Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/16/25, Award (5 March 2020) (RLA-174), ¶ 296

⁷²⁸ *Raymond Charles Eyre and Montrose Developments (Private) Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/16/25, Award (5 March 2020) (RLA-174), ¶¶ 298-302.

⁷²⁹ USPTPA Investment Chapter (CLA-1), Art. 10.28.

3. Even if Baspetro acquired rights through a direct negotiation (*quod non*), it abandoned them by participating in the Bidding Process and failing to pursue any action following its disqualification

418. In a single paragraph and without any legal support or analysis, Amorrortu maintains that he “did not abandon any of his rights.”⁷³⁰ Each of the reasons he offers in support of this position is unfounded.

419. *First*, he contends that he “did not need to ‘formally allege’ anything” because Mr. Ortigas instructed him “to submit a proposal for both Blocks.”⁷³¹ This argument is circular and unresponsive. As Peru’s legal expert explains, Mr. Ortigas did not have the authority to invite Amorrortu or Baspetro to submit a proposal.⁷³² As President of Perupetro’s Directory, he did not have the power to reverse the Directory’s prior decision to adjudicate the Blocks through an international public tender. But even assuming Mr. Ortigas invited Baspetro to submit a proposal (*quod non*⁷³³), this is not relevant to Baspetro’s subsequent decision to participate in the Bidding Process. The relevant conduct for Peru’s waiver argument is Baspetro’s voluntary participation in the Public Bidding Process—not any prior alleged invitation concerning a direct negotiation. By participating without reservations or subsequent formal complaints, Baspetro effectively accepted the framework of the competitive process in lieu of any purported direct negotiation rights.

420. *Second*, Amorrortu maintains that “it is similarly trivial to state that Amorrortu did not challenge the Bidding Process” after Baspetro’s disqualification because the “Minimum Indicators were being edited that same day and beyond, all to favor GyM.”⁷³⁴ There is a disconnect—indeed, an inherent contradiction—in Amorrortu’s argument. If the change to the Bidding Rules was improper, as he maintains, that is precisely the reason he should have registered

⁷³⁰ Reply, p. 115. *See also id.*, ¶ 301.

⁷³¹ Reply, ¶ 301.

⁷³² *See* Vizquerra Second Expert Report, ¶ 86. *See also* Tafur First Witness Statement, ¶ 18.

⁷³³ *See* § II.A.2 *supra*; SoD, ¶¶ 68-73.

⁷³⁴ Reply, ¶ 301.

a formal complaint. By not challenging the alleged impropriety through available remedies, Baspetro acquiesced to Perupetro's decisions.⁷³⁵

421. *Finally*, citing Exhibits C-15, C-16, and C-17, the Reply concludes that “[i]n any event, Amorrortu did not waive any rights as he formally complained to PeruPetro officials about the bidding process’ irregularities.”⁷³⁶ In any event, far from supporting his position, a careful examination of these exhibits against the governing legal framework reveals that Amorrortu never availed himself of the formal challenge mechanisms under the Bidding Rules—and that his so-called “complaints” were procedurally deficient in every material respect.

422. The Bidding Rules established a detailed procedure for observations and challenges. They specifically provided that observations by interested companies regarding their evaluation “may be raised before the Commission” and that the Commission “must respond within a period of two (2) business days.”⁷³⁷ If the Commission rejected the observation, the company could appeal to the General Manager of Perupetro “within a period of two (2) business days from the notification of the results,” and the General Manager’s decision would be “final and unappealable.”⁷³⁸ Baspetro did not avail itself of this procedure, and the three exhibits demonstrate this conclusively.

423. Exhibit C-15 is not a “complaint” by Baspetro or Amorrortu at all. It is a letter from Perupetro—specifically, the Commission dated 3 November 2014—to Baspetro notifying it that it “[did] not comply with any of the Technical Indicators for [the Bidding Process]”

⁷³⁵ See C. Tams, “Waiver, Acquiescence and Extinctive Prescription” in J. Crawford, *The Law of International Responsibility* (2010) (RLA-215), pp. 1042-1043.

⁷³⁶ Reply, ¶ 301.

⁷³⁷ Perupetro’s Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (R-22), Art. 6.5.1 (translation by Counsel. In the original Spanish: “podrán ser planteadas ante la Comisión, la que deberá responder dentro del plazo de dos (2) días útiles.”) (emphasis added).

⁷³⁸ Perupetro’s Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (R-22), Art. 6.5.2 (translation by Counsel. In the original Spanish: “podrá apelar ante la Gerencia General de PERUPETRO dentro del plazo de dos (2) días útiles contados a partir de la notificación de los resultados [...] la decisión que emane de la Gerencia General de PERUPETRO será final e impugnabile.”).

and that it had also failed to provide information on its net worth, current assets, and operating cash flow. This letter was a formal notification of Baspetro's disqualification—the very act that should have triggered Baspetro's challenge under Article 6.5.1 of the Bidding Rules. There is no evidence in the record that Baspetro filed any such observation.

424. Exhibit C-17 is a letter from Amorrortu to Ms. Tafur, Perupetro's General Manager, dated 15 December 2014—three days after GyM was announced as the winning bidder on 12 December 2014. Similarly, Exhibit C-16 is a letter from Amorrortu to Ms. Tafur dated 5 February 2015—more than three months after Baspetro's disqualification and nearly two months after the award of the *Buena Pro* to GyM. These letters fail to satisfy the procedure under the Bidding Rules in two important respects and therefore do not constitute “formal[] complain[ts].”⁷³⁹

425. *First*, they were addressed to the General Manager, not to the Commission—the entity designated by Article 6.5 to receive observations and challenges. *Second*, their content does not raise a procedural or substantive “observation” or “challenge” with respect to its disqualification from the Bidding Process; rather, it asserts that GyM could not have presented a better economic proposal than Baspetro's Alleged Proposal from May 2014, referencing the purported impact on local communities in Talara and the Vichayal District. These are policy arguments—not procedural or substantive challenges cognizable under the Bidding Rules.

426. Amorrortu's characterization of these exhibits as “formal complaints” is a misnomer. They were informal, belated correspondence directed to a Perupetro official who was not the designated recipient, raising grievances of a general and policy character rather than procedural and substantive challenges cognizable under the Bidding Rules.

427. Crucially, they do not constitute formal complaints before Peru's administrative and judicial bodies, as Dr. Vizquerra has established.⁷⁴⁰

⁷³⁹ Reply, ¶ 301.

⁷⁴⁰ See Vizquerra First Expert Report, ¶¶ 34, 66, note 29; Vizquerra Second Expert Report, ¶¶ 28-29, 31.

428. Baspetrol thus acquiesced to these decisions by failing to seek any remedies—whether under the Bidding Rules or Peruvian law, generally—to challenge Perupetro’s decisions to (i) commence the Bidding Processes in spite of the purportedly existing direct negotiation and (ii) disqualify Baspetrol from the Bidding Process. Both Peruvian law⁷⁴¹ and arbitral jurisprudence confirm this conclusion.

429. In *MCI v. Ecuador*, the tribunal held that it would not consider the investor’s claims of denial of fair and equitable treatment because the investor had “acquiesced in cancellation of the permit by not seeking administrative review of the decision.”⁷⁴² Similarly, in *Parkerings-Compagniet v. Lithuania*, a case relied on by Amorrortu,⁷⁴³ the tribunal held that the claimant’s “failure to complain of the violation of the Agreement before the Lithuanian Court” had significant consequences:

First, the Claimant failed to show that the Municipality of Vilnius terminated the Agreement wrongfully and therefore breached the Agreement. Second, even supposing that the Agreement has been wrongfully terminated, the Claimant failed to show that the right of BP to complain of the breach of the Agreement has been denied by the Republic of Lithuania and thus that its own investment was actually not accorded, by the Respondent, an equitable and reasonable treatment in such circumstances.⁷⁴⁴

430. Here, too, Baspetrol failed to challenge Perupetro’s decisions to conduct public tenders for the Blocks and disqualify it from the Bidding Process.

⁷⁴¹ See Vizquerra First Expert Report, ¶¶ 34, 66, note 29; Vizquerra Second Expert Report, ¶ 26.

⁷⁴² *M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/03/6, Award (31 July 2007) (CLA-159), ¶ 302.

⁷⁴³ See Reply, ¶¶ 280-282.

⁷⁴⁴ *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award (11 September 2007) (CLA-142), ¶ 319. See also *Ronald S. Lauder v. Czech Republic*, UNCITRAL, Final Award (3 September 2001) (RLA-79), ¶¶ 271-273 (“This being said, neither CNTS nor CME raised any objections to this process to the Media Council. On the contrary, both CET 21 and CNTS fully collaborated [...] This collaboration took place despite the CME’s awareness that their legal situation vis-à-vis CET 21 might be affected [...] Therefore, the Arbitral Tribunal holds that the Claimant acquiesced to the Media Council’s above mentioned actions, and is in any event barred from making a claim deriving therefrom.”).

431. Baspetro’s voluntary participation in the Bidding Process, combined with its failure to pursue any administrative or judicial remedies following its disqualification, constitutes a waiver of any rights it may have purportedly acquired through a direct negotiation.⁷⁴⁵ The evidence is unambiguous: Baspetro had the opportunity to challenge Perupetro’s decisions, chose not to do so, and Amorrortu cannot now, years later, repackage that inaction as a Treaty claim.

4. Even if direct negotiations created rights (*quod non*), they belonged to Baspetro, not Amorrortu

432. In its SoD, Peru established that any “appurtenant rights” purportedly created by the alleged direct negotiation (*quod non*) were held by Baspetro, not Amorrortu.⁷⁴⁶ Amorrortu’s Reply maintains that those rights vested in him because “he controls and is the beneficial owner of Baspetro.”⁷⁴⁷ The law and evidence, however, do not support this proposition.

433. Amorrortu begins by challenging Peru’s reliance on *Axos v. Kosovo*, contending that it is inapposite because the claimant in that case could not avail itself of the rights of a “consortium” as a unit of companies, whereas “[n]o such situation exists here.”⁷⁴⁸ This attempted distinction is superficial and misses Peru’s point entirely.

434. The *Axos* tribunal’s holding was not limited to the consortium context. Its core principle—transcribed in Peru’s SoD⁷⁴⁹—was that a claimant “cannot avail itself of the rights” of

⁷⁴⁵ Under the doctrine of acquiescence, inaction “may lead to the loss of a right or claim if, under the circumstances, that State [investor] would have been expected to display some form of activity.” C. Tams, “Waiver, Acquiescence and Extinctive Prescription” in J. Crawford, *The Law of International Responsibility* (2010) (RLA-215), p. 1042. *See also id.*, p. 1043 (noting that “the concept of acquiescence is similar to that of implied waiver.”). *See also Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962: I.C.J. Reports 1962 (RLA-201)*, p. 23 (“In fact, as will be seen presently, an acknowledgment by conduct was undoubtedly made in a very definite way; but even if it were otherwise, it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. Qui tacet consentire videtur si loqui debuisset ac potuisset.”).

⁷⁴⁶ *See* SoD, § III.C.1.b.

⁷⁴⁷ Reply, p. 116.

⁷⁴⁸ Reply, ¶¶ 302-306.

⁷⁴⁹ *See* SoD, ¶ 272.

another legal entity to establish jurisdiction.⁷⁵⁰ That principle applies with full force here. Baspetro—not Amorrortu—was the legal entity that submitted the Alleged Proposal to Perupetro. Baspetro—not Amorrortu—was the entity that would have been party to any resulting direct negotiation and exploitation contract.⁷⁵¹ The rights, if any, vested in Baspetro as a matter of Peruvian law, and Amorrortu cannot simply “avail” himself of them by claiming to control the company, especially without any legal analysis in support of his claim.⁷⁵²

435. In fact, Amorrortu himself confirms Peru’s point, acknowledging that “the rights flowed to Baspetro.”⁷⁵³ This concession is fatal to his position. He does not fully own or control Baspetro; he owns only 40% and, as demonstrated below, he has not proven that he controls it either. As for his argument that he can “still claim under the rights of Baspetro” because the Treaty covers assets an investor “owns or controls, directly or indirectly,”⁷⁵⁴ it is premised on a misunderstanding of the applicable law. Whether Amorrortu can claim as his own any of Baspetro’s “appurtenant rights” resulting from the alleged direct negotiation is a matter of Peruvian law. The Treaty’s definition of “investor” simply cannot create rights under domestic law for Amorrortu to claim as a protected investment, and Amorrortu cites no authorities stating otherwise.⁷⁵⁵

⁷⁵⁰ *ACP Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No. ARB/15/22, Award (3 May 2018) (**RLA-158**), ¶ 195.

⁷⁵¹ Vizquerra First Expert Report, ¶ 21.

⁷⁵² Neither can Amorrortu clear this hurdle by loosely referencing Article 10.16 of the Treaty. *See* Reply, ¶ 312. As the Reply’s own transcription establishes, Article 10.16 of the Treaty concerns a claimant’s ability to initiate an arbitration “on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly.” *Id* (emphasis added). Amorrortu’s position in this arbitration has always been that this is a claim brought in his personal capacity. If he intends to argue that it is on behalf of Baspetro, then his waiver of 16 August 2022 is non-compliant because that waiver was made in his personal capacity, not on behalf of Baspetro’s. *See* Irrevocable Waiver and Consent to Arbitrate (16 August 2022).

⁷⁵³ Reply, ¶ 305.

⁷⁵⁴ Reply, ¶ 305.

⁷⁵⁵ In this respect, Amorrortu’s and Mr. Quiroga’s argument that his 40% ownership does not “upset Amorrortu’s standing to bring this Arbitration under the Treaty” as a protected investor entirely misses the mark. *See* Reply, ¶¶ 311-314; Quiroga Second Expert Report, ¶¶ 4.42-4.47. Without prejudice to Peru’s objection concerning Amorrortu’s nationality *supra*, its objection here does not concern Amorrortu’s status as protected investor under the Treaty, but rather that the “appurtenant rights” that he claims as his protected investment do not belong to him; they belong to

436. Under Peruvian law, the rights would have belonged to Baspetro, not Amorrortu. Even if Amorrortu could prove control and beneficial ownership (*quod non*), this is not the relevant standard under Peruvian law. Baspetro is a Peruvian *sociedad anónima cerrada* (S.A.C.), and its rights and obligations are determined by Peruvian corporate law—not by assertions of “beneficial ownership” under foreign legal concepts. Dr. Vizquerra’s expert opinion is dispositive on this point.

437. In his First Expert Report, Dr. Vizquerra established that any hypothetical rights acquired through a direct negotiation would be non-transferable and would belong to the legal entity (Baspetro), not its shareholders.⁷⁵⁶ Indeed, Peruvian law establishes that qualification certifications pursuant to Supreme Decree No. 030-2004-EM run to the oil company—not its shareholders.⁷⁵⁷

438. In his Second Expert Report, Dr. Vizquerra further explains that, under Article 105 of the Peruvian General Law of Corporations, a company is controlled when one has ownership of the majority of the voting shares or the right to elect the majority of the board.⁷⁵⁸ Moreover, “it should be noted that, pursuant to Article 55, paragraph 11 of the General Corporations Law, agreements among shareholders that may involve covenants among themselves and with the company (such as those concerning control) must be recorded in the company’s corporate registry.”⁷⁵⁹ Amorrortu does not meet this threshold.

439. Despite Peru’s related request during document production,⁷⁶⁰ and Amorrortu’s agreement to “produce responsive, nonprivileged documents in his possession, custody, or

Baspetro. Peru’s objection thus relates to the Tribunal’s jurisdiction *ratione materiae*, not *ratione personae*, as Amorrortu and his expert wrongly suggest.

⁷⁵⁶ Vizquerra First Expert Report, ¶ 21.

⁷⁵⁷ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 14.

⁷⁵⁸ Vizquerra Second Expert Report, ¶ 94 citing General Law of Corporations (Law No. 26887 of 1997) (RLA-74), Art. 105.

⁷⁵⁹ Vizquerra Second Expert Report, ¶ 102.

⁷⁶⁰ See Procedural Order No. 5 (6 February 2025), ¶ 118 Peru’s Request No. 11 (requesting “The following documents relating to Baspetro’s shares:

control,”⁷⁶¹ the only document that Amorrortu produced is Baspetrol’s Certificate of Incorporation which was already on the record as Exhibit C-24 and, more importantly, fails to establish Amorrortu’s purported control *vis-à-vis* the remaining shareholders.⁷⁶² Indeed, not a single document was produced by Claimant to prove that his 40% stake translates into effective control of the other 60%.

440. Instead, Amorrortu relies on his own statements and the testimony of his two sons and remaining shareholders.⁷⁶³ This is insufficient as a matter of Peruvian law and, in any event, unconvincing on the facts.

441. Amorrortu’s sons state that their “father has, from the inception of Baspetrol, exercised and maintained all control.”⁷⁶⁴ In nearly identical statements, they refer to his general decision-making and supervision despite not being named as the owner of all, or even a majority, of the shares.⁷⁶⁵ Tellingly, both sons acknowledge that they held roles within the company that outranked their father’s, yet attempt to downplay the significance of this by stating that “[they] did as he instructed [them]” in those roles.⁷⁶⁶

(i) Baspetrol’s shares registration book (*libro de matricula de acciones*) open at the Peruvian National Superintendency of Tax Administration (*Superintendencia Nacional de Administración Tributaria*, or ‘SUNAT’), updated to date;

(ii) Baspetrol’s shares certificates (*certificados de acciones*), issued from 2012 to date; and

(iii) Any other document showing (i) the number of shares in Baspetrol; (ii) the ownership of Baspetrol’s shares from 2012 (when Baspetrol was incorporated) to the present; (iii) any issuance and transfer of Baspetrol’s shares from 2012 to the present; and (iv) any liens or encumbrances on Baspetrol’s shares from 2012 to the present.”).

⁷⁶¹ Procedural Order No. 4 (29 August 2024), p. 92 [PDF].

⁷⁶² Amorrortu produced a copy of Exhibit C-24 as “AMORRORTU_PROD000019-AMORRORTU_PROD000031.”

⁷⁶³ See Reply, ¶ 310, notes 474-475. Each of Amorrortu’s sons owns 30% of Baspetrol. Sebastián Amorrortu Witness Statement, ¶ 5; Basilio Cesar Amorrortu Witness Statement, ¶ 5.

⁷⁶⁴ Sebastián Amorrortu Witness Statement, ¶ 6; Basilio Cesar Amorrortu Witness Statement, ¶ 6.

⁷⁶⁵ See Sebastián Amorrortu Witness Statement, ¶¶ 4-19; Basilio Cesar Amorrortu Witness Statement, ¶¶ 4-19.

⁷⁶⁶ Sebastián Amorrortu Witness Statement, ¶ 16; Basilio Cesar Amorrortu Witness Statement, ¶ 16.

442. Crucially, neither Amorrortu nor his sons offer any board resolutions, management contracts, voting records, or other corporate documents from the relevant period (or any other period) to corroborate their statements.

443. Neither does Amorrortu’s correspondence to Perupetro on Baspetro’s behalf establish shareholder control.⁷⁶⁷ It is not disputed that, according to Baspetro’s Certificate of Incorporation, Amorrortu served as President of the Board and Deputy Manager⁷⁶⁸ and corresponded on that basis—as any officer would. Relatedly, Amorrortu does not rebut the fact that Baspetro’s contributions came from all three family members in proportion to their shareholding,⁷⁶⁹ demonstrating that the investment was a collective family enterprise, not a unilateral undertaking by Amorrortu.

444. In a closely-held family company with only three shareholders, a 40% stake alone plainly does not create a presumption of control, let alone establish it.

445. For the sake of completeness,⁷⁷⁰ Peru addresses Amorrortu’s theory of “*de facto*” control and beneficial ownership as a matter of law. On one hand, he invokes a series of U.S. domestic cases for the proposition that a minority shareholder may exercise control under Delaware and federal law.⁷⁷¹ This reliance is entirely misplaced. Baspetro is not a Delaware corporation or a U.S. entity and this proceeding is not governed by U.S. law. The only relevant inquiry, as explained above, is under Peruvian law.

446. On the other hand, Amorrortu cites a series of ISDS cases to support the proposition that, as a minority shareholder, he “may bring this claim for his investment, Baspetro, under the

⁷⁶⁷ See Reply, ¶ 329.

⁷⁶⁸ See Certificate of Incorporation of Baspetro S.A.C. (17 October 2012) (C-24), p. 10.

⁷⁶⁹ See Certificate of Incorporation of Baspetro S.A.C. (17 October 2012) (C-24), p. 3.

⁷⁷⁰ As indicated above, the relevant inquiry—whether Baspetro’s alleged “appurtenant rights” from a hypothetical direct negotiation are vested in Amorrortu—is governed exclusively by Peruvian law rendering Amorrortu’s arguments irrelevant.

⁷⁷¹ See Reply, ¶¶ 326-328.

Treaty and the ICSID Convention.”⁷⁷² At the outset, and as Amorrortu himself maintains,⁷⁷³ this arbitration is not conducted under the ICSID Convention. Moreover, Peru’s position is not that he is precluded from asserting a claim as Baspetro’s shareholder. Rather, as explained above, Peru’s objection rests on Baspetro’s separate legal personality under Peruvian law: Baspetro’s substantive rights do not vest in Amorrortu, who cannot conflate the company’s legal identity with his own by virtue of minority ownership.

447. In any case, Amorrortu misrepresents each of the authorities he relies upon. They are distinguishable on the facts and, properly understood, confirm rather than undermine Peru’s position.

448. Amorrortu invokes the tribunal’s observation in *Paushok v. Mongolia* that “a BIT would be rendered practically without effect if it were right to argue that any action taken by a State against such local companies or their assets would not be subject to Treaty claims by a foreign investor because its investment is merely constituted of shares in that local company.”⁷⁷⁴ But Amorrortu omits the critical factual context: those claimants were the ultimate owners of 100% of the shares of the Mongolian companies at issue in that case.⁷⁷⁵ The tribunal’s finding that they held a protected investment was directly premised on the fact that, as of the alleged breaches, “Claimants at that time owned 100% of the shares of [the local company].”⁷⁷⁶

449. Amorrortu also cites the *Azurix v. Argentina ad-hoc* committee for the proposition that a corporate investor may have “interests in the assets” of a subsidiary by virtue of its

⁷⁷² Reply, ¶ 309.

⁷⁷³ See Reply, ¶ 260.

⁷⁷⁴ Reply, ¶ 307 citing *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, Award on Jurisdiction and Liability (28 April 2011) (CLA-179), ¶ 202.

⁷⁷⁵ *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, Award on Jurisdiction and Liability (28 April 2011) (CLA-179), ¶¶ 6, 205.

⁷⁷⁶ *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, Award on Jurisdiction and Liability (28 April 2011) (CLA-179), ¶ 206.

“controlling shareholder status.”⁷⁷⁷ The operative words are “controlling shareholder status.” Indeed, Azurix directly and indirectly owned 100% of the concessionaire’s.⁷⁷⁸

450. Amorrortu, by contrast, is a minority shareholder with only 40% of Baspetro’s shares—a fundamentally different position from the 100% ownership held by the claimants in *Paushok* and *Azurix*. These cases thus confirm the very principle Peru advances: control must be demonstrated through objective corporate evidence, not merely asserted.

451. Amorrortu next cites *Urbaser v. Argentina* for the proposition that “claimants are acting under their own rights as investors through shares acquired under the BIT, rights that are different from any rights attached to domestic law;”⁷⁷⁹ a misrepresentation of that tribunal’s finding. At paragraph 251 of its Decision on Jurisdiction—cited by Amorrortu⁷⁸⁰—the *Urbaser* tribunal held that:

if the rights related to shares include rights of their holders for protection of its investment under the BIT, they may include other rights that are of a nature purely based on domestic law, for which this Tribunal has no competence. Claimants do not claim such rights. Indeed they assert that their claims exclusively are based on the BIT. The crucial point here is that Claimants are acting under their own rights as investors through shares acquired in AGBA under the BIT, rights that are different from any rights attached to their shares under domestic law.

452. Amorrortu does the opposite and this is precisely Peru’s point. He does not allege that his shares in Baspetro are the protected investment or claim damages on that basis.⁷⁸¹ Conflating his individual capacity with Baspetro’s legal entity, he maintains that the “appurtenant rights” that Baspetro purportedly acquired under the alleged direct negotiation governed by

⁷⁷⁷ Reply, ¶ 308 citing *Azurix v. Argentina*, ICSID Case No. ARB/01/12, Decision on the Application for Annulment (1 September 2009) (CLA-180), ¶ 94

⁷⁷⁸ *Azurix v. Argentina*, ICSID Case No. ARB/01/12, Decision on the Application for Annulment (1 September 2009) (CLA-180), ¶ 26.

⁷⁷⁹ Reply, ¶ 308 citing *Urbaser v. Argentina*, ICSID Case No. ARB/07/26, Decision on Jurisdiction (8 December 2016) (CLA-181), ¶ 251.

⁷⁸⁰ See Reply, note 472.

⁷⁸¹ See § VI.B *infra*.

Peruvian law are vested in him and thus constitute a covered investment. The *Urbaser* finding regarding a claimant's standing to bring a treaty claim as a shareholder is thus not disputed by Peru, but it is plainly irrelevant to this case.

453. Amorrortu makes the same mistake with respect to *CMS v. Argentina* and *Thunderbird v. Mexico*. The Reply cites the *CMS* tribunal's statement that "controlling shareholders can in fact own less than a majority of shares,"⁷⁸² but provides no further context or analysis. This omission is telling: the *CMS* tribunal made this observation in analyzing whether minority share ownership can constitute a protected investment under the ICSID Convention⁷⁸³—not whether a minority shareholder, without more, can claim to control the underlying company and, through that control, the company's rights under domestic law. The latter is the relevant question here.

454. Similarly, Amorrortu invokes the *Thunderbird v. Mexico* tribunal's finding that "*de facto* control" can be satisfied through the "ability to exercise a significant influence on decision-making as a driving force through actions, resources, and expertise, regardless of share percentage."⁷⁸⁴ The *Thunderbird* tribunal was concerned with minority shareholders' ability to bring claims on behalf of an enterprise they "own or control" pursuant to article 1117 of NAFTA⁷⁸⁵—not their ability to claim *de facto* control to gain substantive rights under domestic law.

455. The final case addressed in the Reply—*Aguas del Tunari v. Bolivia*—is likewise distinguishable, given the dearth of evidence supporting Amorrortu's alleged control over Baspترول. Amorrortu makes much of the *Aguas del Tunari* decision only to conclude that the

⁷⁸² Reply, ¶ 322 citing *CMS Gas Transmission Company v. Republic of Argentina*, ICSID Case No. ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction (17 July 2003) (CLA-149), ¶ 51.

⁷⁸³ See *CMS Gas Transmission Company v. Republic of Argentina*, ICSID Case No. ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction (17 July 2003) (CLA-149), ¶¶ 49-56.

⁷⁸⁴ Reply, ¶ 323 citing *International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Award (26 January 2006) (CLA-150), ¶¶ 106-108.

⁷⁸⁵ *International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Award (26 January 2006) (CLA-150), ¶ 102.

tribunal “held that ownership is established by majority ownership, but control is established by minority ownership plus voting rights.”⁷⁸⁶ This is wrong and, in any event, of no avail to him.

456. In the paragraph cited by Amorrortu,⁷⁸⁷ the *Aguas del Tunari* tribunal analyzed the specific language included in a BIT between Romania and the Netherlands which was not at issue in the case.⁷⁸⁸ Indeed, the tribunal explicitly indicated that it “[drew] no inference from the language of [that] BIT.”⁷⁸⁹ But even if this were the tribunal’s conclusion (*quod non*), it still does not support Amorrortu’s claim because he offers no evidence that he held voting rights which allowed him to control Baspetro. More importantly, the tribunal’s analysis that actually led to its conclusion that the claimant indirectly controlled the investment vehicles—and thus satisfied the treaty’s nationality requirement—was grounded in objective corporate evidence including share transfer agreements, corporate restructuring documents, and voting arrangements.⁷⁹⁰ As explained above, the record in this case contains no comparable evidence.

457. In sum, Baspetro is a Peruvian *sociedad anónima cerrada*, incorporated in Peru and governed by the Peruvian General Law of Corporations. Whatever rights it allegedly held arising from a direct negotiation are not transferable as a general matter—let alone through a minority shareholder’s unproven claim to *de facto* control.

458. In sum, Amorrortu has failed to demonstrate that he holds a protected investment within the meaning of Article 10.28 of the USPTA. The Reply does not alter Peru’s threshold showing that no direct negotiation ever commenced between Baspetro and Perupetro, and Amorrortu offers no persuasive response to Peru’s four independent and mutually reinforcing

⁷⁸⁶ Reply, ¶ 320.

⁷⁸⁷ See Reply, ¶ 320 citing *Aguas del Tunari, S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent’s Objections to Jurisdiction (21 October 2005) (**RLA-92**), ¶ 299.

⁷⁸⁸ The tribunal discussed the Romania-Netherlands BIT as part of its analysis of “The BIT Practice Generally of Both Nations”, i.e., Bolivia and the Netherlands. See *Aguas del Tunari, S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent’s Objections to Jurisdiction (21 October 2005) (**RLA-92**), p. 66.

⁷⁸⁹ *Aguas del Tunari, S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent’s Objections to Jurisdiction (21 October 2005) (**RLA-92**), ¶ 299.

⁷⁹⁰ *Aguas del Tunari, S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent’s Objections to Jurisdiction (21 October 2005) (**RLA-92**), ¶¶ 315-323.

grounds for dismissal: direct negotiations and any appurtenant rights, absent a binding contract, do not constitute covered investments under the Treaty; Amorrortu's alleged contributions to Baspetro remain entirely unproven and, at most, amount to unprotected pre-investment activity; Baspetro abandoned any rights it may have acquired by voluntarily participating in the Block III Bidding Process and failing to pursue any available remedy following its disqualification; and any rights purportedly arising from the alleged direct negotiation belonged to Baspetro as a separate legal entity under Peruvian law, not to Amorrortu personally.

459. Accordingly, the Tribunal should decline jurisdiction *ratione materiae* and dismiss Amorrortu's claim in its entirety.

D. The Tribunal Lacks Jurisdiction *Ratione Materiae* Because the Disputed Measures Are Not Attributable to Peru

460. In its Statement of Defense, Peru demonstrated that the Tribunal lacks jurisdiction *ratione materiae* because Perupetro's conduct at issue in this case is not attributable to Peru under Article 10.1(2) of the Treaty.⁷⁹¹ According to this provision, Peru's obligations under the Investment Chapter "shall apply to a state enterprise [only] when it exercises any regulatory, administrative, or other governmental authority delegated to it" by Peru.⁷⁹²

461. Peru's Article 10.1(2) objection rests on four basic propositions: (i) Perupetro is a "state enterprise";⁷⁹³ (ii) Perupetro has not been delegated any regulatory, administrative, or other governmental authority;⁷⁹⁴ (iii) in any case, the impugned measures were not governmental;⁷⁹⁵ and

⁷⁹¹ SoD, § III.D.

⁷⁹² USPTA Investment Chapter (CLA-1), Art. 10.1(2) ("2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party, such as the authority to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.").

⁷⁹³ Reply, ¶ 438. *See also* SoD, ¶ 302.

⁷⁹⁴ SoD, § III.D.1.

⁷⁹⁵ SoD, § III.D.2.

(iv) Article 10.1(2) is the *lex specialis* that governs any issues concerning the attribution of Perupetro’s conduct to Peru.⁷⁹⁶

462. Claimant’s Reply fell short of addressing any of these propositions. Claimant attempts to brush aside Peru’s Article 10.1(2) objection by applying, without any analysis, the ILC Articles on State Responsibility for Internationally Wrongful Acts (“**ILC Articles**”) as part of his case on the merits.⁷⁹⁷ But, as a matter of jurisdiction, before trying to resort to the ILC Articles, Claimant needed to explain why Article 10.1(2) of the Treaty does not apply in this case. He failed to do so. As Peru explained in the Statement of Defense, the ILC Articles are not “directly relevant” where the Treaty contains a *lex specialis* provision on attribution.⁷⁹⁸ Here, Article 10.1(2) is such *lex specialis* provision. Because Perupetro is a “state enterprise” (as Claimant and his legal expert concede),⁷⁹⁹ Article 10.1(2) displaces the ILC Articles.

463. The only question, therefore, is whether Perupetro “exercises any regulatory, administrative, or other governmental authority delegated to it [by the Peruvian State].” It does not,⁸⁰⁰ and Claimant does not even try to refute this proposition in his Reply. A close reading of the reports of Amorrortu’s legal expert, Dr. Quiroga, reveals why. Dr. Quiroga could not cite a single legal authority that could have allowed Amorrortu to argue that Perupetro exercises governmental authority. Perupetro does not exercise such authority, which is confirmed by the legal and institutional regime described in Dr. Quiroga’s second expert report (**Section 1**). The measures at issue—each taken by Perupetro in a commercial capacity and implemented pursuant to that legal and institutional regime—are not attributable to Peru (**Section 2**).

⁷⁹⁶ SoD, ¶ 297. See also *Adel A Hamadi Al Tamimi v. Sultanate of Oman*, ICSID Case No ARB/11/33, Award (3 November 2015) (**RLA-139**), ¶¶ 321, 324; *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (11 June 2007) (**RLA-101**), ¶ 59; *Mesa Power Group, LLC v. Government of Canada*, PCA Case No. 2012-17, UNCITRAL, Award (24 March 2016) (**RLA-144**), ¶¶ 361-362.

⁷⁹⁷ Reply, § V.

⁷⁹⁸ SoD, ¶ 297; *Adel A Hamadi Al Tamimi v. Sultanate of Oman*, ICSID Case No ARB/11/33, Award (3 November 2015) (**RLA-139**), ¶ 324.

⁷⁹⁹ Reply, ¶ 438; Quiroga Second Expert Report, ¶ 3.35 (“[...] PERUPETRO S.A., a private company in the Energy and Mines sector whose corporate purpose is to promote investment in hydrocarbon exploitation activities.”).

⁸⁰⁰ SoD, ¶¶ 296-303.

1. Peruvian law does not grant Perupetro any regulatory or governmental authority

464. Perupetro is a “state enterprise” within the meaning of Article 10.1(2) of the Treaty. As Claimant put it in his Reply, “Perupetro is a state-owned company responsible for negotiating contracts, promoting investment, and overseeing hydrocarbon exploration and exploitation in the oil fields and their subdivisions in Peru.”⁸⁰¹ Peru agrees with Claimant’s characterization of Perupetro as a “state-owned company” and the responsibilities delegated to it by law. These responsibilities are listed in Article 3 of Law No. 26225 “Organization and Functions of Perupetro.”⁸⁰² Perupetro does not exercise any governmental or regulatory function in carrying them out.

465. Several passages in the second report of Claimant’s expert, Dr. Quiroga, support this view. According to Dr. Quiroga:

- Article 12 of Peru’s Hydrocarbons Law establishes that the “hydrocarbon exploration and exploitation activities are governed by **private law**.”⁸⁰³
- The effect of Article 12 of the Hydrocarbons Law is that the “license agreements for hydrocarbons exploitation are **indisputably civil in nature**, as can be seen [by the provisions of the Civil Code].”⁸⁰⁴
- Perupetro has **discretion** to contract through direct negotiation or public bidding.⁸⁰⁵
- Perupetro’s main activities are “to promote foreign investment in hydrocarbon exploration and exploitation, as well as negotiating, administering, and supervising oil contracts and technical evaluation agreements.”⁸⁰⁶

⁸⁰¹ Reply, ¶ 438. *See also* Quiroga Second Expert Report, ¶ 3.37.

⁸⁰² Perupetro’s S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 3; Quiroga Second Expert Report, ¶ 3.38.

⁸⁰³ Quiroga Second Expert Report, ¶ 3.3 (emphasis added).

⁸⁰⁴ Quiroga Second Expert Report, ¶ 3.3 (emphasis added). *See also id.*, ¶ 3.10.

⁸⁰⁵ Quiroga Second Expert Report, ¶ 3.19.

⁸⁰⁶ Quiroga Second Expert Report, ¶ 3.38.

466. This legal regime, as described by Dr. Quiroga, is consistent with Perupetro’s nature as a “state entity of private law.”⁸⁰⁷ The fact that hydrocarbons are State property⁸⁰⁸ does not change the commercial nature of Perupetro’s activities.⁸⁰⁹ As Peru explained in the Statement of Defense, Article 60 of the Constitution authorizes the central government to engage in “business activities.”⁸¹⁰ Perupetro was created for the purpose of carrying out the State’s “business activities” in the hydrocarbons sector. And this is why the State has “grant[ed] PERUPETRO S.A. ownership rights over the extracted hydrocarbons so that it may enter into contracts for the exploration and exploitation, or exploitation of such hydrocarbons.”⁸¹¹

467. But despite recognizing that the contracts granted by Perupetro are governed by private law, Claimant’s legal expert asserts in his second report that the procedures by which Perupetro grants its contracts are governed by the Law of General Administrative Procedure, claiming that general administrative law could apply, by way of exception, to the procedures by which Perupetro grants its contracts.⁸¹² Not only does Dr. Quiroga fail to provide any legal authority for his assertion, but that very assertion contradicts the legal basis cited in Perupetro’s procedures.

468. As explained by Dr. Vizquerra in his second report, Perupetro’s internal processes, including those for the granting of contracts, “are management procedures that have been established [...] for operational purposes, the description of control activities, responsibilities, communication mechanisms, forms, and deadlines regarding the activities under PERUPETRO’s

⁸⁰⁷ SoD, ¶ 302. *See also* Quiroga Second Expert Report, ¶ 3.37; Expert Report of Anibal Quiroga León (18 August 2023) (“**Quiroga First Expert Report**”), ¶ 100.

⁸⁰⁸ Quiroga Second Expert Report, ¶ 3.11; Reply, ¶ 435.

⁸⁰⁹ *See, e.g., JCDecaux SA v. Czech Republic*, ICSID Case No. ARB/20/33, Award (5 June 2026) (**RLA-248**), ¶ 261 (explaining that the “receipt of state property and funding” does not necessarily imply exercise of governmental authority).

⁸¹⁰ SoD, ¶ 301 *citing* Republic of Peru’s Political Constitution (31 October 1993) (**CLA-14**), Art. 60.

⁸¹¹ Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 8 (translation provided by Counsel. In the original Spanish: “*otorga a PERUPETRO S.A. el derecho de propiedad sobre los Hidrocarburos extraídos para el efecto de que pueda celebrar Contratos de exploración y explotación o explotación de éstos.*”).

⁸¹² Quiroga Second Expert Report, ¶¶ 3.14-3.16.

charge [...] [t]heir legal basis and related policies are the Organic Law on Hydrocarbons, the Regulations, and Qualification Procedure [for Oil Companies],” not the Law of General Administrative Procedure.⁸¹³

469. In any event, even assuming that administrative law regulates some of the activities of Perupetro, this does not mean that Peru has delegated “regulatory, administrative, or other governmental authority” to Perupetro. The *Finley Resources v. Mexico* tribunal confirmed that, even if the State enterprise executes administrative acts, this does not entail that the enterprise has acted with “regulatory, administrative or other governmental authority.”⁸¹⁴

470. It is therefore undisputed that Perupetro exercises no governmental or regulatory functions. Amorrortu has failed to demonstrate otherwise.

2. Claimant has failed to demonstrate that the impugned measures are governmental

471. According to Claimant, Peru’s treaty breaches arise from (i) Perupetro’s alleged refusal to enter into direct negotiations with Baspetro; and (ii) Perupetro’s decision to exclude Baspetro from the bidding process.⁸¹⁵ But Perupetro’s discretion to grant contracts through direct negotiation or public bidding, as well as the process by which those contracts are awarded, forms

⁸¹³ Vizquerra Second Expert Report, ¶ 16; Procedure GFCN-008 “Contracting by Direct Negotiation” V 3.0 (QUIROGA-12), p. 2, § 7.1; Perupetro, Procedure PR-GFCN-007 Contracting by Call for Bids (RLA-247), p. 4, § 3.

⁸¹⁴ *Finley Resources Inc., MWS Management Inc., and Prize Permanent Holdings, LLC v. United Mexican States*, ICSID Case No. ARB/21/25, Decision on Jurisdiction and Liability (4 November 2024) (RLA-244), ¶ 285 (“In the Tribunal’s view, the answer to that key question should be in the negative: the facts that PEP is a State enterprise and that the three Contracts were administrative in nature do not automatically make all acts by PEP in the execution of the Contracts acts of ‘regulatory, administrative or other governmental authority’ attributable to Mexico and subject to the disciplines of the NAFTA and the USMCA.”) (emphasis in original). See also *JCDecaux SA v. Czech Republic*, ICSID Case No. ARB/20/33, Award (5 June 2026) (RLA-248), ¶ 262 (“The Tribunal is also of the view that the provision of mass transportation does not as such require or involve any element of governmental authority. Whether it is undertaken by a state- or a privately owned entity, it is of course likely to be subject to regulation in the public interest. But being regulated by governmental authority is not the same as having or exercising governmental authority.”).

⁸¹⁵ Reply, ¶ 494.

part of the functions assigned to it by law. In other words, the impugned measures reflect Perupetro's routine operational activity.

472. In fact, Amorrortu's expert, Dr. Quiroga, confirmed that the alleged negotiations between Baspetro and Perupetro that lay at the core of this case were "governed by private law," not administrative law.⁸¹⁶ Amorrortu also conceded that the rights "appurtenant" to the alleged direct negotiation that he claims were violated are all private law obligations that would arise in any negotiation between two equal, private, commercial entities.⁸¹⁷ The *Jan de Nul* tribunal supports the proposition that the running of a tender by a State-owned company is not a governmental activity. The tribunal there expressly held that, when the Suez Canal Authority—a State-owned company—conducted the public bidding process leading to the dredging contract, "during the tender process, the SCA acted like any contractor trying to achieve the best price for the services it was seeking."⁸¹⁸ The same can be said of Perupetro's conduct in the adjudication of the contracts for Blocks III and IV. More generally, Perupetro's acts in negotiating, administering, and supervising oil contracts are ordinary commercial acts governed by Peruvian private law and, therefore, cannot be considered "to constitute acts of governmental authority."⁸¹⁹

473. Claimant's allegations of corruption are irrelevant for purposes of attribution under Article 10.1(2) of the Treaty. The fact that former President Ollanta Humala and Nadine Heredia were "Heads of State at the time of the complained conduct"⁸²⁰ does not mean that the alleged measures were taken by them in their official capacity. Even if the public bidding of Blocks III

⁸¹⁶ Quiroga First Expert Report, ¶ 178 (translation provided by Counsel. In the original Spanish: "[...] *encontrándose regidas por el derecho privado*"). See also Quiroga Second Expert Report, ¶ 4.24 ("Based on the foregoing, we can affirm that the negotiations initiated by BASPETROL S.A.C. with PERUPETRO S.A. for the purpose of entering into a license contract for the exploitation of Lots III and IV, [were] governed by private law [...]").

⁸¹⁷ SoC, ¶ 225.

⁸¹⁸ *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (CLA-18), ¶ 169.

⁸¹⁹ *EBO Invest AS, Rox Holding AS and Staur Eiendom AS v. Republic of Latvia*, ICSID Case No. ARB/16/38, Award (28 February 2020) (RLA-233), ¶ 343 ("[...] the conduct of SJSC Airport with which this dispute is concerned is of a quintessentially commercial character, i.e., the management of its relationship with private investors in relation to the development of real estate in accordance with contracts concluded for that purpose on commercial terms and governed by Latvian private law.").

⁸²⁰ Reply, ¶ 463.

and IV was corrupted (*quod non*), corruption is a “private act” devoid of any appearance of an act of authority.⁸²¹

474. In any case, as Peru explained in the Statement of Defense, Amorrortu’s claim ultimately arises from Perupetro’s conduct, not the President nor the First Lady. Even if Claimant’s corruption theory were true (*quod non*), the breaches of the Treaty arise from alleged measures taken by Perupetro and Perupetro alone.⁸²²

475. In conclusion, the Tribunal lacks jurisdiction *ratione materiae* over Amorrortu’s claim because Perupetro’s conduct cannot be attributed to Peru under Article 10.1(2) of the Treaty.

⁸²¹ *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 232 (“Clear and convincing evidence should have been produced by the Claimant showing not only that a bribe had been requested [...] but also that such request had been made not in the personal interest of the person soliciting the bribe, but on behalf and for the account of the Government authorities in Romania, so as to make the State liable in that respect.”). See also *Kenneth P. Yeager v. Islamic Republic of Iran*, IUSCT Case No. 10199, Award No. 324-10199-1 (2 November 1987) (**RLA-204**), ¶ 65 (“Acts which an organ commits in a purely private capacity, even if it has used the means placed at its disposal by the State for the exercise of its function, are not attributable to the State [...] There is no indication in this case that the Iran Air agent was acting for any other reason than personal profit, or that he had passed on the payment to Iran Air. He evidently did not act on behalf or in the interest of Iran Air.”); *Georg Gavrilovic and Gavrilovic D.O.O. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award (26 July 2018) (**RLA-160**), ¶ 801; *Bernhard Friedrich Arnd Rüdiger von Pezold et al. v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015) (**CLA-91**), ¶ 444.

⁸²² SoD, ¶¶ 308, 310 (“Indeed, the four alleged bases of this violation are based on alleged measures of Perupetro, and Perupetro alone: (i) the international bidding process conducted by Perupetro; (ii) the alleged corruption allegedly materialized by Perupetro; (iii) the alleged ‘rejection’ of Baspetro’s alleged proposal by Perupetro, and Perupetro’s decision to submit the Blocks to public tender, and (iv) Perupetro’s alleged failure ‘to follow’ its rules and procedures; ‘to give Amorrortu a well-reasoned response,’ to ‘follow the [d]irect [n]egotiation [p]rocedure,’ and its supposedly ‘false representations.’”).

E. The Tribunal Lacks Jurisdiction Because There Is No Connection Between Peru’s Purported Treaty Breach and the Damages Amorrortu Claims

476. In its Statement of Defense, Peru showed that Amorrortu’s claim falls outside the Tribunal’s jurisdiction because, as a matter of law, Peru’s purported Treaty breach could not have resulted in the damages Amorrortu claims.⁸²³

477. Indeed, Article 10.16.1 of the Treaty limits the claims that may be submitted to arbitration to those directly resulting in a “loss or damage” to the investor,⁸²⁴ such that claims that do not result in damages must be excluded.⁸²⁵ That is the situation here. As Amorrortu explained in his Statement of Claim, his claim rests on the premise that Peru’s purported breach “deprived [him] of the opportunity to complete the Direct Negotiation and profit from the contracts to which he was entitled.”⁸²⁶ That premise is legally wrong. Even if his Alleged Proposal had triggered direct negotiations (*quod non*),⁸²⁷ and even if Baspetro had obtained the necessary petroleum qualification (*quod non*),⁸²⁸ neither step would have conferred any right to contract. As Amorrortu concedes,⁸²⁹ the granting of a qualification certification “does not generate any right whatsoever” with respect to a contract.⁸³⁰ Moreover, Peruvian law requires the completion of additional steps before any contract may be awarded, including reaching an agreement with Perupetro on contractual terms within 60 days (an inherently uncertain outcome, as in any negotiation), and obtaining approval from the Ministry of Energy and the Ministry of Finance (which is likewise

⁸²³ SoD, § III.E.

⁸²⁴ USPTA Investment Chapter (CLA-1), Art. 10.16.1(a) (“[T]he claimant, on its own behalf, may submit to arbitration under this Section a claim [...] that the respondent has breached [...] an obligation under Section A, [...] an investment authorization, or [...] an investment agreement; and [...] that the claimant has incurred loss or damage by reason of, or arising out of, that breach.”) (emphasis added).

⁸²⁵ SoD, ¶¶ 315-317.

⁸²⁶ SoC, ¶ 396 (emphasis added).

⁸²⁷ Amorrortu’s Alleged Proposal did not trigger direct negotiations; *see* § VI.A *infra*.

⁸²⁸ Baspetro never obtained the necessary petroleum qualification; *see* § VI.A *infra*.

⁸²⁹ SoC, ¶ 200 (“[A] certification of qualification does not give the qualified company the right to establish a contract with PeruPetro, which has to be negotiated by the parties.”).

⁸³⁰ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 2 (translation provided by Counsel. In the original Spanish: “El otorgamiento de Calificación no generará derecho alguno sobre el área de Contrato.”).

uncertain, particularly given Baspetro's lack of a track record and financial capacity to operate the blocks).⁸³¹ Since Amorrortu had no entitlement to contract, his claim—predicated on that entitlement—could never result in damages. Thus, the requirement of Article 10.16.1 is not satisfied and the Tribunal lacks jurisdiction over Amorrortu's claim.

478. Amorrortu addresses this objection in Section V.c of his Reply, within his discussion on attribution rather than jurisdiction.⁸³² He does not dispute that Article 10.16.1 imposes a jurisdictional threshold whereby only claims resulting in damages may be submitted to arbitration, nor does he contest that he lacked any entitlement to contract. Instead, his rebuttal focuses on distinguishing *Merrill v. Canada* (one of the three cases relied upon by Peru in support of its objection),⁸³³ arguing that *Merrill* is inapposite because the breach “at issue in [the present case] is one of lost opportunity or chance, not direct expropriation of a contract right as the *Merrill* tribunal dealt with.”⁸³⁴

479. Amorrortu's attempt to recast his claim as one of “lost opportunity or chance” is unavailing.

480. *First*, such recasting contradicts Amorrortu's own case. In his Statement of Claim, he expressly rejected the characterization of his claim as one of loss of chance, emphasizing that his “is not a case of a loss of chance” because he “was not deprived of the opportunity to commence a Direct Negotiation Process,” but rather “of the opportunity to complete the Direct Negotiation and profit from the contracts to which he was entitled.”⁸³⁵ Amorrortu's recasting also contradicts the instructions to his quantum expert. He instructed Mr. Dellepiane to assess his alleged damages “under the assumption that, absent [Peru's purported breach], PeruPetro would have granted

⁸³¹ SoD, ¶ 320. *See also* § VI.B *infra*.

⁸³² Reply, ¶¶ 466-469.

⁸³³ SoD, ¶¶ 315-317. The other two cases are *Factory at Chorzów* and *PACC v. Mexico*; *see id.*, ¶¶ 315, 317.

⁸³⁴ Reply, ¶ 468.

⁸³⁵ SoC, ¶ 396. At the end of this paragraph, Amorrortu made the caveat that “the application of the loss of chance doctrine would yield the same result, as every direct negotiation that has been properly commenced for the operation of the oil lots in Talara has concluded in the execution of a contract”; *see id.* This, however, was framed as a purely hypothetical statement, not as a statement that Amorrortu's primary position was that his claim was one of “lost opportunity or lost chance.”

Claimant the operation contracts for Blocks III and IV under the terms of Claimant’s proposal.”⁸³⁶ These instructions do not reflect a loss of chance claim, but rather a claim predicated on an entitlement to contract. Amorrortu’s recasting is thus inconsistent and self-serving and underscores the untenability of his original position that he had an entitlement to contract.

481. *Second*, by characterizing his claim as one of loss of chance, Amorrortu concedes the very point that Peru made with its objection: that Amorrortu never had an entitlement to contract.⁸³⁷ By his own admission, he had, at most, only a chance to secure contracts.⁸³⁸ Yet a chance to secure a contract is different from an entitlement to one. Thus, Amorrortu’s claim, premised on an entitlement that does not exist, could neither give rise to damages nor satisfy Article 10.16.1’s jurisdictional threshold.

482. *Third*, even if Amorrortu’s claim were one of loss of chance (as he now contends), it would still fail to meet Article 10.16.1’s jurisdictional requirements.

483. Article 10.16.1 does not merely require Amorrortu to prove that a theoretical chance existed; it requires him to demonstrate that he has suffered actual “loss or damage by reason of, or arising out of” Peru’s breach.⁸³⁹ A loss of chance claim does not relieve Amorrortu of that burden. If a loss of chance framework is applied, Amorrortu would still need to demonstrate that Peru’s purported breach deprived him of a real chance of obtaining the Blocks III and IV License Contracts, such that but for the breach, it was more probable than not that the Contracts would

⁸³⁶ BRG Second Expert Report, ¶¶ 4, 40; Letter of Instruction (**BRG-5**).

⁸³⁷ SoD, ¶¶ 318-320.

⁸³⁸ As Peru demonstrated in Section V.A.2 of Peru’s Statement of Defense, and further addresses in Section VI.A.1 below, the chance that Amorrortu through his company Baspetro would have secured the License Contracts for Blocks III and IV is zero. Even in the absence of Peru’s alleged breach, Baspetro could never have obtained such contracts because Baspetro neither fulfilled nor could have fulfilled the legal requirements to engage in direct negotiations with Perupetro, participate in the Blocks III and IV public tender, or in sum have the License Contracts for those blocks awarded to it.

⁸³⁹ USPTPA Investment Chapter (**CLA-1**), Art. 10.16.1(a) (“[T]he claimant, on its own behalf, may submit to arbitration under this Section a claim [...] that the respondent has breached [...] an obligation under Section A, [...] an investment authorization, or [...] an investment agreement; and [...] that the claimant has incurred loss or damage by reason of, or arising out of, that breach.”) (emphasis added).

have been awarded to Baspetrol.⁸⁴⁰ In the present case, Amorrortu cannot demonstrate that. As Peru established in Section V.A.2 of its Statement of Defense, and further explains in Section VI.A below, Baspetrol could never have secured the License Contracts because it neither fulfilled nor could have fulfilled the applicable legal requirements. Put simply, even absent Peru’s purported breach, Amorrortu’s and Baspetrol’s chances of obtaining the Contracts were nil. In these circumstances, Amorrortu cannot establish that the damages he claims were “by reason of, or arising out of” Peru’s breach,⁸⁴¹ even under a loss of chance framework. Thus, the requirements of Article 10.16.1 are not met and the Tribunal lacks jurisdiction over Amorrortu’s claim.

F. The Tribunal Lacks Jurisdiction *Ratione Voluntatis* because Amorrortu Did Not Comply with the Procedural Prerequisites for Submitting a Claim to Arbitration

484. In its SoD,⁸⁴² Peru established that a State’s consent to arbitration is foundational to jurisdiction and is not given unconditionally or without limits. Any conditions the State attaches to its consent constitute binding prerequisites that a claimant must satisfy before the State’s offer to arbitrate is perfected and a tribunal’s jurisdiction established. Failure to meet these conditions negates jurisdiction *ratione voluntatis* and mandates dismissal of the claim. Peru also demonstrated that Section B of the USPTPA establishes clear procedural prerequisites for arbitration. These include the requirement that an investor initially attempt to resolve the dispute through consultation and negotiation, and the obligation to deliver a written notice of intent (“NoI”) at least 90 days before submitting a claim—any claim—to arbitration; neither of which Amorrortu complied with.

485. In his Reply, Amorrortu attempts to deflect Peru’s objections with a series of unfounded or contradictory arguments that do not engage with Peru’s position. As demonstrated

⁸⁴⁰ See *Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan (II)*, ICSID Case No. ARB/13/13, Award (27 September 2017) (**RLA-225**), ¶ 1151 (“[T]he Tribunal must assess whether the Claimants have proven their claims for damages for lost opportunity with sufficient probability, i.e. whether their claim is more probable than not, by a preponderance of evidence.”).

⁸⁴¹ USPTPA Investment Chapter (**CLA-1**), Art. 10.16.1(a) (“[T]he claimant, on its own behalf, may submit to arbitration under this Section a claim [...] that the respondent has breached [...] an obligation under Section A, [...] an investment authorization, or [...] an investment agreement; and [...] that the claimant has incurred loss or damage by reason of, or arising out of, that breach.”) (emphasis added).

⁸⁴² See SoD, § III.F.

below, each of these arguments fails as a matter of treaty interpretation, is unsupported by case law, and is incompatible with the fundamental principle that a State’s consent to arbitration must be affirmatively perfected through compliance with the express conditions upon which that consent is predicated.

486. Peru refutes Amorrortu’s arguments, demonstrating once again that steps taken for a different arbitration—dismissed for lack of jurisdiction *ab initio*—cannot cure his failures to comply with the Treaty’s requirements to consult and negotiate under Article 10.15 (**Section 1**) and submit a NoI before commencing arbitration under Article 10.16.2 (**Section 2**).

1. Amorrortu failed to comply with the mandatory consultation and negotiation requirement before initiating this arbitration, pursuant to Article 10.15

487. Amorrortu’s principal response to Peru’s consultation and negotiation objection is a *volte face*. In his Reply, he now contends that the word “should” in Article 10.15 is not mandatory and does not impose a binding obligation comparable to “shall.”⁸⁴³ Amorrortu previously acknowledged—repeatedly—that consultation and negotiation is a “requirement” under the Treaty. In his August 2022 letter to the PCA, he stated that he had “satisfied the Consultation and Negotiation requirement under Article 10.15 of the USPTPA.”⁸⁴⁴ In his Opposition to Bifurcation, he affirmed that “Article 10.15 requires consultation and negotiation.”⁸⁴⁵ Having conceded the mandatory nature of this requirement when it suited him, Amorrortu cannot now retreat from that position.

488. Amorrortu’s belated reinterpretation of Article 10.15 also fails on its merits. The Reply fails to respond to Peru’s interpretation based on Article 33 of the Vienna Convention on the Law of Treaties and the Spanish version of the Treaty, which employs the term “*deben*”—an

⁸⁴³ Reply, ¶ 416.

⁸⁴⁴ See Letter from Claimant to the PCA (26 August 2022) (**R-1**), p. 1 (emphasis omitted; underlining added).

⁸⁴⁵ See Claimant Bacilio Amorrortu’s Opposition to Respondent Peru’s Request for Bifurcation (19 December 2023) (“**Claimant’s Opposition to Bifurcation**”), ¶ 60 (“To determine if this requirement has been satisfied [...] After all, Article 10.15 requires consultation and negotiation.”) (emphasis added).

unmistakably mandatory formulation.⁸⁴⁶ Nor does he engage with Peru’s reliance on *Murphy v. Ecuador (I)*, where the tribunal held that an identically-worded “should” provision imposed a “fundamental requirement” that Claimant must “comply with, compulsorily, before submitting a request for arbitration.”⁸⁴⁷ Amorrortu’s silence on these points is telling. He has no answer.

489. Amorrortu’s reliance on *Murphy v. Ecuador (II)* is equally unavailing. He argues that the tribunal there described the “cooling-off period” as a curable procedural defect,⁸⁴⁸ and in doing so conflates two distinct concepts: cooling-off periods and consultation and negotiation requirements. *Murphy II* concerned the former; Peru’s objection is based on Amorrortu’s failure to satisfy the latter. More fundamentally, *Murphy II* supports Peru’s position, not Amorrortu’s. In that case, the claimant consulted and negotiated with Ecuador after *Murphy I* but before initiating *Murphy II*.⁸⁴⁹ The *Murphy II* claimant therefore complied with its consultation obligations for the new arbitration—precisely what Amorrortu failed to do here.

490. Amorrortu also argues that because the claims in *Amorrortu I* and *Amorrortu II* are identical, the 2019 negotiations satisfy the consultation requirement for this arbitration.⁸⁵⁰

491. Tellingly, Amorrortu provides no legal support for his interpretation. The case law cited by Peru—which Amorrortu ignores—proves the opposite. Under the USPTPA itself, the *Renco* saga demonstrates that a new consultation and negotiation was required following a dismissal for a defective waiver.⁸⁵¹ After the *Renco I* tribunal dismissed the claimant’s case, Renco served Peru with a new notice communicating its intention to refile the claims that were the subject

⁸⁴⁶ See SoD, ¶ 327.

⁸⁴⁷ See SoD, ¶ 328 (emphasis omitted).

⁸⁴⁸ See Reply, ¶ 417.

⁸⁴⁹ *Murphy Exploration & Production Company – International v. The Republic of Ecuador*, PCA Case No. 2012-16, Partial Award on Jurisdiction (13 November 2013) (**CLA-188**), ¶¶ 18-22.

⁸⁵⁰ See Reply, ¶¶ 401, 415.

⁸⁵¹ See SoD, ¶ 342 discussing *The Renco Group, Inc. v. Republic of Peru*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction (15 July 2016) (**RLA-147**); *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, Claimant’s Notice of Arbitration and Statement of Claim (23 October 2018) (**RLA-165**); *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, Response of the Republic of Peru (14 January 2019) (**RLA-167**).

of *Rencho I* in a new arbitration and requesting consultations. Amorrortu cannot credibly argue otherwise.

492. Amorrortu also ignores Peru’s argument that the *Amorrortu I* tribunal dismissed the case for lack of jurisdiction *ab initio*.⁸⁵² The procedural prerequisites satisfied (or allegedly satisfied) for a proceeding that was invalid from its inception cannot be carried over to a new arbitration. By attempting to do so, Amorrortu asks this Tribunal to rewrite the *Amorrortu I* Award. The *Amorrortu I* tribunal was clear: submission of a compliant waiver is “not a condition for the admissibility of claims, but a precondition for the very existence of the State’s consent to arbitrate.”⁸⁵³ Because there was no valid consent in *Amorrortu I*, the jurisdictional prerequisites for that proceeding cannot perfect consent in this one.

493. Amorrortu further maintains that the 2019 negotiations for *Amorrortu I* never closed and “continued through *Amorrortu I* and *Amorrortu II*.”⁸⁵⁴ In support of this argument, he references a meeting with Minister Vera on 28 June 2023, claiming that Peru “failed to disclose” this meeting to the Tribunal. This argument fails for several reasons.

494. *First*, the assertion that negotiations never closed is contradicted by Amorrortu’s own conduct and statements. If the 2019 negotiations had not concluded, why did Amorrortu submit his claims to the *Amorrortu I* arbitration? The entire premise of that arbitration was that consultation and negotiation had failed. Amorrortu’s own characterization of the 2019 negotiations confirms as much: the Special Commission’s response of 24 December 2019 informed Amorrortu that “a technically and legally viable alternative solution has not been identified,” and Amorrortu described the negotiations in his Statement of Claim as “ultimately unproductive.”⁸⁵⁵ These are not the hallmarks of ongoing negotiations.

⁸⁵² See SoD, ¶ 339.

⁸⁵³ *Bacilio Amorrortu v. Republic of Peru* [I], PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (RLA-54), ¶ 233.

⁸⁵⁴ Reply, ¶¶ 406, 415.

⁸⁵⁵ Reply, ¶ 400 *citing* Letter from B. Amorrortu (Baspetro) to I. Tafur (Perupetro) (16 July 2014) (C-32). See also Reply, note 625.

495. *Second*, Peru did not “fail to disclose” the alleged meeting with Minister Vera to the Tribunal.⁸⁵⁶ In truth, even Amorrortu did not consider the meeting relevant until he was confronted with Peru’s objection. Indeed, it was not until the Parties’ briefing on bifurcation that Amorrortu first raised this meeting—not in his Statement of Claim submitted months after the meeting allegedly occurred. Similarly, Amorrortu’s Notice of Arbitration referred only to the negotiations in the context of *Amorrortu I*, not to any subsequent meetings, including with Minister Vera.⁸⁵⁷ If Amorrortu considered this meeting relevant to the Treaty’s consultation and negotiation requirement, why did he not address it sooner?

496. *Third*, the purported meeting with Minister Vera cannot satisfy the Treaty’s consultation and negotiation requirement. Amorrortu does not respond to Peru’s argument that the Ministry of Energy and Mines does not have authority to settle investment disputes—a fact Amorrortu knew from the *Amorrortu I* negotiations, when he was referred to the Special Commission that represents the State in international investment controversies.⁸⁵⁸

497. *Finally*, there continues to be no evidence on the record that supports Amorrortu’s claim that the June 2023 meeting was intended to settle this investment dispute or that this arbitration was even discussed. The only evidence that Claimant offers with the Reply is the statement of a new witness, Mr. Chaves, who vaguely indicates that he attended the meeting and that “Amorrortu and Baspétrol presented a Proposal.”⁸⁵⁹ Mr. Chaves fails to specify what that alleged proposal consisted of or related to and, like Amorrortu, does not support his statement with any documentation.

⁸⁵⁶ Reply, ¶ 406.

⁸⁵⁷ NoA, ¶ 66.

⁸⁵⁸ See SoD, ¶¶ 344-347.

⁸⁵⁹ Chaves Witness Statement, ¶ 3 (“I should note that on June 28, 2023, I accompanied Engineer Amorrortu to a meeting at the Ministry of Energy and Mines with Engineer Oscar Vera, then Minister of Energy and Mines, where Amorrortu and Baspétrol presented a proposal.”).

498. Amorrortu’s next argument focuses on the word “initially” in Article 10.15.⁸⁶⁰ He argues that the Treaty’s focus on “initially” seeking to resolve dispute through consultation and negotiation “could also stand for the argument that in multiple filings of the same exact claims, no such consultation is needed.”⁸⁶¹ This interpretation is baseless. The plain meaning of “initially” in this provision sets the chronological order of the consultations and negotiations in relation to the submission of the claims to arbitration: the parties must first attempt to settle the dispute before bringing it to arbitration. The word “initially” does not—and cannot—justify a single round of consultations and negotiations for all future submissions of a claim to arbitration. Amorrortu tellingly provides no legal support for his interpretation.

499. Amorrortu’s final argument is plainly an afterthought.⁸⁶² Amorrortu hints at a futility argument, noting that in *Amorrortu I* he “approached Peru to negotiate a possible resolution of the underlying dispute, and Peru demonstrated its unwillingness to engage in any meaningful conciliation,”⁸⁶³ but does not expressly invoke the doctrine, let alone analyze its requirements or applicability.⁸⁶⁴ Even if Amorrortu intends to rely on the futility doctrine, it does not apply here.

500. Negotiation attempts in *Amorrortu I* are not determinative of the probability of settlement in *Amorrortu II*. Circumstances change, including here. The mere fact that negotiations failed in one context does not establish that they would fail in another—particularly where, as here, significant time has passed and the procedural landscape has shifted dramatically. Moreover, tribunals have established that the obligation to attempt settling a dispute amicably is an obligation

⁸⁶⁰ See USPTPA Investment Chapter (CLA-1), Art. 10.15 (“In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation”).

⁸⁶¹ Reply, ¶ 416.

⁸⁶² To the extent that Claimant fails to articulate it or develop the applicable legal framework beyond a footnote referring to two cases.

⁸⁶³ See Reply, ¶ 405.

⁸⁶⁴ Because this is Peru’s last written submission, Amorrortu’s vagueness precludes Peru from responding in full if he elaborates on this argument in his upcoming Rejoinder on Jurisdiction. Peru therefore reserves the right to expand or modify its arguments accordingly at the Hearing.

of means, not of result, requiring “genuine” negotiation efforts from both parties.⁸⁶⁵ Here, Amorrortu made no genuine effort to consult or negotiate with Peru before initiating this arbitration. He simply filed his Notice of Arbitration eleven days after the *Amorrortu I* Award was issued.

501. Furthermore, futility cannot be presumed; it must be proven with “compelling” evidence.⁸⁶⁶ As the tribunal in *Louis Dreyfus Armateurs v. India* observed, futility “imposes a considerable burden of proof on a claimant.”⁸⁶⁷ Amorrortu offers no such evidence. The evidence on the record, including Amorrortu’s own account, proves the opposite: the 2019 negotiations demonstrate that when Amorrortu engaged Peru in consultations, Peru participated in good faith, including throughout correspondence and meetings.⁸⁶⁸ That the outcome did not satisfy Amorrortu does not establish futility—it establishes that negotiations occurred as the Treaty contemplates.

502. The cases Amorrortu cites⁸⁶⁹—*Teinver* and *Alps Finance*—do not assist him either. In *Teinver*, the parties in fact “attempted to settle th[e] dispute from 2002 until May 2008, and then again between October 2008 and early 2010” and even came close to executing a settlement

⁸⁶⁵ See, e.g., *Murphy Exploration and Production Company International v. Republic of Ecuador*, ICSID Case No. ARB/08/4, Award on Jurisdiction (15 December 2010) (**RLA-14**), ¶ 135; *Guaracachi America et al. v. Plurinational State of Bolivia*, PCA Case No. 2011-17, Award (31 January 2014) (**RLA-133**), ¶ 392.

⁸⁶⁶ See, e.g., *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 70 (1 April 2011) (**RLA-116**), ¶ 160; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422 (20 July 2012) (**RLA-122**), ¶ 57; *Kiliç v. Turkmenistan*, ICSID Case No. ARB/10/1, Award (2 July 2013) (**RLA-130**), ¶ 8.1.3.

⁸⁶⁷ *Louis Dreyfus Armateurs SAS (France) v. The Republic of India*, PCA Case No. 2014-26, Decision on Jurisdiction (22 December 2015) (**CLA-187**), ¶ 97.

⁸⁶⁸ See Reply, ¶¶ 397-398, note 625 (describing the 2019 negotiations). See also Letter from Peru’s President R. Ampuero Llerena to Akerman LLP, representatives of B. Amorrortu (28 November 2019) (**C-28**) Graña y Montero Marketing Campaign (4 February 2019) (**C-22**) Letter from Claimant to the PCA (26 August 2022) (**R-1**), pp. 1-2 (acknowledging that a meeting between Peru’s and Amorrortu’s representatives took place “[p]ursuant to Article 10.15 of the USPTA”).

⁸⁶⁹ See Reply, note 629.

agreement.⁸⁷⁰ They were, however, “ultimately unable to reach any sort of amicable agreement.”⁸⁷¹ It was against this backdrop that the tribunal found “that requiring Claimants to engage in any further settlement attempts would serve no further purpose.”⁸⁷² In *Alps Finance*, the tribunal did not conclude that negotiations would have been futile. Rather, it concluded that the parties’ correspondence—consisting of five letters from the claimant “in which the matter in dispute was identified and the Claimant expressed its availability to settle it out-of-court with clarity” and three replies from the respondent over an eight month period⁸⁷³—“abundantly fulfil[led] the BIT requirement.”⁸⁷⁴ Thus, far from excusing compliance based on the futility doctrine, the tribunal deemed it satisfied by concrete evidence reflecting the parties’ negotiations. In this case, Amorrortu made no effort to resolve the dispute amicably, proceeding directly to arbitration in disregard of that obligation.

503. Even if Amorrortu’s interpretation of the Treaty were adopted (*quod non*) and his claims “remain unchanged,”⁸⁷⁵ the changed circumstances since 2019 further preclude the futility exception. The distinct landscape the Parties faced before *Amorrortu I* and *Amorrortu II* warranted fresh negotiation efforts. Since the Parties’ negotiations in 2019, the *Amorrortu I* Award was rendered, Amorrortu commenced annulment proceedings (which remain pending), and Amorrortu has not complied with the cost award in *Amorrortu I*. These developments—which Amorrortu does not address—created a new context that required genuine efforts to consult and negotiate.

504. If negotiations were truly futile, one must ask: why did Amorrortu allegedly seek to meet with Minister Vera in June 2023? The purported effort to consult with a government minister—however ineffective for the reasons explained above—belies any claim that negotiations

⁸⁷⁰ See *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction (21 December 2012) (**RLA-218**), ¶¶ 126, 128.

⁸⁷¹ *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction (21 December 2012) (**RLA-218**), ¶ 129.

⁸⁷² *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction (21 December 2012) (**RLA-218**), ¶ 129.

⁸⁷³ *Alps Finance and Trade AG v. Slovak Republic*, Ad hoc Arbitration, Award (5 March 2011) (**RLA-217**), ¶ 208.

⁸⁷⁴ *Alps Finance and Trade AG v. Slovak Republic*, Ad hoc Arbitration, Award (5 March 2011) (**RLA-217**), ¶ 209.

⁸⁷⁵ Reply, ¶ 401.

would have been pointless. Amorrortu cannot have it both ways. Either negotiating was futile or he believed it was necessary and might yield results. His own conduct suggests the latter.

505. Accordingly, Amorrortu’s failure to engage in consultation and negotiation before commencing this arbitration deprives the Tribunal of jurisdiction *ratione voluntatis*—a conclusion reinforced by his separate failure to submit a NoI.

2. Amorrortu failed to submit a Notice of Intent as required under Article 10.16.2 of the Treaty

506. As Peru established in its SoD,⁸⁷⁶ even if Amorrortu were not required to negotiate with Peru before commencing these proceedings—which he was—the Tribunal nevertheless lacks jurisdiction *ratione voluntatis*. This is because Amorrortu did not deliver a written notice of his intention to submit the claim to arbitration, as required under Article 10.16.2 of the Treaty,⁸⁷⁷ such that Peru’s consent was never perfected.

507. Amorrortu’s response in the Reply is to repeat his argument from the SoC: that the NoI he submitted for *Amorrortu I* on 19 September 2019 satisfies Article 10.16.2 for purposes of this arbitration.⁸⁷⁸ He adds only that “[n]othing in the Treaty precludes” his interpretation.⁸⁷⁹ This is not legal analysis. That the Treaty does not expressly prohibit an interpretation does not make that interpretation correct. Amorrortu ignores Peru’s numerous arguments demonstrating why his

⁸⁷⁶ See SoD, § III.F.2.

⁸⁷⁷ USPTPA Investment Chapter (CLA-1), Art. 10.16.2 (“At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration (‘notice of intent’).”).

⁸⁷⁸ See, Reply, ¶¶ 399, 402, 407-408.

⁸⁷⁹ See, Reply, ¶ 402 (emphasis omitted).

position is wrong, including the three-step process of treaty interpretation under Article 31(1) of the VCLT,⁸⁸⁰ the case law,⁸⁸¹ and the policy reasons behind the requirement.⁸⁸²

508. Amorrortu relies on a handful of cases to argue that the NoI for *Amorrortu I* suffices for this proceeding,⁸⁸³ but his own descriptions of those cases reveal precisely why they do not support his position. *Kappes v. Guatemala* and *Pope & Talbot v. Canada* concerned additional or amended claims within the same, ongoing proceeding—not the commencement of an entirely new arbitration after a prior one had been dismissed.⁸⁸⁴ Those cases stand for the unremarkable proposition that, in certain circumstances, a claimant may add or amend claims during an ongoing arbitration without filing separate notices. They say nothing about whether a claimant can

⁸⁸⁰ See SoD, ¶¶ 352-361.

⁸⁸¹ See, e.g., *Guaracachi America et al. v. Plurinational State of Bolivia*, PCA Case No. 2011-17, Award (31 January 2014) (RLA-133), ¶¶ 388-390 (“[t]he explicit wording requiring a written notification and the expiry of a period of six months from that notification leads the Tribunal to consider that the ‘cooling off period’ narrows the consent given by the Contracting Parties to international arbitration. It is not up to the Tribunal to evaluate the importance or effect of such a condition, but simply to acknowledge that it was agreed by the two Contracting Parties as a condition precedent to the availability of an arbitral forum which is, and must be, based on consent.”); *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction (2 June 2010) (RLA-12), ¶ 315 (“[B]y imposing upon investors an obligation to voice their disagreement at least six months prior to the submission of an investment dispute to arbitration, the Treaty effectively accords host States the right to be informed about the dispute at least six months before it is submitted to arbitration. The purpose of this right is to grant the host State an opportunity to redress the problem before the investor submits the dispute to arbitration. In this case, Claimant has deprived the host State of that opportunity. That suffices to defeat jurisdiction.”).

⁸⁸² See SoD, ¶¶ 363-364. See also *Tulip Real Estate v. Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue (5 March 2013) (RLA-127), ¶¶ 56, 62 (“[a] requirement for prior notice of a dispute to be given and negotiations to follow for a period before filing a claim [...] fulfils the policy function of conferring upon the State Party an opportunity to address a potential claimant’s complaint before it becomes a respondent in an international investment dispute.”).

⁸⁸³ Reply, ¶ 409 *et seq.*

⁸⁸⁴ See Reply, ¶¶ 410-411, 413. See also *Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Decision on Respondent’s Preliminary Objections (13 March 2020) (RLA-234), ¶¶ 162, 185 (“Respondent states that Claimants’ claim for breach of DR-CAFTA Article 10.4 (Most-Favored-Nation Treatment) must be dismissed because Claimants did not include this alleged breach in their Notice of Intent [...] the Tribunal accepts Claimants’ alternative point that a reference to the MFN claim could not have been included in the Notice of Intent, because the particular act that Claimants later challenged as an Article 10.4 breach had not yet occurred.”); *Pope & Talbot v. Government of Canada*, UNCITRAL, Award concerning the Motion by Government of Canada respecting the Claim Based Upon Imposition of the ‘Super Fee’ (7 August 2000) (RLA-205), ¶ 25 (“the Tribunal concludes that the Investor’s contentions regarding tire super fee are not a ‘new’ claim, but relate instead to a new element that has recently been grafted onto the overall Regime.”).

commence an entirely new arbitration after a prior one has concluded—without complying with the notice requirement.

509. *Westmoreland v. Canada II* is equally unavailing. Notably, Amorrortu cites the claimant’s Notice of Arbitration rather than any decision by the tribunal—because the tribunal never ruled on this issue.⁸⁸⁵ And the reason the tribunal did not need to rule is telling: as Amorrortu himself notes, the claimant in *Westmoreland II* submitted a new notice of intent before commencing the second arbitration.⁸⁸⁶ Far from supporting Amorrortu’s position, *Westmoreland II* confirms that a new NoI should be submitted before commencing a new arbitration.

510. Critically, Amorrortu’s interpretation would allow him to undo the findings of *Amorrortu I* by treating the two proceedings as one continuous case; another argument that the Reply ignores.⁸⁸⁷ The *Renco* saga again proves the point. After the *Renco I* tribunal dismissed the claimant’s case for a defective waiver, Renco understood that it needed to submit a new notice of intent before commencing *Renco II* and thus served Peru with a new NoI, waited the required 90 days (during which it consulted Peru on negotiations), and only then submitted its notice of arbitration. Amorrortu could have—and should have—done the same.

511. In sum, the Treaty is clear: a NoI is required “before submitting any claim to arbitration.”⁸⁸⁸ Amorrortu has failed to identify any case law supporting his contention that one NoI suffices for multiple distinct arbitrations. His interpretation of Article 10.16.2 is not merely unsupported by jurisprudence—it is incompatible with the Treaty’s plain text, its object and purpose, and the fundamental principle that a State’s consent to arbitration must be affirmatively perfected.

512. For the reasons set forth above, Amorrortu has plainly failed to satisfy Articles 10.15 and 10.16.2 of the Treaty. Peru’s consent to arbitration is clearly and expressly conditional

⁸⁸⁵ See Reply, note 637.

⁸⁸⁶ See Reply, ¶ 412.

⁸⁸⁷ See SoD, ¶ 362.

⁸⁸⁸ USPTPA Investment Chapter (CLA-1), Art. 10.16.2.

upon two prerequisites: (i) prior consultation and negotiation, and (ii) a notice of intent submitted at least 90 days before submission of a claim to arbitration. Amorrortu satisfied neither.

513. No amount of reliance on a dismissed prior proceeding can cure these deficiencies. The *Amorrortu I* tribunal dismissed that case for lack of jurisdiction *ab initio*. The procedural steps taken in a proceeding that was void from its inception cannot perfect Peru's consent in a new and distinct arbitration. The procedural prerequisites in the USPTPA exist to protect a State's sovereign right to attempt to resolve disputes before being subjected to international arbitration. Peru has never waived these protections, and Amorrortu has never satisfied them.

514. For all the foregoing reasons, Peru respectfully requests that the Tribunal dismiss Amorrortu's claim for lack of jurisdiction and admissibility.

V. AMORRORTU'S CLAIM IS MERITLESS

515. Even if Claimant could defeat every one of Peru's jurisdictional objections, his claim would still fail on the merits. Peru's SoD set out two independent reasons why that is so. First, the disputed measures are not attributable to Peru under customary international law (**CIL**). Second, even if attribution were established (*quod non*), Perupetro's award of Blocks III and IV through a public tender cannot constitute a breach of the Minimum Standard of Treatment (**MST**) codified in Article 10.5 of the Treaty.

516. This chapter explains why Amorrortu's Reply fails even to engage with, let alone overcome, Peru's merits defenses. Neither attribution nor a breach of the MST is made out, and the claim must therefore be dismissed on the merits.

A. The Disputed Measures Are Not Attributable to Peru under CIL

517. Peru will address first Amorrortu's argument that his claims are attributable to Peru under international customary law because they "arise (variously) from the conduct of Peru's

executive branch and its administrative organs and Perupetro.”⁸⁸⁹ This is wrong for at least three reasons. *First*, none of the measures challenged were committed by organs of Peru (**Section 1**). *Second*, Perupetro is not authorized to exercise governmental authority within the meaning of Article 5 of the ILC Articles (**Section 2**). *Third*, Perupetro did not act under the direction or control of any organ of the State (**Section 3**).

1. The impugned measures were not committed by organs of Peru (Article 4 of the ILC Articles)

a. Perupetro is not a state organ

518. As demonstrated in the SoD, Perupetro is not a *de jure* organ of the State because it has an independent legal personality from the State.⁸⁹⁰ Nor is it a *de facto* organ of the State because it has “economic, financial and administrative” autonomy.⁸⁹¹

519. Amorrortu’s Reply advances three arguments to rebut Peru’s demonstration that Perupetro is not an organ of the State. Amorrortu fails on all counts.

520. *First*, according to Amorrortu, Perupetro “is legally and functionally part of the Ministry of Energy and Mines (‘MINEM’) of Peru, and accordingly also forms part of the executive (a *de jure* State organ).”⁸⁹² This is false, as evidenced by the fact that Amorrortu does not cite any legal authority in support of this assertion. To be sure, Perupetro is not part of MINEM⁸⁹³: it has a separate legal personality from the State.⁸⁹⁴ If it were part of MINEM—as Amorrortu incorrectly claims—Perupetro would not have its own law, and it would not have been granted the “economic, financial and administrative” autonomy that it enjoys.⁸⁹⁵ Perupetro’s

⁸⁸⁹ Reply, ¶ 431.

⁸⁹⁰ SoD, ¶ 373; SoC, ¶ 287. *See also* Vizquerra Second Expert Report, ¶ 39.

⁸⁹¹ SoD, ¶ 374.

⁸⁹² Reply, ¶ 437.

⁸⁹³ *See, e.g.*, Perupetro, “About us” (last accessed 28 April 2024) (**R-68**); Perupetro, “Organization” (last accessed 14 July 2026) (**R-120**).

⁸⁹⁴ Perupetro’s S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 4. *See also* Vizquerra Second Expert Report, ¶ 39.

⁸⁹⁵ SoD, ¶ 374.

separate legal personality is manifested also in the fact that its employees are not subject to public service laws and regulations.⁸⁹⁶

521. *Second*, Amorrortu claims that Perupetro is a *de facto* organ of the State because it performs essential government functions, including granting contracts for the extraction of hydrocarbons, a national resource.⁸⁹⁷ This assertion is also false. Perupetro’s activities do not constitute essential government functions. As stated in the SoD, Perupetro is a state company carrying out commercial activities with “economic, financial and administrative” autonomy.⁸⁹⁸ The extraction of hydrocarbons through commercial contracts, which is Perupetro’s main activity, does not represent an essential government function. As explained by the tribunal in *Unión Fenosa v. Egypt*, “the development of [a] State-owned natural resource [...] is not the same thing as being integral to the State apparatus.”⁸⁹⁹

522. *Third*, Amorrortu argues that Perupetro lacks operational autonomy “due to its subservience to First Lady Nadine Heredia and her husband then-president Ollanta Humala through bribery.”⁹⁰⁰ Amorrortu asks this Tribunal to accept, on faith alone, that Nadine Heredia instructed Perupetro—yet the record contains no evidence to that effect. On the contrary, the fact

⁸⁹⁶ See Vizquerra Second Expert Report, ¶¶ 37-38.

⁸⁹⁷ Reply, ¶¶ 444-445.

⁸⁹⁸ SoD, ¶ 374.

⁸⁹⁹ See *Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award (31 August 2018) (RLA-162), ¶ 9.98; *Mr. Kristian Almås and Mr. Geir Almås v. Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) (RLA-145), ¶ 210 (“[...] where an entity engages on its own account in commercial transactions, even if these are important to the national economy, this inference will not be drawn.”). See also *JCDecaux SA v. Czech Republic*, ICSID Case No. ARB/20/33, Award (5 June 2026) (RLA-248), ¶ 262 (“The Tribunal is also of the view that the provision of mass transportation does not as such require or involve any element of governmental authority. Whether it is undertaken by a state- or a privately owned entity, it is of course likely to be subject to regulation in the public interest. But being regulated by governmental authority is not the same as having or exercising governmental authority. If DPP had or were to be given statutory powers to employ and deploy transport police with, for example, powers to detain or exclude, that could certainly mean that DPP enjoyed and was exercising an element of governmental authority. But there is nothing like that here in question. This case is concerned with DPP’s treatment of contractual arrangements under the Rencar Contract and its Amendments. Whether or not DPP’s treatment of the Rencar Contract and/or its Amendments was justified contractually, DPP was not thereby acting or purporting to act as a governmental authority or pursuant to any form of discernible governmental authority. The Claimant is therefore unable to rely on Article 5 to justify the attribution to the State of DPP’s treatment or mistreatment of the Rencar Contract and/or its Amendments.”).

⁹⁰⁰ Reply, ¶ 445.

that GyM was awarded the License Contracts for Blocks III and IV disproves any role or intervention of Nadine Heredia in Perupetro. [REDACTED]

[REDACTED] If Nadine Heredia had any influence or role in Perupetro's decision, GyM would never have obtained the *Buena Pro* for Blocks III and IV.

523. The arbitral awards Amorrortu invokes in the Reply do not support the proposition that Perupetro qualifies as a State organ under the ILC Articles.⁹⁰²

524. In *Venezuela US v. Venezuela*, the tribunal noted that a State-owned company could be considered an organ of the State if its decision-making process was restricted and if all their board decisions or contracts required government ratification.⁹⁰³ Yet Perupetro does not fit any of

[REDACTED]

⁹⁰² Reply, ¶¶ 444-445, 455.

⁹⁰³ *Venezuela US v. Venezuela*, PCA Case No. 2013-34, Partial Award (Jurisdiction and Liability) (5 February 2021) (CLA-192), ¶ 193 ("It is to be noted that in both the *Ampal-American* and *Flemingo* cases, to which the Claimant refers, further restrictions were applicable on the decision-making processes of the State-owned companies in question, namely, that all their board decisions or all their contracts required governmental ratification or approval. It has not been shown that this was the case here.").

those characteristics, given that it has economic, financial and administrative autonomy.⁹⁰⁴ In any case, that tribunal ultimately found that the Venezuelan state oil company was not a state organ.⁹⁰⁵

525. Amorrortu also invokes the *Lupaka Gold v. Peru* award without identifying any relevant paragraphs.⁹⁰⁶ In any event, *Lupaka* is inapposite: the tribunal there held that an autonomous rural community established in Peru’s Constitution—endowed with economic, administrative, and judicial functions—over its population, qualified as a state organ.⁹⁰⁷ That finding has no bearing on whether Perupetro qualifies as an organ of the State. Perupetro is a state-owned company with independent legal personality and is not mentioned in the Constitution of Peru.

526. Claimant’s reliance on *M.C.I. v. Ecuador* is equally misplaced.⁹⁰⁸ In that case, Ecuador recognized that the state agency, INECEL, “was a public-sector agency and that official representatives or delegates constituted a majority of its board. It also recognize[d] that INECEL was empowered to exercise certain public powers.”⁹⁰⁹ That is not the case here. Perupetro does not have any public powers and none of its board members, although designated by the State, are themselves government officials.⁹¹⁰

⁹⁰⁴ Perupetro’s S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 4.

⁹⁰⁵ *Venezuela US v. Venezuela*, PCA Case No. 2013-34, Partial Award (Jurisdiction and Liability) (5 February 2021) (**CLA-192**), ¶ 192 (“The Tribunal is of the view that all these factors, even if combined, do not support the conclusion that PDVSA, still less CVP and Petroritupano, are State organs and that on this basis their acts can be attributed to Venezuela. The evidence submitted by the Claimant only demonstrates that the State is the owner of the entirety of PDVSA’s shares, and that the Venezuelan oil industry is highly regulated. The appointment and dismissal of board members by the State as the sole shareholder of PDVSA is not sufficient to call for the lifting of corporate veil.”)

⁹⁰⁶ Reply, ¶ 445.

⁹⁰⁷ *Lupaka Gold Corp. v. Peru*, ICSID Case No. Arb/20/46, Award (30 June 2025) (**CLA-172**), ¶¶ 218-220 (“The Constitution thus establishes that the Parán Community is a legal entity with legal capacity to carry out economic and administrative functions. The Parán Community is assured autonomy in the conduct of its affairs, but this autonomy must be exercised ‘within the framework established by the law.’”).

⁹⁰⁸ Reply, ¶ 446.

⁹⁰⁹ *M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/03/6, Award (31 July 2007) (**CLA-159**), ¶ 224.

⁹¹⁰ Reply, ¶ 432. Although the law provides that the members of the Perupetro Board are appointed by the State, this does not determine that Perupetro is dependent on the State. See *Mr. Kristian Almås and Mr. Geir Almås v. Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) (**RLA-145**), ¶ 213 (“While ANR is supervised by the

527. Claimant simply asserts, without providing any legal or factual basis, that “Perupetro is a *de facto* state organ in that it is controlled by, and dependent on, the State and it performs sovereign and public functions.”⁹¹¹ As Peru has already explained, there is no evidence to support that Perupetro is dependent on the State given that Perupetro’s Board of Directors and management are not controlled by the government.⁹¹² Likewise, Perupetro does not have sovereign or public functions, since its activities are inherently commercial and are regulated by Peru’s domestic private law, as Claimant’s own legal expert confirms.⁹¹³ Therefore, Perupetro is not a *de facto* organ of the state.

b. The First Lady (Nadine Heredia) was not a State organ

528. Claimant also incorrectly asserts that the conduct of the former First Lady, Nadine Heredia, is attributable to Peru because she was an organ of the State.⁹¹⁴ The title of First Lady has no official or government functions, and it is not enshrined in the Constitution nor any law of Peru. Even assuming, *arguendo*, that the First Lady were considered an extension of the President and that Amorrortu’s corruption allegations were true (*quod non*), Nadine Heredia’s conduct was undertaken for her personal gain and in a purely private capacity and, therefore, such conduct

Minister for Rural Development, Poland’s control over ANR’s Board is limited to the appointment and removal of its president and vice-president. Poland may direct ANR through regulations [...] These facts suggest that overall, like the Cocoa Board in Hamster, ANR enjoys a level of autonomy not consistent with its being considered a *de facto* organ.”).

⁹¹¹ Reply, ¶ 446.

⁹¹² Perupetro’s S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (CLA-41), Arts. 4, 10, 18. *See also JCDcaux SA v. Czech Republic*, ICSID Case No. ARB/20/33, Award (5 June 2026) (RLA-248), ¶ 261 (stating that the “corporate control” by the State over an entity does not implicate “any element of governmental authority”: “Equally, the Tribunal acknowledges DPP’s receipt of state property and funding for use in its operations and the corporate control which the State has over DPP. The latter involves the City owning DPP, the City Council acting as DPP’s General Meeting, the General Meeting appointing DPP’s Supervisory Board and the Supervisory Board having power to hire and fire members of DPP’s Board of Directors. None of these features requires or involves however any element of governmental authority. They are features with parallels which could exist in ordinary commercial contexts.”).

⁹¹³ Quiroga Second Expert Report, ¶ 3.3 (“[...] hydrocarbon exploration and exploitation activities are governed by private law. That being the case, license agreements for hydrocarbon exploitation are indisputably civil in nature” [...]).

⁹¹⁴ Reply, ¶¶ 437, 445, 463-464.

cannot be attributed to the State.⁹¹⁵ This is especially true, given that the Peruvian authorities have prosecuted and convicted Ms. Heredia,⁹¹⁶ with other cases pending.⁹¹⁷

2. In any event, Perupetro's measures do not implicate *puissance publique* (Article 5 of the ILC Articles)

529. As stated in the SoD, Amorrortu's alternative argument under Article 5 of the ILC Articles fails because i) Perupetro is not empowered to exercise governmental authority and ii)

⁹¹⁵ If anything, Nadine Heredia's alleged corruption and interference in Perupetro would be considered "private acts" devoid of any appearance of an act of authority. They would not even fall under the category of *ultra vires* acts. The ILC Commentaries to the Articles on Responsibility of States for Internationally Wrongful Acts, distinguish both (ultra vires and private acts) as follows: "The central issue to be addressed in determining the applicability of article 7 to unauthorized conduct of official bodies is whether the conduct was performed by the body in an official capacity or not. Cases where officials acted in their capacity as such, albeit unlawfully or contrary to instructions, must be distinguished from cases where the conduct is so removed from the scope of their official functions that it should be assimilated to that of private individuals, not attributable to the State." United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (CLA-67), p. 46. See also *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (CLA-4), ¶ 232 ("Clear and convincing evidence should have been produced by the Claimant showing not only that a bribe had been requested [...] but also that such request had been made not in the personal interest of the person soliciting the bribe, but on behalf and for the account of the Government authorities in Romania, so as to make the State liable in that respect.") (emphasis added); *Kenneth P. Yeager v. Islamic Republic of Iran*, IUSCT Case No. 10199, Award No. 324-10199-1 (2 November 1987) (RLA-204), ¶ 65 ("Acts which an organ commits in a purely private capacity, even if it has used the means placed at its disposal by the State for the exercise of its function, are not attributable to the State [...] There is no indication in this case that the Iran Air agent was acting for any other reason than personal profit, or that he had passed on the payment to Iran Air. He evidently did not act on behalf or in the interest of Iran Air."); *Georg Gavrilovic and Gavrilovic D.O.O. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award (26 July 2018) (RLA-160), ¶ 801; *Bernhard Friedrich Arnd Rüdiger von Pezold et al. v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015) (CLA-91), ¶ 444.

⁹¹⁶ Vela Second Witness Statement, ¶ 15; Corte Superior Nacional de Justicia Penal Especializada, Tercer Juzgado Penal Colegiado Nacional, Sentencia No. 249-2015 (29 de abril de 2025) (R-98), ¶¶ 228-229. The lack of prosecution would have been considered an "aggravating factor" in assessing whether criminal conduct by a state official could be attributed to the State. See *BSG Resources LTD et al. v. Republic of Guinea*, ICSID Case No. ARB/14/22, Award (18 May 2022) (RLA-238), ¶ 1109 ("Another aggravating circumstance is that Guinea did not initiate criminal proceedings against most persons implicated in BSGR's corrupt dealings and in particular not against government officials [...] his lack of action against corrupt government agents and others close to them is particularly troublesome knowing that, as the Respondent concedes, corruption was pervasive at the highest levels of the Guinean government for decades."). See also A. Llamzon & A. Chakraborty, "The Reciprocity Dialectic in Transnational Corruption: The Relative Responsibility of Private and Public Actors Under International Law," *Yale Journal of International Law* (2024) (RLA-243), p. 9 [PDF] ("It is important not to go too far in placing all of the responsibility for corruption on states. One of the pitfalls of a stringent application of the ILC Articles, for example, lies in the tension between attribution of knowledge and attribution of conduct of the public official to the State. As Reed and Zamour correctly observe, it would be inconsistent to attribute only the conduct (or act) of the public official to the state, but not the knowledge of the bribe to the state. As set out in Part II, under national and international frameworks, a respondent is prevented from raising the corruption defense if it is established that it knowingly ignored the corrupt acts during the performance of the contract. Therefore, if, on application of the ILC articles, knowledge of corruption is automatically attributed to the state from the moment the bribe is consummated, there is a risk that the state loses its 'innocent' status from that point onwards, precluding it from rescinding contracts tainted by corruption outright.

none of the alleged measures taken by Perupetro constituted the use of government authority or *puissance publique*.⁹¹⁸

530. Amorrortu's Reply argues that Perupetro exercises public or regulatory functions bestowed upon it by law, mainly the right to decide contracts for the exploitation of hydrocarbons, which are the exclusive property of the State.⁹¹⁹ Claimant also underscores the fact that Perupetro is an entity created by law to carry out the State's business activities and is subject to policy considerations of the State.⁹²⁰ Claimant is wrong.

531. *First*, Claimant's own legal expert confirmed, Perupetro is a company of private law, governed by the rules of commercial companies, that was created to carry out business activities of the State, not governmental authority.⁹²¹ The fact that Perupetro negotiates contracts over hydrocarbons, a resource of the State, is not indicative of being empowered with government

This would create a total restriction on the state's ability to raise the corruption defense even in situations where the corrupt regime is being prosecuted by a new successor regime which had no role in the prior administration. Rather than a strict application that automatically attributes knowledge to the state (from the moment the illegality occurred), the more balanced approach would be, for example, to defer to the good faith obligations of the state to prosecute the corrupt individuals prior to the arbitration.”).

⁹¹⁷ Vela Second Witness Statement, ¶ 15.

⁹¹⁸ SoD, ¶¶ 376-391.

⁹¹⁹ Reply, ¶ 459.

⁹²⁰ Reply, ¶ 460.

⁹²¹ SoD, ¶ 380; Quiroga First Expert Report, ¶ 100; Vizquerra First Expert Report, note 1.

authority.⁹²² The commercial object of Perupetro is provided in the law, and none of its objectives represent an example of governmental authority.⁹²³

532. *Second*, the case of Perupetro differs from other state entities which investment tribunals have found were empowered to exercise governmental authority under Article 5. In *Hamester v. Ghana*, the tribunal determined that “Cocobod is indeed entrusted with governmental functions [...] it has the mission to regulate the marketing and export of cocoa, coffee and sheanuts.”⁹²⁴ The tribunal in *Jan de Nul v. Egypt* held that “the [Suez Canal Authority] was and still is empowered to exercise elements of governmental authority [...] in particular empowered to ‘issue the decrees related to the navigation in the canal’ [...] or to ‘impose and collect charges for the navigation and passing through the canal’.”⁹²⁵ Perupetro, by contrast, exercises no comparable regulatory powers, but instead acts in a purely commercial capacity by entering into and administering license and service contracts on behalf of the State.⁹²⁶

533. *Third*, even if the Tribunal finds that Perupetro has governmental authority (*quod non*), none of the alleged measures represent a use of *puissance publique*. To determine if the act taken by the person or entity constitutes governmental authority, the Tribunal must look at the actual acts complained of. The nature of the person or entity and its general functions are

⁹²² See *JCDecaux SA v. Czech Republic*, ICSID Case No. ARB/20/33, Award (5 June 2026) (**RLA-248**), ¶ 262 (“The Tribunal is also of the view that the provision of mass transportation does not as such require or involve any element of governmental authority. Whether it is undertaken by a state- or a privately owned entity, it is of course likely to be subject to regulation in the public interest. But being regulated by governmental authority is not the same as having or exercising governmental authority. If DPP had or were to be given statutory powers to employ and deploy transport police with, for example, powers to detain or exclude, that could certainly mean that DPP enjoyed and was exercising an element of governmental authority. But there is nothing like that here in question. This case is concerned with DPP’s treatment of contractual arrangements under the Rencar Contract and its Amendments. Whether or not DPP’s treatment of the Rencar Contract and/or its Amendments was justified contractually, DPP was not thereby acting or purporting to act as a governmental authority or pursuant to any form of discernible governmental authority. The Claimant is therefore unable to rely on Article 5 to justify the attribution to the State of DPP’s treatment or mistreatment of the Rencar Contract and/or its Amendments.”).

⁹²³ Perupetro’s S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 3.

⁹²⁴ *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) (**RLA-113**), ¶ 190.

⁹²⁵ *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (**CLA-18**), ¶ 166.

⁹²⁶ See, e.g., Perupetro, “About us” (last accessed 28 April 2024) (**R-68**).

irrelevant.⁹²⁷ As explained in the SoD, “[w]hat matters” under Article 5 “is not the ‘service public’ element, but the use of ‘*prérogatives de puissance publique*’ or governmental authority.”⁹²⁸

534. None of the alleged actions which Claimant claims breached the Treaty represent the use of governmental authority; namely the refusal to conduct a Direct Negotiation to obtain a contract and its disqualification from a public bid to win a contract cannot be considered as acts that reflect government authority.⁹²⁹ These are actions *jure gestionis* by a state-owned company that cannot be attributed to the State.⁹³⁰ Accordingly, even if Perupetro “aborted” the direct negotiations with Baspetro, that conduct is pre-contractual in nature and could, at most, engage *culpa in contrahendo* as a matter of domestic law. Such conduct does not rise to the exceptional circumstances necessary to constitute a breach of the Treaty.⁹³¹

535. *Fourth*, the caselaw cited by Claimant is inapposite. The *Glencore Finance v. Bolivia* award held that the opinions of a head of state “carry some weight” when making determinations regarding national action. Also, Article 5 of the ILC Articles covers

⁹²⁷ *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (CLA-18), ¶ 170.

⁹²⁸ SoD, ¶ 383. *See also Gustav F W Hamster GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) (RLA-113), ¶ 202.

⁹²⁹ Reply, ¶ 494.

⁹³⁰ SoD, ¶ 390; Vizquerra Second Expert Report, ¶ 39. *See also Ortiz Construcciones y Proyectos S.A. v. People’s Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020) (RLA-176), ¶ 200; *Gustav F W Hamster GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) (RLA-113), ¶ 193 (“In contrast, it is well established that for an act of a separate entity exercising elements of governmental authority to be attributed to the State, it must be shown that the precise act in question was an exercise of such governmental authority and not merely an act that could be performed by a commercial entity.”); *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (CLA-18), ¶ 170 (“What matters is not the ‘service public’ element, but the use of ‘*prérogatives de puissance publique*’ or governmental authority. In this sense, the refusal to grant an extension of time at the time of the tender does not show either that governmental authority was used, irrespective of the reasons for such refusal.”) (emphasis in original).

⁹³¹ *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award (11 September 2007) (CLA-142), ¶ 307 (“Another matter is whether, in itself, failing to disclose a legal opinion [...] to the counter-party before entering into an Agreement has international consequences for a State party. Such a conduct is often considered as a breach of good faith or a ‘*culpa in contrahendo*’. However, such a conduct, while objectionable, does not, in itself, amount to a breach of international law.”).

nationalizations and expropriations.⁹³² This is wholly irrelevant to the present discussion regarding whether Perupetro is empowered with governmental authority and no expropriation claim has been made in the present case.

536. Amorrortu cites the Decision on Stay of Enforcement of the award in *OIEG v. Venezuela* to support the proposition that statements of high-ranking governmental officials are legally binding.⁹³³ Once again, this is irrelevant to the discussion at hand regarding the application of Article 5 to Perupetro. He also relies on the award of *Noble Ventures, Inc. v. Romania* to claim that Article 5 has been applied to state-owned entities.⁹³⁴ However, the example set by *Noble Ventures* is inapposite given that in such instance, the entity was clearly empowered by law to represent the State and carry out functions regarding the privatization of state-owned companies.⁹³⁵ This situation is completely different here because Perupetro has not been empowered to exercise any regulatory powers in the performance of its commercial activities.

537. Thus, Perupetro's alleged conduct is not attributable to Peru under Article 5 of the ILC Articles.

3. Perupetro was not acting under the direction or control of Peru (Article 8 of the ILC Articles)

538. In the SoD, Peru demonstrated that Perupetro's conduct is not attributable to the State under Article 8 of the ILC Articles, which requires that measures be taken under the "instructions, direction, or control" of the State.⁹³⁶ At the time, Claimant did not present any argument nor demonstrated that Peru exercised "effective control" over Perupetro—a demanding

⁹³² Reply, ¶ 456.

⁹³³ Reply, ¶ 457.

⁹³⁴ Reply, ¶ 458.

⁹³⁵ *Noble Ventures, Inc. v. Romania*, ICSID Case No. ARB/01/11, Award (12 October 2005) (RLA-91), ¶¶ 76, 79 ("76. [...] The State Ownership Fund is an institution of public interest, a legal person, subordinated to Government, acting for a diminished involvement of the State and the local public administration authorities in the economy.").

⁹³⁶ SoD, ¶¶ 392-396. *See also* United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (CLA-33), Art. 8.

standard requiring both overall control over the entity and specific control over each disputed measure.⁹³⁷

539. In the Reply, Amorrortu addresses Peru’s arguments in a single paragraph, claiming that its Statement of Claim and now [REDACTED]

[REDACTED] Therefore, according to Amorrortu, the impugned conduct is attributable to Peru under Article 8.

540. Unsurprisingly, Claimant does not explain how exactly [REDACTED]

541. The tribunal in *JCDecaux v. Czech Republic* recently held that attribution under Article 8 “requires some form of use by the State of its ownership interest in or control over the entity to achieve a particular result, e.g. by causing the entity to do something it would not otherwise have done, or, it might be, by simply intervening in such a way that it was not possible

⁹³⁷ See *inter alia* *Ortiz Construcciones y Proyectos S.A. v. People’s Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020) (**RLA-176**), ¶ 247; *Georg Gavrilovic and Gavrilovic D.O.O. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award (26 July 2018) (**RLA-160**), ¶ 828; *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (**CLA-18**), ¶ 173; *Mr. Kristian Almås and Mr. Geir Almås v. Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) (**RLA-145**), ¶ 269.

⁹³⁸ Reply, ¶ 465. Additionally, Claimant states that Perupetro’s actions are attributable to Peru under Article 7 of the ILC Articles, but Claimant merely mentions that Perupetro’s actions are in breach of domestic law and transcribes the text of Article 7. Claimant does not argue nor explain in any way how Perupetro’s conduct has violated domestic law. See Reply, ¶¶ 461-462. In any case, Article 7 does not create independent attribution—it presupposes attribution that is otherwise established under Articles 4, 5, or 8, which Claimant has failed to prove.

⁹³⁹ Reply, ¶ 465, note 691.

to disentangle the activities or decision-making of the State and of the entity.”⁹⁴⁰ Yet, there is no evidence that Nadine Heredia “gave any relevant instruction or direction”⁹⁴¹ to Perupetro.

542. As explained in Section II.C above, none of the Confidential Documents reveal a corruption scheme to award the Blocks III and IV to GyM. [REDACTED]

[REDACTED]

[REDACTED]

543. Peru already presented these arguments in the SoD,⁹⁴³ yet Claimant has not, and cannot, offer an adequate rebuttal. There is simply no evidence in the record that anyone, not even Nadine Heredia, instructed Perupetro to allegedly “abort” the Direct Negotiation process with Amorrortu. Thus, Article 8 of the ILC Articles is irrelevant in this case.

544. In conclusion, Claimant has failed to prove that the disputed measures are attributable to Peru under international customary law. Accordingly, no internationally wrongful act (even if established) could be attributed to Peru.

B. Even if Perupetro’s Conduct Is Attributable to Peru (*Quod Non*), Amorrortu’s Claim Must be Dismissed Because He Has Failed to Demonstrate Any Breaches of Article 10.5 of the Treaty

545. Peru’s SoD devoted more than seventy paragraphs (paras. 398–470) to a detailed and thoroughly substantiated demonstration that, even if the Tribunal were to reach the merits, Amorrortu suffered no violation of the Minimum Standard of Treatment (MST) guaranteed by Article 10.5 of the USPTPA. Amorrortu’s Reply purports to respond to that showing in scarcely two dozen paragraphs (paras. 470–494), the bulk of which consists of a rote recapitulation of the

⁹⁴⁰ *JCDecaux SA v. Czech Republic*, ICSID Case No. ARB/20/33, Award (5 June 2026) (RLA-248), ¶ 290.

⁹⁴¹ *JCDecaux SA v. Czech Republic*, ICSID Case No. ARB/20/33, Award (5 June 2026) (RLA-248), ¶ 309.

⁹⁴² Perupetro’s Board of Directors, *Agreement No. 100-2010, Perupetro S.A. is required to carry out a selection process to enter into new contracts for hydrocarbons in lots in the Northwest, whose contracts are close to expire*. (14 July 2010) (R-15); Perupetro’s Board of Directors, *Agreement No. 002-2012, Approving that in all cases of expiration of the term of Hydrocarbon contracts, these shall be subject to new selection processes* (12 January 2012) (R-17).

⁹⁴³ SoD, ¶ 395.

corruption narrative already developed elsewhere in the Reply rather than engaging Peru’s legal arguments.

546. The brevity of the Reply’s merits section is not a function of economy; it is a function of having no answer. Where Peru advanced specific, dispositive propositions of law—on the content of the MST, on the requirements of legitimate expectations, on the high threshold for arbitrariness and discrimination, on the absence of any standalone protection against corruption, and on the absence of a causal link between the breach and the alleged injury—Amorrortu’s Reply responds with rhetoric, repetition, and silence. That silence should be taken for what it is: a concession that Claimant left these merits issues unanswered for the simple reason that he had no answer to give.

547. This section proceeds in four parts. **Subsection 1** identifies the merits arguments raised in Peru’s SoD that Amorrortu has failed to address in the Reply and that must now be treated as uncontested. **Subsection 2** rebuts the Reply’s merits arguments under the correct legal standard, the MST under Article 10.5 of the Treaty. **Subsection 3** demonstrates that, even under the autonomous fair and equitable treatment (“FET”) standard Amorrortu himself proposes, the claim cannot succeed.

1. Peru’s position on the interpretation and application of Article 10.5 of the Treaty is uncontested

548. The following arguments, each developed at length in the SoD, go unanswered in paragraphs 470–494 of the Reply:

- Amorrortu does not meaningfully contest Peru’s demonstration that the MST codified in Article 10.5 is the customary international law minimum standard—a “floor”—and not the more expansive autonomous FET standard found in other treaties.⁹⁴⁴ Peru showed that conduct breaches this standard only where it is “sufficiently egregious and shocking”—a gross denial of justice, manifest arbitrariness, blatant unfairness, a complete lack of due process, evident

⁹⁴⁴ SoD, ¶¶ 403–408.

discrimination, or a manifest lack of reasons—and requires “wilful neglect of duty, an insufficiency of action falling far below international standards, or even subjective bad faith.”⁹⁴⁵ Amorrortu states, without more, that Peru’s formulation of the MST “is not accurate”⁹⁴⁶ but never confronts the authorities cited in the SoD that support it, including the United States’ Non-Disputing Party Submissions in other investment disputes with materially identical MST provisions.

- Amorrortu’s Reply is silent about the dispositive legal requirement that legitimate expectations must rest on *reasonable* reliance, assessed against the information a diligent investor would have discovered. Peru established, by reference to *Micula*, *Saluka*, and *EBL and Tubo Sol v. Spain*, that an investor’s subjective expectations are irrelevant and that appropriateness of the State’s conduct must be assessed against “the background of information that [Amorrortu] knew and should reasonabl[y] have known at the time of the investment and of the conduct of [Perupetro].”⁹⁴⁷ The Reply asserts a generalized expectation that Perupetro would negotiate “in good faith” but never grapples with the reasonableness and due-diligence requirements.⁹⁴⁸
- Amorrortu does not engage the high threshold that governs allegations of arbitrariness and discrimination. Peru showed, on the authority of the International Court of Justice’s judgement in *ELSI*, that arbitrariness is “a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety,” and that a finding of discrimination “requires more than different treatment”—it requires that the investor be treated differently from comparable cases without justification and that the measure target the investment “specifically

⁹⁴⁵ SoD, ¶ 409.

⁹⁴⁶ Reply, ¶ 475.

⁹⁴⁷ SoD, ¶ 413.

⁹⁴⁸ Reply, ¶ 480.

as [a] foreign investment.”⁹⁴⁹ The Reply invokes *Lemire* and *EDF* for a definition of “arbitrary” but never addresses *ELSI* or the requirement that any discrimination be tied to Amorrortu’s status as a foreign national.⁹⁵⁰

- Amorrortu does not answer Peru’s showing that he has no standalone protection against corruption under Article 10.5 of the Treaty. Peru demonstrated that an act of corruption, even if proven, does not in itself constitute a breach of the MST; that *EDF v. Romania*—the only authority Amorrortu cites in which corruption was raised as part of an alleged treaty breach—is distinguishable because it concerned legitimate expectations and transparency under an autonomous FET clause, and was in any event dismissed for failure of proof; and that a violation of “another provision” of the USPTPA or of a separate anti-corruption convention “does not establish that there has been a breach of [the MST].”⁹⁵¹ Peru further showed that the USPTPA does not guarantee that no acts of corruption will occur, but merely requires States to adopt domestic measures criminalizing corruption.⁹⁵² The Reply simply reasserts the Preamble and Chapter 19 of the USPTPA without confronting any of these propositions, and offers no legal authority that an act of corruption is itself a violation of the MST.⁹⁵³
- Amorrortu does not address Peru’s demonstration that any breach must, as a matter of law, be the cause of an injury to the investor. Relying on *Scholz Holding v. Morocco*, Peru established that a measure constitutes a breach only if it is applied to, and injures, the investor, and that Perupetro’s alleged corruption “could never have been the cause of Amorrortu’s alleged injury” because Baspetro would never

⁹⁴⁹ SoD, ¶¶ 415-416.

⁹⁵⁰ Reply, ¶ 479.

⁹⁵¹ SoD, ¶¶ 451-456.

⁹⁵² SoD, ¶¶ 457-459.

⁹⁵³ Reply, ¶ 487.

have been awarded the Blocks in any event.⁹⁵⁴ The Reply addresses causation only in the context of damages and never engages the merits-level causation principle or *Scholz*.

549. Because Amorrortu has left each of the foregoing arguments unanswered, the legal propositions on which they rest must now be treated as undisputed:

- Amorrortu does not dispute that the MST codified in Article 10.5 is the customary international law minimum standard and sets a high threshold. To the contrary, in paras. 475, 476, 478, 480 of the Reply, Amorrortu argues against Peru's merits defenses while adopting Peru's formulation of the MST as the applicable standard. Having embraced Peru's formulation to make his own case, Amorrortu can no longer dispute the applicable standard for a finding of liability under Article 10.5.
- Amorrortu does not dispute that legitimate expectations, even if they were considered part of the MST, require reasonable reliance grounded in due diligence.
- Amorrortu does not dispute that the *ELSI* case sets the standard for arbitrariness, or that discrimination requires the measure to be directed at him because he is a foreign investor.
- Amorrortu does not dispute that no authority establishes a standalone MST protection against corruption.
- Amorrortu does not dispute that, as a matter of law, he is required to establish a causal link between the disputed measure (the alleged corruption) and the alleged injury (the fact that the Blocks were not adjudicated to Baspetrol).

550. On these undisputed propositions, and on the evidence in the record, Peru demonstrates below that Perupetro acted entirely within a long-standing policy and practice to open producing blocks to a competitive tender. Amorrortu's factual allegations cannot sustain his

⁹⁵⁴ SoD, ¶¶ 465-469.

FET claim. This is so under any interpretation of the MST standard, including Claimant's "autonomous" reading of the FET clause in Article 10.5 of the Treaty.

2. Peru did not breach Article 10.5 of the Treaty

a. There was a rational basis for Perupetro's decision to award Blocks III and IV through a competitive process

551. Amorrortu suggests that the disputed measures breached Article 10.5 because

"there was a complete lack of due process and manifest lack of reasons in Peru's conduct through its neglect of duty to reply to Amorrortu and never detail why any of his filings were deficient to it [sic], a fact admitted by Tafur, instead opting to go straight to public bidding after the filing of his documents in direct negotiation."⁹⁵⁵

552. These complaints are meritless.

553. *First*, Claimant glosses over the fact that, eight months before he submitted Baspetro's Alleged Proposal, the President of Perupetro's Board of Directors informed Amorrortu that Block III was not available for direct negotiation.⁹⁵⁶ Amorrortu's allegation that "there was a complete lack of due process in [...] Peru's conduct through its neglect of duty to reply to Amorrortu" is plainly false. The first time Amorrortu inquired about the possibility of a direct negotiation for one of the Blocks, he was told by Mr. Ortigas that the direct-negotiation route was foreclosed.⁹⁵⁷ The MST did not require Perupetro to say more, and certainly did not require it to react a second time in response to Baspetro's Alleged Proposal for direct negotiation. Amorrortu knew and should have known then that a direct negotiation was not possible and that the blocks would be adjudicated through a competitive bidding process.⁹⁵⁸ Amorrortu should have never sent

⁹⁵⁵ Reply, ¶ 478.

⁹⁵⁶ Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (C-6); SoD, ¶¶ 65-67.

⁹⁵⁷ Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (C-6).

⁹⁵⁸ See § II.A.1 *supra*; Vizquerra Second Expert Report, ¶ 11.

Baspetrol's Alleged Proposal in the first place.⁹⁵⁹ If Perupetro owed Amorrortu any due process obligations, they were fulfilled when Perupetro responded that Block III was unavailable for direct negotiation in August 2013.

554. *Second*, Perupetro had no obligation to explain to Amorrortu “why his filings were deficient.” A request for direct negotiations was procedurally out of place when Amorrortu submitted the Alleged Proposal. By that point, Perupetro's board had already resolved to award the Blocks through competitive bidding, foreclosing the direct-negotiation option.⁹⁶⁰ And had Perupetro engaged with the proposal and identified its many flaws, the result would only have been worse for Amorrortu: Baspetrol would have been disqualified, denying him any chance to participate in the bidding process. Instead of considering (and denying) a request for a direct negotiation that was not available to anyone, Ms. Isabel Tafur (then Perupetro's General Manager) instructed Amorrortu to pursue the only option open to anyone interested in Blocks III and IV: participation in the bidding process.⁹⁶¹ The record refutes Amorrortu's claim of “neglect”: Perupetro responded to the Alleged Proposal and invited Baspetrol to participate in the tender.⁹⁶² That was the most favorable response that Amorrortu could have expected in the circumstances.

555. *Third*, Perupetro's decision to award Blocks III and IV through a competitive process reflected a long-standing company policy of awarding producing blocks that way. As Mr. Guzmán— Perupetro's Secretary of the Board— explains in his second witness statement, Perupetro's adjudication method varies with the type of activity and contract. Producing blocks like Blocks III and IV draw multiple bidders, because known reserves make a profitable return more likely.⁹⁶³ Mr. Guzmán further explains that, in these circumstances, a competitive process “it

⁹⁵⁹ Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetrol) (12 August 2013) (C-6); Vizquerra Second Expert Report, ¶ 24.

⁹⁶⁰ Vizquerra Second Expert Report, ¶¶ 40-41.

⁹⁶¹ Letter from I. Tafur Marín (Perupetro) to B. Amorrortu (Baspetrol) (20 August 2014) (C-13); Tafur First Witness Statement, ¶ 34.

⁹⁶² Vizquerra Second Expert Report, ¶¶ 79-80.

⁹⁶³ Guzmán Second Witness Statement, ¶¶ 10-11.

is the most transparent way to award.”⁹⁶⁴ Contrary to what Claimant alleges, there was a rational basis for Perupetro’s decision to award Blocks III and IV through a competitive process.

b. Claimant’s allegations that the adjudication of the Blocks to GyM was corrupt are irrelevant

556. According to Amorrortu, the adjudication of the Blocks to GyM is sufficiently “shocking” and constitutes a “gross denial of justice” under the MST because Peru “continuously benefit[ed] GyM through back-room dealing and bribery.”⁹⁶⁵ Amorrortu’s corruption accusations in this case are irrelevant for several reasons.

557. *First*, Amorrortu has failed to establish any causal link between an act of corruption and the disputed measure.⁹⁶⁶ There is not a shred of evidence in the record connecting any act of corruption by GyM with Perupetro’s issuance of a call for tender for Blocks III and IV in July 2014. As explained above, the corruption admitted by GyM and its directors to the *Lava Jato* team concern infrastructure projects unrelated to the adjudication of Blocks III and IV.⁹⁶⁷ [REDACTED]

[REDACTED]

[REDACTED]

⁹⁶⁴ Guzmán Second Witness Statement, ¶ 11. *See also* Tafur First Witness Statement, ¶¶ 19-23.

⁹⁶⁵ Reply, ¶¶ 475, 478.

⁹⁶⁶ *See Niko Resources (Bangladesh) Ltd. v. Bangladesh Petroleum Exploration & Production Company Limited (“Bapex”) and Bangladesh Oil Gas and Mineral Corporation (“Petrobangla”)*, ICSID Case No. ARB/10/18, Decision on Jurisdiction (19 August 2013) (RLA-219), ¶¶ 455, 464. *See also Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award (31 August 2018) (RLA-162), ¶¶ 7.57-7.58: (“These acts of corruption by bribery (with kickbacks), as publicly reported, included one or more unnamed projects in Egypt. The Tribunal assumes, on the limited materials before it, that one such project was the Damietta Project. **There are no evidential materials before this Tribunal linking such corrupt acts with the Claimant or the SPA.** The Respondent has the legal burden of proving that the Claimant (or any of its associated companies) was party or privy to acts of corruption by Halliburton and officers of the Respondent in regard to the execution or performance of the EPC Contract. Its case cannot succeed without such proof. There can be no such guilt inferred from Halliburton’s mere association with SEGAS as the Claimant’s majority owned subsidiary under the EPC Contract.”) (emphasis added); *H&H Enterprises Investments, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/09/15, Award (6 May 2014) (RLA-220), ¶ 395: (“The Claimant’s Corruption claim raises the issue of whether the required causal link exists between the alleged bribery and the Claimant’s loss of its investment. The evidence does not appear to establish any such link, and the Claimant does not appear to have alleged that the solicitation of bribes by GHE officials was linked with the difficulties the Claimant experienced in its attempts to obtain the operating license and to have the development plan approved.”).

⁹⁶⁷ *See* § II.C.1 *supra*.

560. *Finally*, Claimant’s allegation that the benefits GyM received “through back-room dealing and bribery” constitutes a “gross denial of justice” is flawed as a matter of law.⁹⁷⁴ Article 10.5 of the Treaty makes clear that the obligation not to deny justice (under the Fair and Equitable Treatment standard) is limited to conduct in “criminal, civil, or administrative adjudicatory proceedings.”⁹⁷⁵ The impugned conduct (including the alleged “back-room bribery”) did not take place in the context of any adjudicatory proceedings. The ICJ recently explained in its judgement in *Certain Iranian Assets* that a denial of justice does not occur where “the rights [...] to appear before the courts [...], to make legal submissions and to lodge appeals, have not been curtailed.”⁹⁷⁶ No such thing has occurred in this case. Amorrortu’s access to the administrative and judicial mechanisms established in Peru to fight corruption has not been curtailed. Amorrortu could have submitted a complaint to the *Lava Jato* prosecutors or to Perupetro’s OCI. He chose not to.⁹⁷⁷ Amorrortu’s claim that these institutions are ineffective is contradicted by the fact that the former President Ollanta Humala and his wife, Nadine Heredia, have been convicted because of the work of the *Lava Jato* prosecutors.⁹⁷⁸

c. Perupetro did not discriminate against Baspetro (or Amorrortu)

561. In his Reply, Amorrortu alleges that the alleged evidence of the “clandestine meetings” between Nadine Heredia and GyM executives “also constitutes evident discrimination” under the MST.⁹⁷⁹ Claimant, however, never explains how—he identifies no comparator, no

⁹⁷⁴ Reply, ¶ 478.

⁹⁷⁵ USPTPA Investment Chapter (CLA-1), Art. 10.5 (2)(a) (“‘fair and equitable treatment’ includes the obligation **not to deny justice in criminal, civil, or administrative adjudicatory proceedings** in accordance with the principle of due process embodied in the principal legal systems of the world [...]”) (emphasis added). *See also Amec Foster Wheeler USA Corporation, Process Consultants, Inc., and Joint Venture Foster Wheeler USA Corporation and Process Consultants, Inc. v. Republic of Colombia*, ICSID Case No. ARB/19/34, Award (19 December 2024) (RLA-245), ¶ 214 (“[...] the obligation not to deny justice established in the Treaty is limited to proceedings of a judicial nature before national courts and does not cover purely administrative proceedings.”).

⁹⁷⁶ *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2023 (RLA-240), ¶ 143.

⁹⁷⁷ Vela First Witness Statement, ¶ 29; Vela Second Witness Statement, ¶¶ 45-47.

⁹⁷⁸ Vela Second Witness Statement, ¶ 15.

⁹⁷⁹ Reply, ¶ 476 (emphasis in original).

differential treatment.⁹⁸⁰ But, in any event, Claimant did not respond to Peru’s argument that the customary minimum standard of treatment under Article 10.5 of the Treaty does not include a general prohibition against discriminatory conduct.⁹⁸¹

562. The foregoing analysis suffices to defeat Amorrortu’s claim. But as shown in the next section, the result is no different even if the Tribunal were to apply the autonomous FET standard that Amorrortu wrongly advocates.

3. Even if the Tribunal were to apply the autonomous FET standard, it would not find any breach of Peru’s obligations under the Treaty

a. Amorrortu could not have legitimately expected that the alleged Baspetrol proposal would trigger a direct negotiation process

563. Amorrortu persists in asserting that he had a legitimate expectation that he would “resume” operation of Blocks III and IV through direct negotiation.⁹⁸² However, he continues to ignore the requirement that any such expectation must be objectively reasonable, assessed against the information a diligent investor would have discovered—not the investor’s subjective hopes.⁹⁸³ Amorrortu’s Reply falls short of making out a case that his alleged expectation to obtain the contracts was objectively reasonable. No reasonable expectation could have arisen here. As early as August 2013, Mr. Ortigas informed Amorrortu in writing that Block III was “not available for

⁹⁸⁰ SoD, ¶ 416.

⁹⁸¹ SoD, ¶ 407. *See also Resolute Forest Products Inc. v. Government of Canada*, PCA Case No. 2016-13, Award (25 July 2022) (**RLA-239**), ¶ 742 (“[...] the fair and equitable treatment standard is not part of the non-discrimination standards of investment law, such as MFN or national treatment clauses – it does not hinge on a comparison between the investor and third parties but ‘is an absolute standard that provides a fixed reference point’. This reference point is not domestic law or the treatment of third parties, but the minimum standard of treatment of aliens under customary international law.”).

⁹⁸² Reply, ¶¶ 5, 55, 408. As explained in Peru’s SoD, the MST does not include the protection of legitimate expectations. *See* SoD, ¶ 407. *See also Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, I.C.J. Reports 2018, p. 507 (1 October 2018) (**RLA-164**), ¶ 162 (“The Court notes that references to legitimate expectations may be found in arbitral awards concerning disputes between a foreign investor and the host State that apply treaty clauses providing for fair and equitable treatment. It does not follow from such references that there exists in general international law a principle that would give rise to an obligation on the basis of what could be considered a legitimate expectation. Bolivia’s argument based on legitimate expectations thus cannot be sustained.”).

⁹⁸³ SoD, ¶ 413.

direct negotiation.”⁹⁸⁴ Perupetro’s decision to adjudicate the Blocks by public tender was taken by Perupetro’s Board on 20 March 2014, memorialized in Supreme Decrees Nos. 012- and 013-2014-EM, and published in the official gazette on 5 April 2014—before the Alleged Proposal was even submitted.⁹⁸⁵ Perupetro’s longstanding policy of adjudicating operational blocks by competitive tender was documented as early as 2010 and confirmed in 2012, and was readily ascertainable through public records.⁹⁸⁶ A diligent investor—particularly one claiming decades of experience in Peru’s oil sector—would have known the Blocks were unavailable for direct negotiation.⁹⁸⁷

564. Claimant has also failed to provide documentary evidence to support his allegation that Mr. Ortigas (Perupetro’s President) “instructed” him to submit a proposal for direct negotiation.⁹⁸⁸ But even if Mr. Ortigas did (*quod non*), Amorrortu could not have reasonably relied on this “instruction” as a basis of his alleged expectations. As Dr. Vizquerra —Peru’s legal expert— observes, the alleged instruction by Mr. Ortigas would have been contrary to Perupetro’s Board earlier decision to issue a call for tender for the blocks. Mr. Ortigas, as President of the Board, did not have the authority to override an official decision adopted by the Board of Directors.⁹⁸⁹

565. In a desperate bid to salvage his legitimate-expectations argument, Amorrortu turns to the *Amorrortu I* award. According to him, the *Amorrortu I* tribunal “made clear that Amorrortu had commenced a direct negotiation process”⁹⁹⁰ and that it held that Perupetro’s refusal to engage in direct negotiations with Amorrortu constituted “a denial of [Fair and Equitable Treatment] [...] thereby justifying an award in Mr. Amorrortu’s favor.”⁹⁹¹ Amorrortu’s reliance on the *Amorrortu I* award underscores the weakness of his position, since that award does nothing to support the

⁹⁸⁴ Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (C-6).

⁹⁸⁵ SoD, ¶¶ 69-70; *supra* § II.A.2.

⁹⁸⁶ SoD, ¶ 49.

⁹⁸⁷ SoD, ¶¶ 48-55.

⁹⁸⁸ SoD, ¶ 71.

⁹⁸⁹ Vizquerra Second Expert Report, ¶ 86.

⁹⁹⁰ Reply, ¶ 9.

⁹⁹¹ Reply, ¶ 490.

legitimate expectations he now asserts. First, the *Amorrortu I* tribunal dismissed Amorrortu's claim for lack of jurisdiction.⁹⁹² The tribunal, therefore, did not reach (and could not have possibly reached) any binding decision on the merits. Second, Amorrortu's reliance on the *Amorrortu I* award is misplaced because the tribunal's findings on Amorrortu's alleged rights to a direct negotiation were made on a *pro tem* basis, that is, on the assumption that Amorrortu's factual allegations were true, and for purposes of the preliminary objections Peru raised.⁹⁹³ In other words, Peru did not have the opportunity to challenge Amorrortu's factual assertions at that stage of the proceedings. The only thing that the *Amorrortu I* tribunal found was that Amorrortu's claim could, as a matter of law, proceed to the merits. But it never did because the Tribunal found, in that same award, that Peru's consent to arbitration was not perfected because of Claimant's deficient waiver.⁹⁹⁴ And that is why Amorrortu had to initiate this second arbitration against Peru.

b. Perupetro's conduct was not arbitrary

566. In the Reply, Amorrortu accuses Peru and Perupetro of adopting “measures that did not serve any apparent legitimate purpose, were not based on law but discretion and personal preference, it was taken as a result of backroom dealings (not stated rationale), and it was done with a willful disregard of due process and the stated procedure.”⁹⁹⁵ Amorrortu does not specify the “measures” that, according to him, were arbitrary. In any case, these accusations are plainly false. First, the decision to issue a call for tenders for the Blocks was taken by Perupetro's Board of Directors through Supreme Decrees Nos. 012- and 013-2014-EM, and published in the official gazette on 5 April 2014.⁹⁹⁶ This was a month before Amorrortu submitted the Alleged Proposal. Contrary to what Claimant alleges, this decision was not based on “personal preference” or “backroom dealings.” Instead, this decision reflected Perupetro's long-standing company policy

⁹⁹² *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (CLA-108), ¶ 289.

⁹⁹³ *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (CLA-108), ¶ 155.

⁹⁹⁴ *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (CLA-108), ¶ 265.

⁹⁹⁵ Reply, ¶ 479.

⁹⁹⁶ Vizquerra Second Expert Report, ¶ 81; SoD, ¶¶ 69-70, 92, 266, 432, 486. *See also* § II.A.2 *supra*.

of awarding producing blocks through competitive bidding processes. As Ms. Tafur and Mr. Guzmán explain, that policy was particularly apt here: producing blocks with proven revenue potential were expected to attract substantial interest, making competitive bidding the most transparent way to award the license contracts.⁹⁹⁷ Second, as explained earlier, Amorrortu has failed to prove that any decision concerning the Blocks (*i.e.*, the decision to issue a call for tenders, or the adjudication of the license contracts to GyM) was motivated by corruption.⁹⁹⁸

c. Perupetro acted transparently

567. Amorrortu suggests that Peru breached its transparency obligations under Article 10.5 of the Treaty because supposedly Perupetro did not provide any reasons for ignoring Baspetro's Alleged Proposal.⁹⁹⁹ These allegations are baseless. Several months before Amorrortu submitted the Alleged Proposal, Perupetro informed him in writing that Block III was not available for direct negotiation and that, if Perupetro decided to include Block III in an international public bid, the announcement would be made in Perupetro's portal.¹⁰⁰⁰ The information was limited to Block III because, at the time, Amorrortu had not inquired about Block IV. Then, on 5 April 2014, Perupetro published in the Official Gazette two Supreme Decrees—No. 012-2014-EM (Block III) and No. 013-2014-EM (Block IV)—formalizing the Board of Directors' decision to approve temporary contracts with Interoil to allow Perupetro to issue a call for tenders for both Blocks.¹⁰⁰¹ Clearly, Amorrortu was aware of these Supreme Decrees because he cited them in his Alleged Proposal.¹⁰⁰² In these circumstances, Amorrortu should have also been aware that his Alleged Proposal was hopeless. He should never have sent it in the first place. Later, on 20 August 2014, just over a month after the public bid was announced, Perupetro's General Manager at the time, Ms. Tafur, invited Mr. Amorrortu to participate in the bids.¹⁰⁰³ In her letter, Ms. Tafur referenced

⁹⁹⁷ Guzmán Second Witness Statement, ¶ 11. *See also* Tafur First Witness Statement, ¶¶ 19-23.

⁹⁹⁸ *See* § II.C.1 *supra*.

⁹⁹⁹ Reply, ¶ 485.

¹⁰⁰⁰ Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (C-6).

¹⁰⁰¹ Vizquerra First Expert Report, ¶ 17; Vizquerra Second Expert Report, ¶¶ 40-43.

¹⁰⁰² SoD, ¶ 70.

¹⁰⁰³ Letter from I. Tafur Marín (Perupetro) to B. Amorrortu (Baspetro) (20 August 2014) (C-13).

Baspetrol's Alleged Proposal. Dr. Vizquerra observes that "PERUPETRO was clear in its communication of August 20, 2014, responding to Baspetrol's Proposal to the effect that, on July 14, 2014, bidding processes had been called for Lots III and IV, which had been reserved for that bidding process months earlier, as Amorrortu knew and as was publicly known through Supreme Decrees No. 012-2014-EM and No. 013-2014-EM, published on April 5, 2014."¹⁰⁰⁴ In his view, this was a response to Baspetrol's Alleged Proposal.¹⁰⁰⁵ This was also an appropriate response in the circumstances, and gave Amorrortu and Baspetrol the chance to submit a bid and compete for the Blocks like everyone else.

568. In short, whether measured against the customary international law MST, or against the more expansive standard Amorrortu prefers, his merits case collapses. He identifies no conduct that is egregious or shocking; no reasonable expectation that was frustrated; no arbitrariness or discrimination; and no causal nexus between any impugned measure and his alleged loss.

VI. AMORRORTU IS NOT ENTITLED TO THE DAMAGES HE SEEKS

569. Amorrortu's damages claim does not seek compensation; it seeks an impermissible windfall. He asks the Tribunal to award US\$ 606.3 million for the alleged loss of two petroleum contracts (the Blocks III and IV License Contracts) that Baspetrol never had, could not have obtained (whether through direct negotiation or public bidding), and was not qualified to perform. He does so despite claiming to have incurred costs of only US\$ 5.05 million in connection with his Alleged Proposal to operate those blocks, of which up to US\$ 4.4 million consisted of alleged payments of "*sueldos y bonos*" to himself and members of his family.¹⁰⁰⁶ The premise is untenable: a company with no prior operations, only about US\$ 80,000 in capital, and no demonstrated technical or financial capabilities should be treated as if it had secured and profitably operated

¹⁰⁰⁴ Vizquerra Second Expert Report, ¶ 81.

¹⁰⁰⁵ Vizquerra Second Expert Report, ¶ 81.

¹⁰⁰⁶ Expert Witness Report of Mr. Kurt G. Strunk (14 July 2026) (**RER-03**) ("**Strunk Second Expert Report**"), § II.B.

Blocks III and IV for 30 years. Amorrortu's damages claim is the arbitration equivalent of winning the lottery.¹⁰⁰⁷

570. Amorrortu's damages claim first **fails on causation**. To recover damages, he must show that, but for Peru's alleged breach, Baspetrol would have obtained the Blocks III and IV License Contracts and operated them profitably. He cannot, among other reasons, because direct negotiation was unavailable to Baspetrol: Baspetrol was not a Qualified Oil Company, Blocks III and IV were reserved for public tender, Amorrortu's Alleged Proposal did not satisfy the regulatory requirements for direct negotiation, and Baspetrol lacked the technical and financial qualifications to operate the blocks. Public tender was no better: the Bidding Rules required participants to show prior production of 2,759,000 barrels over the preceding two years and financial capacity exceeding minimum work programs of US\$ 202.50 million for Block III and US\$ 63.75 million for Block IV. Baspetrol had no operations, no production history, and only about US\$ 80,000 in capital. It therefore could not have satisfied the Bidding Rules' requirements. Nor could Baspetrol have cured those defects through a partner: Amorrortu confirms that his Alleged Proposal "was submitted with the contemplation that it would be a sole venture, not one undertaken by any form of consortium."¹⁰⁰⁸ In short, Baspetrol would never have obtained the License Contracts, even absent Peru's alleged breach. Thus, causation cannot be established.

571. Amorrortu's damages claim also **fails on quantum** because it is speculative from beginning to end. International law requires damages to be proved with reasonable certainty, excluding losses based on conjecture or speculation. Amorrortu's valuation does the opposite. It is disconnected from his own counterfactual: he values his damages as the fair market value of his alleged interest in the Blocks III and IV License Contracts as of 14 July 2014,¹⁰⁰⁹ when oil-market conditions were at their peak,¹⁰¹⁰ even though under his own counterfactual Baspetrol would not

¹⁰⁰⁷ Strunk Second Expert Report, ¶ 18.

¹⁰⁰⁸ Reply, ¶ 532.

¹⁰⁰⁹ Expert Report of Santiago Dellepiane (BRG) (21 August 2023) ("**BRG First Expert Report**"), ¶¶ 11-12 ("Counsel has instructed me to assess damages as of the date of the breach, 14 July 2014 [...]. To assess damages, I value Claimant's expected equity stake in Blocks III and IV based on the fair market value ('FMV') standard but for (*i.e.* in the absence of) Respondent's Measures.").

¹⁰¹⁰ Strunk First Expert Report, ¶ 79.

have obtained the contracts until December 2014,¹⁰¹¹ and would then have operated them for 30 years, rather than selling them to a third party.¹⁰¹² Amorrortu’s DCF analysis then assumes that Baspetro would have generated extraordinary future profits, despite being a newly formed, thinly capitalized company with no operating record, no demonstrated ability to raise capital, and no proven record of profitability from which future cash flows could be projected with reasonable certainty. These defects are compounded by overstated and unsupported assumptions: Amorrortu’s DCF assumes he owned 100 percent of Baspetro (ignoring he held only a 40 percent ownership interest), inflates production and drilling projections, overstates oil prices, and understates costs and taxes, among other flaws. The result is an unsupported damages claim that should be rejected in full.

572. This section addresses all these flaws in detail. It first demonstrates that Amorrortu has not established a causal link between his purported damages and Peru’s alleged breach (**Section VI.A**) and then shows that Amorrortu has failed to prove those damages with the reasonable certainty required under international law (**Section VI.B**). It next explains why his interest claim would overcompensate him and should be rejected (**Section VI.C**). Finally, it addresses why his request for non-taxable compensation should be rejected (**Section VI.D**).

A. There Is No Causal Link Between Amorrortu’s Purported Damages and Peru’s Alleged Treaty Breach

573. Peru’s Statement of Defense showed that Amorrortu has not established the necessary causal link between his purported damages and Peru’s alleged Treaty breach.¹⁰¹³ Indeed, even absent that breach, Amorrortu—through Baspetro—could not have “completed the Direct Negotiation Process[,] executed the contracts to operate Blocks III and IV,” or “operated the Blocks profitably”¹⁰¹⁴ for three independently dispositive reasons:

¹⁰¹¹ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 10 [PDF].

¹⁰¹² SoC, ¶¶ 371, 377.

¹⁰¹³ SoD, § V.A.

¹⁰¹⁴ SoC, ¶¶ 364, 377. *See also id.*, ¶ 372 (“With Amorrortu’s wealth of experience and significant success operating the Blocks in the 1900s, coupled with the technical expertise detailed in the Baspetro Proposal, it would be near

- a. First, Baspetro could not have commenced direct negotiations with Perupetro: it was not a Qualified Oil Company, a prerequisite for direct negotiation;¹⁰¹⁵ Blocks III and IV were reserved for public tender and unavailable for direct negotiations;¹⁰¹⁶ and Amorrortu's Alleged Proposal did not satisfy the Qualification Regulation and Procedure requirements for triggering direct negotiation.¹⁰¹⁷
- b. Second, even if direct negotiations had begun (*quod non*), Baspetro could not have obtained the Blocks III and IV License Contracts: Baspetro was not eligible for registration in Peru's Public Hydrocarbons Registry, a prerequisite for any company pursuing license contracts;¹⁰¹⁸ Baspetro was not technically or financially eligible to operate Blocks III and IV;¹⁰¹⁹ and better-qualified bidders would have outbid Baspetro.¹⁰²⁰
- c. Third, even if Baspetro had obtained the Blocks III and IV License Contracts (*quod non*), it could not have generated the multi-million-dollar profits he claims. As Amorrortu confirmed in his Alleged Proposal,¹⁰²¹ Baspetro lacked the technical and financial capacity to operate the blocks;¹⁰²² Baspetro would have incurred

impossible for Peru to show that Baspetro would not have been awarded the license to operate Blocks III and IV, or that Baspetro's operation of Blocks III and IV would have been anything but successful").

¹⁰¹⁵ SoD, ¶¶ 487-490.

¹⁰¹⁶ SoD, ¶¶ 485-486.

¹⁰¹⁷ SoD, ¶¶ 491-493.

¹⁰¹⁸ SoD, ¶¶ 498-500.

¹⁰¹⁹ SoD, ¶¶ 501-506.

¹⁰²⁰ SoD, ¶¶ 507-509.

¹⁰²¹ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 18 [PDF] (explaining that Baspetro would need to resort to "a well-known international oil company to guarantee technically and economically a sustained and growing production of hydrocarbons in Blocks III and IV" and thus confirming that Baspetro lacked the necessary capacity to do so) (translation provided by Counsel; in the original Spanish: "[...] contando con el apoyo de una conocida Empresa Petrolera Internacional para garantizar técnica y económicamente una producción sostenida y creciente de los hidrocarburos en los Lotes III y IV.>").

¹⁰²² SoD, ¶¶ 511-516.

losses due to the low oil price;¹⁰²³ and existing oil reserves in the blocks were insufficient to Amorrortu's claimed production levels.¹⁰²⁴

574. Amorrortu addresses causation in Section VII.a of his Reply, entitled “*There is a causal link between Amorrortu’s damages and Peru’s measures,*” but he does not engage with Peru’s causation objections. Instead, he argues that his own experience, together with that of his former company Propetsa, would have compensated for Baspétrol’s lack of qualifications and allowed Baspétrol to secure the Blocks III and IV License Contracts. That argument, however, does not establish causation (**Section 1**), nor do other allegations concerning direct negotiation by Amorrortu and his experts which, although not framed in the Reply as causation arguments, are addressed below for completeness (**Section 2**).

1. Amorrortu’s Reply does not answer Peru’s causation objections

575. The causation section of Amorrortu’s Reply fails to address Peru’s central causation objections: whether Amorrortu’s Alleged Proposal satisfied the legal requirements for direct negotiation, whether Blocks III and IV were available for direct negotiation, or whether Baspétrol—a newly-formed company with only US\$ 80,000 in capital that “had not yet carried out any operations”¹⁰²⁵—had the technical and financial capacity to operate the blocks. That omission is telling. Amorrortu knows he cannot establish these points and instead argues that his experience, and that of his former company Propetsa, would have enabled Baspétrol to secure direct negotiation and the Blocks III and IV License Contracts. As shown below, that argument fails.

576. *First*, Amorrortu alleges that Peru’s causation defense “ignores that Amorrortu had been granted the contract to operate Block III through his prior company Propetsa and operated these lots successfully,” and that “Propetsa’s successful track record together with the experience

¹⁰²³ SoD, ¶¶ 517-519.

¹⁰²⁴ SoD, ¶¶ 520-522.

¹⁰²⁵ SoD, ¶¶ 501-503; Baspétrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] (translation provided by Counsel. In the original Spanish: “*BASPETROL SAC es una EP que no ha realizado operaciones aún.*”).

that Amorrortu had had operating oil blocks in Talara for decades, and the overwhelming support of the local communities[,] ma[d]e Amorrortu and Baspetro the most likely candidate to have received the contract but for” Peru’s alleged breach.¹⁰²⁶

577. This argument fails because it rests on the wrong entities. Neither Propetsa nor Amorrortu applied to operate the blocks. Baspetro was the sole applicant.¹⁰²⁷ That distinction is critical: Perupetro was required to assess the entity seeking qualification and the License Contracts, not the experience or qualifications of third parties such as Propetsa or Amorrortu.

578. The Qualification Regulation confirms that the evaluation is entity-specific. The qualification process concerns only the particular *empresa petrolera* (petroleum company) that submits the qualification application and asks to contract with Perupetro.¹⁰²⁸ Article 5 requires the applicant “Petroleum Company” to submit, “for *its* qualification,” (i) “a deed of incorporation [...] evidencing the legal existence of the *Petroleum Company*,” (ii) “information about the hydrocarbons exploration and production activities carried out by the *Petroleum Company* during the preceding three years,” and (iii) “a sworn statement [...] that the *Petroleum Company* undertakes to strictly comply with the hydrocarbon activities environmental regulations.”¹⁰²⁹ Articles 9 and 11 likewise require Perupetro to evaluate “whether the *Petroleum Company*” that submitted the documentation “possesses the necessary legal, technical, and financial capacity” to

¹⁰²⁶ Reply, ¶¶ 500-501.

¹⁰²⁷ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 1 [PDF].

¹⁰²⁸ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 4.

¹⁰²⁹ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5 (translation by Counsel; in the original Spanish: “Las Empresas Petroleras [...] deberán presentar a PERUPETRO S.A., para su calificación, una solicitud acompañando la documentación siguiente: a. Testimonio o copia simple de la Escritura Pública de Constitución, Acta de Constitución u otro documento similar que acredite la existencia legal de la Empresa Petrolera [...]; e. Información sobre las actividades de exploración y explotación de Hidrocarburos realizadas por la Empresa Petrolera en los últimos tres (3) años. [...] f. Declaración Jurada [...] en la que la Empresa Petrolera se compromete a cumplir estrictamente con las disposiciones de protección ambiental aplicables a las actividades de Hidrocarburos.”).

execute a license contract.¹⁰³⁰ In Amorrortu’s counterfactual, therefore, Perupetro would have been required to evaluate Baspetro alone.¹⁰³¹

579. In any event, even if Perupetro could have evaluated Propetsa’s and Amorrortu’s experience (*quod non*), the argument would still fail. That experience was too remote and too limited to satisfy the applicable requirements:

- a. Amorrortu’s and Propetsa’s activities in Block III date to the 1990s.¹⁰³² But the Qualification Regulation requires applicants to provide information on petroleum operations conducted during the preceding three years,¹⁰³³ and the Qualification Procedure requires applicants to show that, during the preceding two years, they achieved production levels at least equivalent to the average production of the block for which they are applying.¹⁰³⁴ Because neither Propetsa nor Amorrortu carried

¹⁰³⁰ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Arts. 9, 11 (translation by Counsel; in the original Spanish: “PERUPETRO S.A. evaluará [...] si la Empresa Petrolera posee la capacidad legal, técnica, económica y financiera necesarias.”).

¹⁰³¹ The Qualification Regulation contemplates only one narrow exception to this entity-specific framework. Under Article 6, a Petroleum Company that has financial capacity but “does not demonstrate experience in hydrocarbons exploration or production activities” may still seek qualification to the extent that it submits an “Association Commitment with a technically qualified operator” or a “Contract entered into with a Petroleum Company with experience to carry out petroleum services”; see Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 6 (translation provided by Counsel. In the original Spanish: “Una Empresa Petrolera que cuente con capacidad económica y financiera y que no acredite experiencia en actividades de exploración o explotación de Hidrocarburos, deberá presentar a PERUPETRO S.A. [...] b. Compromiso de Asociación con un operador técnicamente capacitado para llevar a cabo operaciones de exploración y explotación o explotación de Hidrocarburos o Contrato suscrito con una Empresa Petrolera con experiencia para llevar a cabo servicios petroleros.”). However, Amorrortu does not contend—let alone prove—that Baspetro entered into any such arrangement with Propetsa (whose current legal existence is unclear), nor has he produced any document evidencing the existence of such arrangement.

¹⁰³² Amorrortu First Witness Statement, pp. 8, 13.

¹⁰³³ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 5.e.

¹⁰³⁴ PeruPetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), pp. 5-6 [PDF].

out petroleum operations after Propetsa abandoned Block III in 1997,¹⁰³⁵ they could not have satisfied these criteria in 2014.

- b. The same conclusion would follow even if the temporal requirements were ignored. As Peru has explained, Propetsa's activities in Block III consisted of a 50% participation in a consortium that produced 246,000 barrels in 1993-1995, and a 10% participation in another consortium that produced 795,000 barrels in 1995-1997.¹⁰³⁶ Those figures are far below the minimum production levels required for Blocks III and IV in 2014: 2,759,000 barrels in aggregate over a two-year period.¹⁰³⁷

580. Thus, even accepting *arguendo* Amorrortu's claim that Propetsa's and his own experience should count, the qualification criteria still would not have been satisfied. His assertion that he was the "most likely candidate" is therefore wrong.

581. *Second*, Amorrortu alleges that in his counterfactual "Baspetrol would have received the contracts to operate Blocks III and IV either by completing the direct negotiation process or in a [...] bidding process."¹⁰³⁸ He argues that, had a public bidding process occurred instead of direct negotiation, Baspetrol would have prevailed because "[n]one of the companies that could try to compete [...] had the level of experience in the Talara Basin and in operating the oil Blocks that Amorrortu had with more than two decades of experience in the area and years operating Block III under Propetsa."¹⁰³⁹

582. This argument also fails, first because it is premised on an unsupported counterfactual. Amorrortu, through Baspetrol, participated only in the bidding process for Block III, although nothing prevented him from bidding for Block IV as well. Thus, there is no basis to

¹⁰³⁵ Amorrortu First Witness Statement, pp. 8, 13.

¹⁰³⁶ Strunk First Expert Report, ¶ 63.

¹⁰³⁷ Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF].

¹⁰³⁸ Reply, ¶ 502.

¹⁰³⁹ Reply, ¶ 510. *See also id.*, ¶ 504.

assume that Baspetro would have participated in a bidding process for Block IV, much less prevailed in it.

583. Moreover, Amorrortu's argument repeats the same error: it conflates his personal background and Propetsa's experience with those of Baspetro. Because Baspetro was the sole applicant in the Block III bidding process, the same entity-specific qualification problems arise:

- a. The Qualification Regulation's entity-specific framework described above applies equally to public bidding processes.¹⁰⁴⁰ Because only Baspetro applied in the Block III bidding process,¹⁰⁴¹ Perupetro could evaluate only Baspetro.
- b. Even if Propetsa's and Amorrortu's experience could be considered (*quod non*), it would not have satisfied the prior-production requirement under the Blocks III and IV Bidding Rules. The Rules required bidders to demonstrate aggregate production of at least 2,759,000 barrels during the preceding two years.¹⁰⁴² Because neither Propetsa nor Amorrortu had conducted petroleum operations since Propetsa abandoned Block III in 1997, they could not have met that requirement. Even

¹⁰⁴⁰ PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), Art. 2.2 (explaining that license contracts "may only be entered into with duly qualified Petroleum Companies, following direct negotiation or public tender") (translation provided by Counsel; in the original Spanish: "*Dichos Contratos y Convenios solo podrán celebrarse con las EP [Empresas Petroleras] debidamente calificadas, previa negociacion directa o convocatoria.*"). See also Perupetro's Board of Directors, *Agreement No. 072- 2014, Approval of Rules for International Public Tender No. PERUPETRO-002-2014* (Full text) (30 June 2014) (**R-23**), p. 11 [PDF] (stating that the Perupetro Commission in charge of carrying out the bidding process, "in addition to the provisions established in the Regulations for the Qualification of Petroleum Companies, approved by Supreme Decree No. 030-2004-EM, shall apply the 'Procedure and Indicators for the Qualification of Petroleum Companies' approved by Board Resolution No. 048-2010, to the extent applicable.") (translation provided by Counsel; in the original Spanish: "*complementariamente a lo establecido en el Reglamento de Calificación de Empresas Petroleras, aprobado por Decreto Supremo N° 030-2004-EM, aplicará el 'Procedimiento e Indicadores para la Calificación de Empresas Petroleras' aprobado mediante Acuerdo de Directorio N° 048-2010, en lo que resulte aplicable.*").

¹⁰⁴¹ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 1 [PDF].

¹⁰⁴² Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF]. Memorandum No. CONT-083-2014 established a minimum production requirement over the prior two years of 2.90 and 0.89 thousand barrels a day for Blocks III and IV respectively, which totals 3.78 thousand barrels a day. This is equivalent to 2,759 thousand barrels over a two-year period (2,759 thousand barrels = 3.78 thousand bbl/day x 365 days/yr x 2 years). See Strunk First Expert Report, note 39.

counting Propetsa's operations in the 1990s, they still would have fallen short of the 2,759,000-barrel threshold: Propetsa held a 50% stake in a consortium that produced only 246,000 barrels during 1993-1995, and a 10% stake in another consortium that produced only 795,000 barrels during 1995-1997.¹⁰⁴³

- c. Nor could Propetsa or Amorrortu have satisfied the Bidding Rules' financial requirements. The Rules required participants to demonstrate financial capacity exceeding the minimum work programs of US\$ 202.50 million for Block III and US\$ 63.75 million for Block IV.¹⁰⁴⁴ Amorrortu has not even argued that he or Propetsa could have met that requirement in 2014. Nor could he credibly do so: Baspétrol's share capital that year was just 200,000 Peruvian soles (around US\$ 80,000),¹⁰⁴⁵ making it implausible that he or Propetsa could have met the threshold.

584. The same conclusion follows when the correct entity (Baspétrol) is considered. In 2014, Baspétrol "had not yet carried out any operations,"¹⁰⁴⁶ and therefore could not have met the Bidding Rules' minimum production requirement of 2,759,000 barrels during the preceding two years.¹⁰⁴⁷ Nor could Baspétrol have satisfied the Bidding Rules' financial-capacity requirement: in 2014, its share capital was only 200,000 Peruvian soles (around US\$ 80,000),¹⁰⁴⁸ far below the US\$ 266.25 million minimum work programs required for the blocks.¹⁰⁴⁹ In fact, it was for

¹⁰⁴³ Strunk First Expert Report, ¶ 63.

¹⁰⁴⁴ Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF].

¹⁰⁴⁵ Baspétrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF].

¹⁰⁴⁶ SoD, ¶¶ 501-503; Baspétrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] (translation provided by Counsel. In the original Spanish: "*BASPÉTROLO SAC es una EP que no ha realizado operaciones aún.*").

¹⁰⁴⁷ Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF].

¹⁰⁴⁸ SoD, ¶¶ 504-507; Baspétrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF].

¹⁰⁴⁹ Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF]. These conclusions are further reinforced by Amorrortu's failure to produce the documents that could have shown Baspétrol's financial capacity to be awarded license contracts for Blocks III and IV. At the document production phase of this arbitration, the Tribunal granted Peru's request for documents concerning Baspétrol's financial documents reports from 2014 and Baspétrol's access to financing. See Procedural Order No. 4 (29 August 2024), Annex 1 (Perupetro's Requests Nos. 5-7). Amorrortu, however, has produced none of these documents, thereby confirming that by no means did Amorrortu or Baspétrol have the financial means to undertake the operation of Blocks III and IV.

precisely these reasons that Perupetro rejected Baspetro's submission in the Block III bidding process, concluding that Baspetro "did not meet any of the Technical Indicators for the Bidding Process" and failed to "indicate the information on [Baspetro's] net worth, current assets and operating cashflows."¹⁰⁵⁰

585. *Third*, Amorrortu argues that Baspetro would have prevailed in a bidding process for Blocks III and IV because "no other company presented as part of its proposal the release of a multimillion-dollar debt, which Amorrortu offered."¹⁰⁵¹

586. This statement is troubling. Amorrortu's Alleged Proposal says nothing about any release of a multimillion-dollar debt,¹⁰⁵² and the annex he cites (Annex C-189) shows that the alleged debt had been sold to a third party in 1995,¹⁰⁵³ nearly 20 years before the Alleged Proposal. This false statement underscores the need for caution in assessing Amorrortu's submissions.

587. *Fourth*, with respect to his claim that he would have prevailed in the Blocks III and IV bidding process, Amorrortu contends that "[i]f the Tribunal were to focus on [such] process, the Tribunal would have to apply the loss [of] opportunity or loss of chance doctrines."¹⁰⁵⁴

588. That argument does not help Amorrortu. A chance alone does not establish causation. Even under a loss-of-chance framework, Amorrortu must prove that Peru's alleged breach deprived him of a real chance of success in the bidding process. The standard of proof is not lower simply because the claim is framed as loss of chance: investor-state jurisprudence

¹⁰⁵⁰ See Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (R-36), ¶ 2 (translation provided by Counsel. In the Original Spanish: "Al respecto, la Comisión observó que la empresa BASPETROL SAC no cumple con ninguno de los Indicadores Técnicos para la presente Licitación [...] y, de otra parte, no indica la información del Patrimonio Neto, Activo Corriente y Flujo de Caja operativo."). See also SoD, ¶¶ 135-141; Guzmán First Witness Statement, ¶¶ 28-31.

¹⁰⁵¹ Reply, ¶ 510.

¹⁰⁵² Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11).

¹⁰⁵³ See Reply, note 733 (citing Swizz Bank Corporation Correspondence re: Recovery of Claims against PetroPerú (27 October 1995) (C-189)); Swizz Bank Corporation Correspondence re: Recovery of Claims against PetroPerú (27 October 1995) (C-189), p. 1 [PDF].

¹⁰⁵⁴ Reply, ¶ 504.

confirms that the applicable standard remains the “preponderance of evidence,” requiring a likelihood greater than 50%. As the *Caratube v. Kazakhstan (II)* tribunal explained:

[A]ny damage, including damages for lost opportunity, must be sufficiently certain in order to be recovered [...]. The Claimants, who bear the burden of proof with respect to their damages, must thus show that it is more probable than not, by a preponderance of the evidence, that the facts they allege are true. [...] [T]he Tribunal must assess whether the Claimants have proven their claims for damages for lost opportunity with sufficient probability, i.e. whether their claim is more probable than not, by a preponderance of evidence.¹⁰⁵⁵

589. Amorrortu therefore must show that, more probably than not,¹⁰⁵⁶ Baspetro would have qualified to participate in the Blocks III and IV bidding processes. He cannot. As explained above, even absent Peru’s alleged breach, there is no basis to assume that Baspetro would have participated—let alone prevailed—in the Block IV bid, given that Amorrortu sought to participate only in the Block III bid. In any event, even if Baspetro had sought to participate in both bidding processes, it could not have satisfied the Bidding Rules’ technical and financial requirements, nor could Propetsa or Amorrortu himself have done so. Thus, even absent Peru’s purported breach, Amorrortu’s chances of succeeding in the bidding process were nil. Whether he frames his claim as loss of chance or otherwise, causation cannot be established.

590. *Fifth*, Amorrortu alleges that “Baspetro would have been awarded the blocks due to its compliance with standards for the proposal, the completeness of its proposal, and the innovation within its terms that benefited the local community to a greater extent than GyM or any other competitor.”¹⁰⁵⁷

¹⁰⁵⁵ See *Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan (II)*, ICSID Case No. ARB/13/13, Award (27 September 2017) (RLA-225), ¶ 1151.

¹⁰⁵⁶ See *Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan (II)*, ICSID Case No. ARB/13/13, Award (27 September 2017) (RLA-225), ¶ 1151.

¹⁰⁵⁷ Reply, ¶ 514.

591. That is wrong. A proposal is “compliant” and “complete” only if it satisfies the Qualification Regulation and Procedure requirements. Amorrortu’s Alleged Proposal did not, and so Perupetro could neither assess it nor rely on it to award license contracts. Specifically:

- a. The Qualification Regulation and Procedure require direct negotiation to be requested through a formal “letter of interest” in the format set out in Annex II of the Qualification Procedure. That letter must apply for the *calificación petrolera*, express the applicant’s interest in commencing direct negotiations with Perupetro, and declare the applicant’s express submission to the Qualification Procedure.¹⁰⁵⁸

Amorrortu’s Alleged Proposal did not do this. It expressed Baspetrol’s interest in commencing direct negotiation, but it did not apply for petroleum qualification, declare Baspetrol’s express submission to the Qualification Procedure, or follow the format prescribed in Annex II.¹⁰⁵⁹

- b. The Qualification Regulation and Procedure also require the letter of interest to be submitted accompanied by the documents listed in Article 5 (for companies with a

¹⁰⁵⁸ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 4 (“The Qualification procedure shall commence with the submission of an application by the Petroleum Company to PERUPETRO S.A., accompanied by the documents detailed in Article 5 of these Regulations; in said, application, [the Petroleum Company] must state its intention to negotiate a Contract or to associate with a Petroleum Company that has an existing Contract.”) (translation provided by Counsel. In the original Spanish: “*El proceso de Calificación se iniciará con la presentación de una solicitud de la Empresa Petrolera a PERUPETRO S.A., acompañando los documentos que se detallan en el Artículo 5 del presente Reglamento; en dicha solicitud deberán manifestar su intención de negociar un Contrato o de asociarse con una Empresa Petrolera que tenga un Contrato vigente.*”); PeruPetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (QUIROGA 10), p. 5 [PDF] (“The Qualification procedure commences with the submission of an application by the Petroleum Company to PERUPETRO, expressing its willingness to participate in a contracting process, or to associate with a Petroleum Company that has an existing Contract, in which the Petroleum Company shall also declare its express submission to the contents of the [Qualification Procedure], in accordance with the format set forth in Annex II. Said application shall be accompanied by the documents indicated in the Qualification Regulation.”) (translation provided by Counsel. In the original Spanish: “*El procedimiento de calificación se inicia con la presentación de una solicitud de la EP a PERUPETRO, manifestando su voluntad de participar en un proceso de contratación, o de asociarse con una Empresa Petrolera que tenga un Contrato vigente, en la cual declarará, además, el sometimiento expreso de la EP al contenido del presente procedimiento, según formato del Anexo II. A dicha solicitud, se acompañarán los documentos que se indican en el Reglamento de Calificación.*”).

¹⁰⁵⁹ See SoD, ¶ 489.

track record of activities) or Article 6 (for companies with no prior experience) of the Qualification Regulation.¹⁰⁶⁰

As Peru showed in its Statement of Defense (and Amorrortu does not dispute in his Reply),¹⁰⁶¹ Amorrortu did not submit these documents with his Alleged Proposal. Under Article 5, he failed to include (a) Baspetrol’s “deed of incorporation [...] evidencing the legal existence of the company;”¹⁰⁶² (b) a “sworn statement ... certifying that [Baspetrol] [was] not in a state of bankruptcy [and] ha[d] no legal impediment to contracting with the Peruvian State;”¹⁰⁶³ (c) a “sworn statement ... certifying that [Baspetrol] ha[d] managerial-level specialized technical professional personnel to carry out hydrocarbon exploration and exploitation ... operations;”¹⁰⁶⁴ (d) Baspetrol’s “financial statements for the last three years,”¹⁰⁶⁵ a requirement Amorrortu could not have satisfied because Baspetrol had been incorporated less

¹⁰⁶⁰ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 4; PeruPetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (QUIROGA 10), p. 5 [PDF].

¹⁰⁶¹ SoD, ¶¶ 504-506.

¹⁰⁶² Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5.a (translation provided by Counsel. In the original Spanish: “Testimonio o copia simple de la Escritura Pública de Constitución, Acta de Constitución u otro documento similar que acredite la existencia legal de la Empresa Petrolera.”).

¹⁰⁶³ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5.b (translation provided by Counsel. In the original Spanish: “Declaración Jurada [...] que certificará que la Empresa Petrolera [...] [n]o se encuentra en situación de quiebra [y] [n]o tiene impedimento legal para contratar con el Estado Peruano.”).

¹⁰⁶⁴ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5.c (translation provided by Counsel. In the original Spanish: “Declaración Jurada [...] que certificará que la Empresa Petrolera cuenta con personal de nivel gerencial y profesional técnico especializado para llevar a cabo operaciones de exploración y explotación [...] de Hidrocarburos.”). As Peru explained in its Statement of Defense, Baspetrol’s Alleged Proposal did state that (i) that all existing workers in Blocks III and IV were to be retained by Baspetrol (without providing, however, any evidence that Baspetrol had reached an employment agreement with those workers, or that Baspetrol otherwise had on payroll employees of its own with sufficient technical capabilities to operate the blocks); and (ii) Baspetrol would have had the support of a well-known International Oil Company (without providing, however, any details about that company, let alone any type of contractual document memorializing their agreement to jointly operate Blocks III and IV). See SoD, ¶ 490.d.

¹⁰⁶⁵ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5.d (translation provided by Counsel. In the original Spanish: “Estados Financieros correspondientes a los últimos tres (3) años.”).

than two years before;¹⁰⁶⁶ (e) “information on the hydrocarbon exploration and exploitation activities carried out by [Baspetrol] in the last three years,”¹⁰⁶⁷ a requirement Amorrrortu could not have satisfied because Baspetrol was a “company that had not yet carried out any operations,”¹⁰⁶⁸ and (f) a “sworn statement [...] in which [Baspetrol] undertakes to strictly comply with the environmental protection provisions applicable to Hydrocarbon Activities.”¹⁰⁶⁹

Nor did the Alleged Proposal comply with Article 6. It did not include (a) “documentation that reliably demonstrates that [Baspetrol] ha[d] sufficient economic and financial capacity to carry out the activities related to the project it will undertake,”¹⁰⁷⁰ a requirement Amorrrortu could not have satisfied because Baspetrol’s US\$ 80,000 share capital fell short of the US\$ 266.25 million minimum work program required for Blocks III and IV in 2014;¹⁰⁷¹ (b) an “association commitment with a technically qualified operator to carry out hydrocarbon [...] operations or a Contract entered into with an experienced Petroleum Company to

¹⁰⁶⁶ Registration of Baspetrol S.A.C. in the Registry of Legal Persons of Peru (23 October 2012) (C-65).

¹⁰⁶⁷ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5.e (translation provided by Counsel. In the original Spanish: “*Información sobre las actividades de exploración y explotación de Hidrocarburos realizadas por la Empresa Petrolera en los últimos tres (3) años.*”).

¹⁰⁶⁸ Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (R-35), p. 5 [PDF] (translation provided by Counsel. In the original Spanish: “*BASPETROL SAC es una EP que no ha realizado operaciones aún.*”).

¹⁰⁶⁹ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5.f (translation provided by Counsel. In the original Spanish: “*Declaración Jurada [...] en la que la Empresa Petrolera se compromete a cumplir estrictamente con las disposiciones de protección ambiental aplicables a las actividades de Hidrocarburos.*”). Although Amorrrortu’s Proposal did state that Baspetrol would guarantee “*un eficiente cuidado del medio ambiente*” and apply “*la última tecnología en el control del medio ambiente,*” none of those statements constitute a formal sworn declaration that Baspetrol would strictly comply with the applicable environmental regulations. See Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), pp. 4, 11 [PDF].

¹⁰⁷⁰ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 6.a (translation provided by Counsel. In the original Spanish: “*Documentación que acredite de manera fehaciente que cuenta con capacidad económica y financiera suficiente para desarrollar las actividades relacionadas con el proyecto que asumirá.*”).

¹⁰⁷¹ Memorandum No. CONT-083-2014 (14 July 2014) (R-25), p. 2 [PDF].

carry out petroleum services”;¹⁰⁷² or (c) a “sworn statement with supporting documentation that reliably demonstrates that [Baspetro] will have, on a permanent basis, managerial-level and specialized technical professional personnel to carry out hydrocarbon exploration and exploitation or exploitation operations.”¹⁰⁷³

592. It is therefore beside the point whether the Alleged Proposal was “innovati[ve]” because it “benefited the local community to a greater extent than GyM or any other competitor,”¹⁰⁷⁴ or was more economical in terms of operating costs.¹⁰⁷⁵ The Alleged Proposal was neither “compliant” nor “complete” because it did not satisfy the Qualification Regulation and Procedure.¹⁰⁷⁶ Thus, Perupetro could not have evaluated the Alleged Proposal or used it to award license contracts to Baspetro.

593. The same is true of Amorrortu’s “recreated” documents¹⁰⁷⁷—which, as explained in Section II.A.2.c above, are not recreations at all, but documents Amorrortu created *ex post facto*

¹⁰⁷² Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 6.b (translation provided by Counsel. In the original Spanish: “*Compromiso de Asociación con un operador técnicamente capacitado para llevar a cabo operaciones de [...] Hidrocarburos o Contrato suscrito con una Empresa Petrolera con experiencia para llevar a cabo servicios petroleros.*”).

¹⁰⁷³ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 6.c (translation provided by Counsel. In the original Spanish: “*Declaración Jurada con la documentación que sustente y demuestre fehacientemente que contará, de manera permanente, con el personal de nivel gerencial y profesional especializado para llevar a cabo operaciones de exploración y explotación [...] de Hidrocarburos.*”).

¹⁰⁷⁴ Reply, ¶ 514. *See also id.*, ¶¶ 499, 501.

¹⁰⁷⁵ Reply, ¶ 512.

¹⁰⁷⁶ As explained in Section II.A.1 above, the Alleged Proposal’s failures become most apparent when compared with a compliant submission, such as Tullow’s 2017 Letter of Interest to Perupetro, where it (i) explicitly identified its legal representative, indicated its interest in “becoming a qualified Oil Company for the direct negotiation of a contract,” identified the available areas it wished to negotiate over, and “declare[d] that [it] expressly understands and agrees for its submission to the Oil Company qualification procedure approved by the [Qualification Procedure] which complements the Qualification Regulation, a procedure that Tullow Oil Plc declares it knows”; and (ii) submitted the documents required by the Qualification Regulation; *see* § II.A.2.c *supra*; Tullow, Letter of Interest (7 August 2017) (R-91), pp. 3-4 [PDF].

¹⁰⁷⁷ Baspetro Operational Chart (2013-2014) (C-182); Baspetro Proposal to Operate the Oil & Gas Blocks III & IV in Talara, Northwest Peru (28 May 2014) (C-183); Baspetro Start-up Operations Report (C-184); Excel Sheet

(on Claimant’s own account “during the course of this arbitration”), years after the events they purport to document, without any contemporary evidence to corroborate their content or specific information regarding the process through which they were created, and seeking to cure the Alleged Proposal’s defects.¹⁰⁷⁸

594. These “recreated” documents consist of (i) a PPT presentation setting out Baspetro’s purported 2013-2014 operational chart;¹⁰⁷⁹ (ii) a PDF containing a new Baspetro proposal to operate Blocks III and IV that was never submitted to Perupetro;¹⁰⁸⁰ (iii) a PDF described as a “start up operations report,”¹⁰⁸¹ whose retrospective content and advocacy-like language confirm that it is not a reconstruction;¹⁰⁸² and (iv) Excel sheets containing production,

Detailed Business Plan Baspetro Blocks III & IV (2014) (C-185); GMP Regalías Lotes III & IV (C-186); Real Oil Production Incomes Blocks III IV (C-187).

¹⁰⁷⁸ See Peru’s Request to Exclude Evidence Purportedly Recreated from Memory (18 March 2025) (R-97), § II; Peru’s Reply on Request to Exclude Evidence (3 April 2026) (R-102).

¹⁰⁷⁹ Baspetro Operational Chart (2013-2014) (C-182).

¹⁰⁸⁰ Baspetro Proposal to Operate the Oil & Gas Blocks III & IV in Talara, Northwest Peru (28 May 2014) (C-183).

¹⁰⁸¹ Baspetro Start-up Operations Report (C-184).

¹⁰⁸² Amorortu’s purported “start-up report” claims to be “a compilation and reconstruction of reports, facts, contacts, coordination efforts, endeavors, investments, travel, and other activities carried out by [...] Bacilio Amorortu [...] during the period from June 2012 to July 2014”; see Baspetro Start-up Operations Report (C-184), p. 1 [PDF]. **However, both its content and its language confirm that it is not a reconstruction of a document or documents that existed in 2014, but rather a document entirely prepared after the fact.** First, the report describes events that occurred well after its stated period of June 2012 to July 2014. For example, it refers to Baspetro’s disqualification from the Block III bidding process, which occurred in November 2014, and lists expenses allegedly incurred by Baspetro from “junio 2012 a mayo 2015 (36 meses)”; see *id.*, pp. 4, 34 [PDF]. Moreover, in discussing Baspetro’s proposal “to allocate 5% of the monthly oil production ... to create an economic fund for direct aid to local communities,” the report goes so far as to state that “today, six years later [i.e., six years after Amorortu submitted its 2014 Alleged Proposal] [...] how many lives would have been saved [...] in the local communities of Talara”; see *id.*, p. 37 [PDF]. Second, the report uses retrospective language that is incompatible with it being a reconstruction of a document that existed in 2014. It states, using the past tense, that “Amorortu and [...] Baspetro *were* ready in May 2014, once the aforementioned proposal had been submitted, to continue the direct negotiation and subsequent signing of contracts with Perupetro,” and claims that since the report “demonstrates that Amorortu has the leadership and skills to form teams, companies, and alliances,” “operating block III again and operating Block IV *was* an achievable plan”; see *id.*, pp. 29, 36 [PDF]. Third, the report uses advocacy-type language that further confirms that it was created after the fact to support Amorortu’s claims in this arbitration. For example, it characterizes Perupetro’s conduct as “arbitrary,” accusing Perupetro of failing to respond to Amorortu’s Alleged Proposal, of having unilaterally broken the direct negotiation, and of having structured the Block III bidding process to favor a single bidder; see *id.*, pp. 4 [PDF]. With respect to the Block III bidding process itself, the report characterizes it as “*un total engaño y una demostración de que se trataba de un cuestionado e irregular proceso en marcha*”; see *id.*, p. 4 [PDF]. See also Strunk Second Expert Report, § VI.A.

costs, and profit estimates for the Alleged Proposal,¹⁰⁸³ royalties paid by GyM in Blocks III and IV from 2016 through 2019,¹⁰⁸⁴ and income generated by GyM in Blocks III and IV from 2015 through 2019.¹⁰⁸⁵

595. Amorrortu and his expert, Mr. Zamalloa, rely on the “recreated” documents to argue that Amorrortu’s Alleged Proposal was “sufficient,”¹⁰⁸⁶ “complete,”¹⁰⁸⁷ and “technically robust.”¹⁰⁸⁸ But they miss the point again, as the “recreated” documents also ignore the Qualification Regulation and Procedure requirements. In particular:

- a. The “recreated” documents contain no evidence that Baspetro ever submitted to the Qualification Procedure, and they do not comply with the format prescribed in Annex II of that Procedure.¹⁰⁸⁹
- b. The “recreated” documents do not include Baspetro’s financial statements for the preceding three years or any evidence of Baspetro’s financial capacity to operate Blocks III and IV.¹⁰⁹⁰ They are silent on how Amorrortu intended to finance the capital-intensive operation of Blocks III and IV, which in 2014 required a minimum work program of US\$ 266.25 million.¹⁰⁹¹

¹⁰⁸³ Excel Sheet Detailed Business Plan Baspetro Blocks III & IV (2014) (**C-185**).

¹⁰⁸⁴ GMP Regalías Lotes III & IV (**C-186**).

¹⁰⁸⁵ Real Oil Production Incomes Blocks III IV (**C-187**).

¹⁰⁸⁶ Reply, ¶ 230; Zamalloa Expert Report, ¶ 7.1.

¹⁰⁸⁷ Reply, ¶ 233; Zamalloa Expert Report, ¶¶ 5.3-5.4.

¹⁰⁸⁸ Zamalloa Expert Report, ¶ 7.1.

¹⁰⁸⁹ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 4; PeruPetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 5 [PDF].

¹⁰⁹⁰ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 5.d; PeruPetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 5 [PDF].

¹⁰⁹¹ Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF].

- c. The “recreated” documents provide no evidence of Baspetro’s prior operational experience¹⁰⁹²—unsurprisingly, because Baspetro had none.¹⁰⁹³

Nor do the documents attempt to compensate for that lack of experience. As noted above, the Qualification Regulation required applicants with no prior experience to submit either an “association commitment with a technically qualified operator to carry out hydrocarbon ... operations” or “a Contract entered into with an experienced Petroleum Company to carry out petroleum services.”¹⁰⁹⁴ The “recreated” documents provide neither. Instead, Amorrortu’s purported “start-up report” refers only to “conversations” with local petroleum services providers¹⁰⁹⁵ and purported “excellent relationships” with individuals at Halliburton and FMC Technologies.¹⁰⁹⁶ That is not enough: “conversations” and “excellent relationships” are not the “association commitments” or “contracts to carry petroleum services” required by the Qualification Regulation. As the “start-up report” confirms, any such agreements would have been entered into, at best, only after Baspetro

¹⁰⁹² Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 5.e; PeruPetro’s Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 5 [PDF].

¹⁰⁹³ SoD, ¶¶ 501-503; Baspetro, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] (translation provided by Counsel. In the original Spanish: “*BASPETROL SAC es una EP que no ha realizado operaciones aún.*”).

¹⁰⁹⁴ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 6.b (translation provided by Counsel. In the original Spanish: “*Compromiso de Asociación con un operador técnicamente capacitado para llevar a cabo operaciones de [...] Hidrocarburos o Contrato suscrito con una Empresa Petrolera con experiencia para llevar a cabo servicios petroleros*”).

¹⁰⁹⁵ Baspetro Start-up Operations Report (**C-184**), pp. 23-24 [PDF].

¹⁰⁹⁶ Baspetro Start-up Operations Report (**C-184**), pp. 25-26 [PDF].

received the license contracts.¹⁰⁹⁷ But as Peru explained in its Statement of Defense, that is not what the Qualification Regulation required.¹⁰⁹⁸

- d. Finally, the “recreated” documents contain no sworn statement that Baspetro had the required “managerial-level specialized technical professional personnel to carry out hydrocarbon ... operations.”¹⁰⁹⁹

The documents show that Baspetro hired (*contrató*) only four individuals: (i) a manager for Baspetro’s office in Talara; (ii) an accountant; and (iii) two technical coordinators for Talara and Piura.¹¹⁰⁰ Assuming it is true that Baspetro did hire these individuals, that plainly falls short of the requirement to show “managerial-level specialized technical professional personnel” capable of carrying out petroleum operations: no one can credibly claim that two oil blocks could be operated with just one office manager, one accountant, and two technical coordinators.

¹⁰⁹⁷ Baspetro Start-up Operations Report (C-184), p. 26 [PDF] (stating that “Amorrortu was advancing the relationship with Halliburton in order to subsequently sign a Baspetro-Halliburton service contract **once the direct negotiation was finalized and the contracts with PeruPetro to operate [...] blocks [III and IV] were executed.**”) (translation provided by counsel; in the Spanish original: “*Amorrortu avanzaba en la relación con Halliburton para luego firmar un contrato de servicios Baspetro-Halliburton una vez que se concretara la negociación directa y se firmaran los contratos con PeruPetro para operar los [...] lotes [III y IV].*”).

¹⁰⁹⁸ SoD, ¶ 513.d.

¹⁰⁹⁹ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5.c (translation provided by Counsel. In the original Spanish: “*Declaración Jurada [...] que certificará que la Empresa Petrolera cuenta con personal de nivel gerencial y profesional técnico especializado para llevar a cabo operaciones de exploración y explotación [...] de Hidrocarburos.*”). As Peru explained in its Statement of Defense, Baspetro’s Alleged Proposal did state that (i) that all existing workers in Blocks III and IV were to be retained by Baspetro (without providing, however, any evidence that Baspetro had reached an employment agreement with those workers, or that Baspetro otherwise had on payroll employees of its own with sufficient technical capabilities to operate the blocks); and (ii) Baspetro would have had the support of a well-known International Oil Company (without providing, however, any details about that company, let alone any type of contractual document memorializing their agreement to jointly operate Blocks III and IV). *See* SoD, ¶ 490.d.

¹¹⁰⁰ Baspetro Start-up Operations Report (C-184), p. 16 [PDF].

Baspetrol’s “recreated” 2012-2014 team and operational chart further confirm this deficiency.¹¹⁰¹ Nowhere does that chart say—let alone show—that the individuals listed therein were on Baspetrol’s payroll. To the contrary, Amorrortu’s statement that, “in April 2014,” he merely “organized” (rather than *hired* or *staffed*) “the entire executive, operational, administrative, and logistical personnel structure of Baspetrol” confirms that the chart was only a plan.¹¹⁰² At most, it shows the organizational structure he *contemplated*, not Baspetrol’s actual workforce.

596. In sum, the “recreated” documents do not cure the Alleged Proposal’s flaws. They instead confirm Amorrortu’s continued disregard for the rules governing the award of license contracts in Peru and the lack of seriousness with which he approached—and still approaches—the process. Even if the documents had been submitted to Perupetro, they would not have helped Amorrortu because they failed to comply with the applicable requirements—just like the Alleged Proposal did.

2. Amorrortu’s remaining arguments confirm that Baspetrol could not have obtained the Blocks III and IV License Contracts

597. Although not presented as part of Amorrortu’s causation case, he and his experts, Mr. Quiroga and Ms. Yaya, advance arguments that could bear on that matter. For completeness, Peru addresses those arguments in turn, without conceding that they properly form part of Amorrortu’s causation analysis.

a. The *Amorrortu I* tribunal did not find that direct negotiation had commenced

598. As explained above, no causal link exists because, absent Peru’s alleged breach, Amorrortu’s Alleged Proposal could not have triggered direct negotiation between Perupetro and

¹¹⁰¹ Baspetrol Start-up Operations Report (C-184), pp. 19-21 [PDF].

¹¹⁰² Baspetrol Start-up Operations Report (C-184), p. 18 [PDF] (translation provided by Counsel; in the Spanish original: “Amorrortu en abril de 2014 organiza la estructura de todo el personal ejecutivo, operative, administrativo y logístico de Baspetrol para operar los lotes III y IV.”).

Baspetrol.¹¹⁰³ In his Reply, Amorrortu alleges that the *Amorrortu I* tribunal found that direct negotiations had in fact commenced.¹¹⁰⁴ That is wrong.

599. First, the *Amorrortu I* tribunal made no final determination on whether direct negotiation ever commenced between Baspetrol and Perupetro.

600. As also addressed in Sections II.A.2 and V.D.3.a above, the issue of direct negotiation arose in *Amorrortu I* in the context of Peru’s preliminary objection, under Article 10.20.4,¹¹⁰⁵ that Amorrortu, as a matter of law, had no right to direct negotiation or to contract protected by the Treaty for which an award could be rendered in his favor.¹¹⁰⁶ In deciding that objection, Article 10.20.4 expressly required the tribunal to “assume to be true claimant’s factual allegations in support of [its] claim[s].”¹¹⁰⁷ Article 10.20.4 therefore barred the tribunal from making definitive factual findings. It required the tribunal to assume Amorrortu’s alleged facts to be true *pro tem* and, on that basis only, decide whether they could support an award in his favor. Other investor-State tribunals have confirmed that evidentiary standard under Article 10.20.4 of the Treaty and analogous provisions in other treaties.¹¹⁰⁸

¹¹⁰³ SoD, ¶¶ 491-493.

¹¹⁰⁴ Reply, ¶ 249.

¹¹⁰⁵ USPTPA Investment Chapter (CLA-1), Art. 10.20.4 (“[The] tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be rendered under Article 10.26.”).

¹¹⁰⁶ *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (CLA-108), ¶ 71.

¹¹⁰⁷ USPTPA Investment Chapter (CLA-1), Art. 10.20.4(c).

¹¹⁰⁸ *The Renco Group, Inc. v. Republic of Peru*, ICSID Case No. UNCT/13/1, Decision as to the Scope of the Respondent’s Preliminary Objections Under Article 10.20.4 (18 December 2014) (RLA-25), ¶ 189.c (holding, with respect to sub-paragraphs (a)-(d) of Article 10.20.4 of the Treaty, that “[w]hen deciding ‘an objection under this paragraph,’ the tribunal is required to adopt an evidentiary standard which assumes that all of claimant’s factual allegations in support of its claim as set out in the pleadings are true.”); *Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador*, ICSID Case No. ARB/09/17, Award (14 March 2011) (RLA-17), ¶ 55 (stating, with respect to CAFTA’s Article 10.4—drafted in almost identical terms as those of Article 10.20.4 of the Treaty—that “when deciding on Respondent’s [Preliminary Objection], ‘the tribunal shall assume to be true claimant’s factual allegations in support of any claim’ in the Request”, and that “[i]n light of this, the Tribunal does not purport to make any findings of fact in this Section, but rather sets out what it understands to be this matter’s factual background in light of the factual allegations in this Request, which the Tribunal assumes to be true in this phase of the proceedings.”).

601. That is precisely what the *Amorrortu I* tribunal did. It expressly cautioned that its assessment of Amorrortu’s purported direct negotiation “d[id] not constitute factual findings of the Tribunal,” because the Treaty required the parties’ factual submissions to be “assumed as true for the purposes of Article 10.20.4.”¹¹⁰⁹ The tribunal’s observations on direct negotiations were thus strictly preliminary. Had Amorrortu not lost *Amorrortu I* for lack of jurisdiction,¹¹¹⁰ and had the case proceeded to the merits, the tribunal would have had to consider the issue *de novo*.

602. The *Amorrortu I* award confirms this. The tribunal consistently framed its reasoning in conditional and hypothetical terms in line with the *pro tem* standard under Article 10.20.4. In paragraph 155, for example, it stated that it was “obliged for present purposes to accept Mr. Amorrortu’s factual description of events as correct” and that, on that basis, “it would be open to the Tribunal to conclude” that Perupetro’s refusal to treat Amorrortu’s Alleged Proposal as a “letter of interest” commencing direct negotiation “constituted a denial of FET in the application of Direct Negotiation Procedure 8.”¹¹¹¹ In paragraph 173, it dismissed Peru’s Article 10.20.4 preliminary objection because it was not persuaded, “at this stage of the proceedings,” that Amorrortu’s claims were “not claims for which an award in [his] favor [...] may be rendered.”¹¹¹² Phrases such as “would be open to conclude,” “for present purposes,” “on that assumed basis,” and “at this stage” make clear that the *Amorrortu I* tribunal made no final factual determination.

603. *Second*, even if the *Amorrortu I* tribunal’s observations on direct negotiation were treated as final factual findings (*quod non*), they would not establish that direct negotiations began. They would show the opposite: that direct negotiations never actually commenced.

¹¹⁰⁹ *Bacilio Amorrortu v. Republic of Peru* [I], PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (RLA-54), ¶ 57 (“The events described below are drawn from the Parties’ submissions and constitute a recount of the facts that the Parties consider must be assumed as true for the purposes of Article 10.20.4 of the Treaty. They do not constitute factual findings of the Tribunal.”).

¹¹¹⁰ *Bacilio Amorrortu v. Republic of Peru* [I], PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (RLA-54), ¶ 289.

¹¹¹¹ *Bacilio Amorrortu v. Republic of Peru* [I], PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (RLA-54), ¶ 155.

¹¹¹² *Bacilio Amorrortu v. Republic of Peru* [I], PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (RLA-54), ¶ 173.

604. Indeed, the *Amorrortu I* tribunal concluded *pro tem* (and only on the assumption that “Amorrortu’s factual description of events [w]as correct”¹¹¹³) that the direct negotiation **procedure** under Perupetro’s Procedure 8 may have begun after Amorrortu submitted his Alleged Proposal.¹¹¹⁴ However, the tribunal carefully distinguished between (i) the direct negotiation **procedure**; and (ii) actual direct negotiations (or the direct negotiation process, as the award puts it).¹¹¹⁵ Section VI.A.2.b below addresses that distinction in detail. For present purposes, it suffices to note that the *Amorrortu I* tribunal confirmed (subject to the *pro tem* limits imposed by Article 10.20.4) two key points: first, that direct negotiations do not begin with the mere receipt of the letter of interest,¹¹¹⁶ and second, that the tribunal “accept[ed] that Direct Negotiations never actually commenced.”¹¹¹⁷

b. The record shows that no direct negotiations ever commenced

605. Leaving *Amorrortu I* aside, Amorrortu and his expert, Mr. Quiroga, contend that direct negotiations commenced. Their positions diverge. Relying on paragraph 3.29 of Mr. Quiroga’s Second Expert Report, Amorrortu asserts that “the Direct Negotiation process was indeed commenced.”¹¹¹⁸ Mr. Quiroga, however, does not make that claim in paragraph 3.29 (at least not in those terms).¹¹¹⁹ His position is that Baspetro initiated a “direct negotiation

¹¹¹³ *Bacilio Amorrortu v. Republic of Peru [I]*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 155.

¹¹¹⁴ *Bacilio Amorrortu v. Republic of Peru [I]*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 161 (“[T]he Direct Negotiation Procedure [...] starts with receipt of the Letter of Interest.”); *id.*, ¶ 154 (“[A]ccording to the Direct Negotiation Procedure 8[,], a number of initial steps were required in response to the ‘letter of interest.’”).

¹¹¹⁵ *Bacilio Amorrortu v. Republic of Peru [I]*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶¶ 160-161 (“PeruPetro was required to ask the oil company at a later stage in Direct Negotiation Procedure 8 to appoint its representative for the negotiation [and] ‘to establish the date of the start of the first meeting, the kickoff meeting’ and [...] ‘this is when the Direct Negotiation begins, and this has to be done within 60 days.’”).

¹¹¹⁶ *Bacilio Amorrortu v. Republic of Peru [I]*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 161.

¹¹¹⁷ *Bacilio Amorrortu v. Republic of Peru [I]*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 160.

¹¹¹⁸ Reply, ¶ 224 (*citing* Quiroga Second Expert Report, ¶ 3.29).

¹¹¹⁹ Quiroga Second Expert Report, ¶ 3.29 (“The Republic of Peru incorrectly states that Baspetro never initiated direct negotiations with Perupetro. [...] According to the regulations in force on May 28, 2014, the date of submission of the direct negotiation proposal from BASPETROL S.A.C. to PERUPETRO S.A., the direct negotiation **procedure** for the granting of the hydrocarbon exploitation license was governed by the provisions [set

procedure” by submitting the Alleged Proposal on 28 May 2014 because Procedure 6 (petroleum qualification) and Procedure 8 (contracting by direct negotiation with Perupetro) both begin with the submission to Perupetro of a “letter of interest” to execute license contracts, and because Amorrortu’s Proposal allegedly constituted such a letter.¹¹²⁰

606. Both propositions fail. The record shows that neither a direct negotiation procedure nor actual direct negotiations ever commenced.

607. *First*, Amorrortu and Mr. Quiroga appear to conflate two distinct concepts: (i) Perupetro’s internal Procedure 8; and (ii) “direct negotiations with Perupetro.” They are not the same. Initiating the former does not mean commencing the latter:

- a. Direct negotiation is one of two mechanisms through which Perupetro may award license contracts under Peru’s Hydrocarbons Law (the other is public tender).¹¹²¹ But direct negotiation may begin only after certain mandatory preconditions are satisfied, including that the applicant has obtained petroleum qualification. Mr. Quiroga acknowledges this: “[a]rticle 2 of the [Qualification Regulation] [...] establishes as a prerequisite for the commencement of negotiations for a contract with PERUPETRO S.A. the obtaining of qualification as an oil company.”¹¹²²
- b. Procedure 8 is different. It is an internal Perupetro procedure that governs not only direct negotiation itself, but also the steps preceding it and the later signing of a license contract. As Dr. Vizquerra explains, this is why Procedure 8 is titled

forth in] **procedure [8]**, ‘Contracting by Direct Negotiation.’”). *See also id.*, ¶¶ 2.2, 4.14, 4.17-4.18 (arguing that by submitting his Alleged Proposal, Amorrortu triggered the direct negotiation **procedure** between Baspetro and Perupetro) (emphasis added).

¹¹²⁰ Quiroga Second Expert Report, ¶ 2.2 (“BASPETROL [...] initiated the direct negotiation procedure for the granting of a license for the exploitation of Lots III and IV, taking into account that Procedure [...] 6 ‘Qualification of Oil Companies’ and Procedure [...] 8 ‘Contracting by Direct Negotiation,’ beginning with the submission of a letter of interest from the oil company to sign a license agreement for the exploration and/or exploitation of hydrocarbons and its receipt by the General Management of PERUPETRO S.A.; which took place on May 28, 2014”).

¹¹²¹ Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (CLA-45), Art. 11.

¹¹²² Quiroga Second Expert Report, ¶ 3.21.

“Contracting by Direct Negotiation” (as opposed to “direct negotiation” only).¹¹²³ Procedure 8 thus covers pre-negotiation steps, including (i) obtaining petroleum qualification under the Qualification Regulation; and (ii) verifying whether the relevant areas are available for direct negotiation or reserved for bidding.¹¹²⁴

608. This distinction is critical. Even if Amorrortu’s Alleged Proposal triggered Procedure 8 (*quod non*), that would not mean Baspetro began direct negotiations. At most, it would mean Baspetro took the first step contemplated by Procedure 8 (submitting a letter of interest) and still had to complete later steps, including obtaining petroleum qualification, before any direct negotiation could begin.

609. *Second*, in any event, the Alleged Proposal did not trigger Procedure 8’s “direct negotiation procedure” because it was not a “letter of interest” capable of initiating that procedure.

610. As Mr. Quiroga confirms, the “letter of interest” that triggers Procedure 8 is the same “letter of interest” through which a company requests petroleum qualification.¹¹²⁵ The Qualification Procedure and Qualification Regulation impose clear, mandatory requirements for that letter: it must follow the format in Annex II to the Qualification Procedure, request petroleum qualification, express the applicant’s interest in commencing direct negotiations, declare the applicant’s express submission to the Qualification Procedure, and be accompanied by the documents listed in Articles 5 and 6 of the Qualification Regulation.¹¹²⁶

¹¹²³ Vizquerra Second Expert Report, ¶ 74.

¹¹²⁴ Vizquerra Second Expert Report, ¶ 74; Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (CLA-44), pp. 11-16 [PDF].

¹¹²⁵ Quiroga Second Expert Report, ¶ 4.12 (“In accordance with the procedural rules set forth in Procedure [...] 6 ‘Qualification of Oil Companies’ and in Procedure [...] 8 ‘Contracting by Direct Negotiation,’ it is quite clear that both procedures begin with the submission of a letter of interest from the oil company to enter into a license agreement.”).

¹¹²⁶ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 4 (“The Qualification procedure shall commence with the submission of an application by the Petroleum Company to PERUPETRO S.A., accompanied by the documents detailed in Article 5 of these Regulations; in said, application, [the Petroleum Company] must state its intention to negotiate a Contract or to associate with a Petroleum Company that has an existing Contract.”) (translation provided by Counsel. In the original Spanish: “*El proceso de Calificación se iniciará con la presentación de una solicitud de la Empresa Petrolera a PERUPETRO S.A., acompañando los documentos que se detallan en el Artículo 5 del presente*”).

611. Amorrortu's Alleged Proposal did not satisfy those requirements. As explained above,¹¹²⁷ although the Alleged Proposal expressed Baspetro's interest in commencing direct negotiations, it did not request petroleum qualification (the Alleged Proposal did not even use the word "qualification"), did not declare Baspetro's express submission to the Qualification Procedure, and did not follow the format required by Annex II. Thus, Dr. Vizquerra confirms that the Alleged Proposal did not qualify as a "letter of interest" capable of triggering Procedure 8.¹¹²⁸

612. *Third*, if Amorrortu and Quiroga mean that actual direct negotiations (as opposed to Procedure 8) commenced, they are equally wrong.

613. As Mr. Quiroga recognizes, petroleum qualification is a mandatory prerequisite to direct negotiations.¹¹²⁹ Yet when Amorrortu submitted the Alleged Proposal, Baspetro indisputably did not hold that qualification, had not applied for it, and could not meet the requirements to obtain it. As explained above, the Qualification Regulation requires applicants to demonstrate both financial and technical capacity, including by submitting "financial statements for the last three years"¹¹³⁰ and "information on the hydrocarbon exploration and exploitation activities" conducted during the same period.¹¹³¹ Baspetro could satisfy neither requirement.

Reglamento; en dicha solicitud deberán manifestar su intención de negociar un Contrato o de asociarse con una Empresa Petrolera que tenga un Contrato vigente.”); PeruPetro’s Board of Directors, Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies (15 April 2010) (QUIROGA 10), p. 5 [PDF] (“The Qualification procedure commences with the submission of an application by the Petroleum Company to PERUPETRO, expressing its willingness to participate in a contracting process, or to associate with a Petroleum Company that has an existing Contract, in which the Petroleum Company shall also declare its express submission to the contents of the [Qualification Procedure], in accordance with the format set forth in Annex II. Said application shall be accompanied by the documents indicated in the Qualification Regulation.”) (translation provided by Counsel; in the original Spanish: “El procedimiento de calificación se inicia con la presentación de una solicitud de la EP a PERUPETRO, manifestando su voluntad de participar en un proceso de contratación, o de asociarse con una Empresa Petrolera que tenga un Contrato vigente, en la cual declarará, además, el sometimiento expreso de la EP al contenido del presente procedimiento, según formato del Anexo II. A dicha solicitud, se acompañarán los documentos que se indican en el Reglamento de Calificación.”).

¹¹²⁷ See SoD, ¶¶ 491-493.

¹¹²⁸ Vizquerra Second Expert Report, ¶¶ 71, 75-76; Vizquerra First Expert Report, ¶ 36.

¹¹²⁹ Quiroga Second Expert Report, ¶ 3.21.

¹¹³⁰ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5.d.

¹¹³¹ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 5.e.

When Amorrortu submitted the Alleged Proposal, Baspetro (i) had been incorporated for less than two years and therefore could not provide financial statements for the preceding three years;¹¹³² (ii) had share capital of only US\$ 80,000 and therefore could not demonstrate the financial capacity required to operate Blocks III and IV, which required wells worth US\$ 202.50 million and US\$ 63.75 million, respectively;¹¹³³ and (iii) was “a company that had not yet carried out any operations” and therefore could not provide information about petroleum operations during the preceding three years.¹¹³⁴

614. The conclusion is clear: Baspetro could not have obtained petroleum qualification, and without that qualification, it could not have commenced direct negotiations with Perupetro.

c. No implied petroleum qualification was ever granted to Baspetro

615. Amorrortu and Mr. Quiroga seek to avoid Baspetro’s lack of petroleum qualification by arguing that Perupetro implicitly granted Baspetro the required qualification through the doctrine of positive administrative silence.¹¹³⁵ Mr. Quiroga relies on Article 14 of the Qualification Regulation, which provides:

PERUPETRO S.A. is obligated to grant the Petroleum Company Qualification within ten (10) business days of receiving the application referred to in Articles 5 and 6 of these Regulations, as applicable, subject to the Administrative responsibility of its officials, provided that the Petroleum Company submits the documents mentioned in said Articles in complete form and if, after the corresponding evaluation is carried out, no observations, errors, or omissions are found or the additional information referred to in

¹¹³² Registration of Baspetro S.A.C. in the Registry of Legal Persons of Peru (23 October 2012) (**C-65**).

¹¹³³ Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF].

¹¹³⁴ Baspetro, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] (translation provided by Counsel; in the Spanish original: “*BASPETROL SAC es una EP que no ha realizado operaciones aún.*”).

¹¹³⁵ Reply, ¶ 207; Quiroga Second Expert Report, ¶¶ 3.27-3.28, 4.19(iv)(b)-(c). Under Peruvian Administrative Law, positive administrative silence is a legal mechanism whereby an administrative authority’s failure to issue a decision within a prescribed period is deemed to constitute an approval of the applicant’s request. Negative administrative silence operates inversely, treating the authority’s silence as a denial.

Article 7 is not requested; otherwise, the period referred to in the last paragraph of Article 10 shall apply.¹¹³⁶

616. Mr. Quiroga states that, because Article 14 requires Perupetro to grant qualification within ten business days of receiving the application (absent objections or requests for information), Perupetro's failure to act within that period should be deemed an implicit grant. Mr. Quiroga thus contends that because Perupetro neither responded to the Alleged Proposal nor raised observations or requested additional information, Baspetro should be deemed qualified.¹¹³⁷ As also discussed in Section II.A.2.a above, that argument is factually and legally wrong.

617. *First*, it rests on a premise that the record contradicts: Baspetro never applied for petroleum qualification. Positive administrative silence presupposes the existence of a request by an applicant. Here, there was none. Amorrortu's Alleged Proposal did not request qualification; it did not even use the word "qualification." The same is true of his *ex post facto* "recreated" documents,¹¹³⁸ which also omit any reference to a qualification request. Thus, even assuming *arguendo* that petroleum qualification could be granted by positive silence (it cannot, as shown below), there was no request upon which Perupetro's silence could operate.

618. *Second*, in any event, Peruvian law bars the granting of petroleum qualification by positive administrative silence.

619. Peru's Law on Administrative Silence, in force when Amorrortu submitted the Alleged Proposal, required negative administrative silence to apply in matters "affecting the public

¹¹³⁶ Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 14 (translation provided by Counsel; in the Spanish original: "PERUPETRO S.A. se encuentra obligada a otorgar la Calificación de la Empresa Petrolera, dentro de los diez (10) días hábiles de recibida la solicitud a que se refieren los Artículos 5 ó 6 del presente Reglamento, según corresponda, bajo responsabilidad Administrativa de sus funcionarios, siempre y cuando la Empresa Petrolera presente los documentos mencionados en dichos Artículos de manera completa y si luego de efectuarse la evaluación correspondiente no se encontraran observaciones, errores u omisiones o no se solicitara la información adicional referida en el Artículo 7; en caso contrario se computará el plazo referido en el último párrafo del Artículo 10.").

¹¹³⁷ Quiroga Second Expert Report, ¶¶ 3.27-3.28, 4.19(iv)(b)-(c).

¹¹³⁸ Baspetro Operational Chart (2013-2014) (C-182); Baspetro Proposal to Operate the Oil & Gas Blocks III & IV in Talara, Northwest Peru (28 May 2014) (C-183); Baspetro Start-up Operations Report (C-184); Excel Sheet Detailed Business Plan Baspetro Blocks III & IV (2014) (C-185); GMP Regalías Lotes III & IV (C-186); Real Oil Production Incomes Blocks III IV (C-187).

interest” and concerning Peru’s “natural resources.”¹¹³⁹ Amorrortu’s Alleged Proposal falls squarely within that category: it sought to exploit Peru’s hydrocarbons resources, directly implicating both Peru’s public interest and natural resources. Peru’s Constitutional Court has recognized that such resources form part of the “national patrimony” and must be exploited for “the pursuit of general welfare.”¹¹⁴⁰ Positive silence therefore could not apply to Amorrortu’s Alleged Proposal. As Dr. Vizquerra confirms, the applicable regime was negative silence, so Perupetro’s lack of response (assuming arguing that Baspetrol had requested qualification) would have meant rejection, not approval.¹¹⁴¹

620. Article 14 of the Qualification Regulation does not change that conclusion. Its text does not provide for administrative silence, whether expressly or implicitly. Nor could it: the Law on Administrative Silence has higher normative rank than the Qualification Regulation, so any regulatory provision purporting to apply positive silence to matters concerning Peru’s public interest and natural resources would be legally invalid.¹¹⁴²

¹¹³⁹ Vizquerra First Expert Report, ¶ 9; Vizquerra Second Expert Report, ¶¶ 57-58; Law of Administrative Silence (Law No. 29060) (7 July 2007) (**RLA-212**), Transitory, Complementary and Final Provisions, First (“Exceptionally, **negative administrative silence shall apply** in those cases in which the **public interest** is significantly affected, impacting health, the environment, **natural resources**, public safety [...]”) (translation provided by Counsel; in the Spanish original: “*Excepcionalmente, el silencio administrativo negativo será aplicable en aquellos casos en los que se afecte significativamente el interés público, incidiendo en la salud, el medio ambiente, los recursos naturales, la seguridad ciudadana [...]*”).

¹¹⁴⁰ “Los recursos naturales y su aprovechamiento no pueden quedar excluidos del dominio soberano del Estado, por ende, su uso y explotación se concede por ley orgánica y, por su condición de patrimonio nacional y principios del compendio constitucional, busca el bienestar general,” *Pasión por el Derecho*, available at: <https://lpderecho.pe/recursos-naturales-aprovechamiento-quedar-excluidos-dominio-soberano-estado-ende-uso-explotacion-concede-ley-organica-exp-0003-2006-pi-tc/> (13 August 2016) (**R-89**).

¹¹⁴¹ Vizquerra First Expert Report, ¶ 9; Vizquerra Second Expert Report, ¶ 57.

¹¹⁴² Vizquerra Second Expert Report, ¶¶ 59-60. Amorrortu’s expert, Ms. Yaya, seems to confirm this conclusion. While her position is that negative silence does not apply to Amorrortu’s Proposal, she states that “positive administrative silence does not apply in any way” either. See Yaya Second Expert Report, ¶ 233 (“[I]n this case, positive administrative silence does not apply in any way, since the Regulations approved by Supreme Decree No. 030-2004-EM, in its Article 14, expressly established the obligation for the administration to grant the qualification within the established period if it had not requested the correction of any error or omission.”). Ms. Yaya’s admission thus confirms that Quiroga’s positive silence argument is flawed. And even if Ms. Yaya misspoke and she intended the above text to say that *negative* silence does not apply here, the result would be the same: Peru’s Law on Administrative Silence mandates the application of negative silence in cases that, like petroleum qualification, concern Peru’s public interest and natural resources. That mandate preempts any interpretation that Article 14 provides for positive silence.

d. The record confirms that Blocks III and IV were reserved for public tender

621. A further reason no causal link exists is that, when Amorrortu submitted its Alleged Proposal on 28 May 2014, Blocks III and IV were reserved for an international public tender, so direct negotiations could never have commenced.¹¹⁴³ Amorrortu and his experts seek to show that the blocks were available on several grounds, but none withstand scrutiny.¹¹⁴⁴

622. *First*, Amorrortu and Mr. Quiroga contend that, under Peru’s Hydrocarbons Law, direct negotiation and public bidding are both legally valid methods for awarding license contracts, that neither has priority over the other,¹¹⁴⁵ and that Perupetro’s stated intention to commence public bidding for Blocks III and IV did not make the blocks unavailable for direct negotiation.¹¹⁴⁶

623. Amorrortu and Mr. Quiroga miss the point. Indeed, Peru’s Hydrocarbons Law does not establish a hierarchy between direct negotiation and public tender. But as Mr. Quiroga confirms, the law does give Perupetro the absolute prerogative to choose which mechanism to use.¹¹⁴⁷ If Perupetro’s choice was that public tender would be the default rule generally, or that Blocks III and IV specifically would be awarded by tender, that ends the matter: that choice binds any applicant for the blocks, including Amorrortu—regardless of whether he disagrees.

624. *Second*, regarding Perupetro’s internal policy of prioritizing public tender,¹¹⁴⁸ Amorrortu and Ms. Yaya challenge the existence of that policy. They argue that no document exists evidencing the policy and that, under Peru’s Law on the Executive Power, “national and

¹¹⁴³ SoD, ¶¶ 485-486. *See also id.*, ¶¶ 48-55.

¹¹⁴⁴ *See also* § II.A.2.d *supra*.

¹¹⁴⁵ Quiroga Second Expert Report, ¶ 4.2(ii); Reply, ¶ 245.

¹¹⁴⁶ Reply, ¶ 208.

¹¹⁴⁷ Quiroga Second Expert Report, ¶ 4.2(ii) (“[T]here is no doubt that PERUPETRO S.A. is responsible [...] [to] determine[] whether [each lot] will be granted for exploration and/or exploitation through direct negotiation or public tender.”); Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (CLA-45), Art. 11 (“The contracts referred to in Article 10 may be entered into, at the discretion of the Contracting Party [i.e., Perupetro], through direct negotiation or by public tender.”) (translation provided by Counsel; in the original Spanish: “*Los contratos a que se refiere el Artículo 10 podrán celebrarse, a criterio del Contratante [i.e., Perupetro], previa negociación directa o por convocatoria.*”).

¹¹⁴⁸ SoD, ¶¶ 48-55, 485-486.

sectorial policies” must be “approved by Supreme Decree,” yet no Supreme Decree approving Perupetro’s policy was ever issued.¹¹⁴⁹

625. Amorrortu and Ms. Yaya are mistaken. To start, it is not true that no document exists reflecting Perupetro’s policy of prioritizing public tender. Perupetro’s Procedure 8, in force when Amorrortu submitted the Alleged Proposal, does so directly. It bars direct negotiation where a block has been designated for public tender or where competing third-party interest arises during direct negotiation.¹¹⁵⁰ In that way, Procedure 8 records Perupetro’s preference for public tender.¹¹⁵¹

626. In any event, Perupetro has no obligation to formalize its internal policies in a document, much less to have them approved by Supreme Decree. Article 11 of Peru’s Hydrocarbons Law gives Perupetro absolute discretion to determine, in each case, whether the applicable contracting mechanism is direct negotiation or tender.¹¹⁵² Nothing in Article 11 requires Perupetro to formalize that choice (or any internal policy guiding it) in a Supreme Decree. In fact, Article 11 does not require Perupetro to formalize its choices or policies in a document at all.

627. Moreover, Amorrortu’s and Ms. Yaya’s argument (that Perupetro’s policies must be confirmed by Supreme Decree) wrongly conflates two categories of “policies.” The “national and sectorial policies” they cite, which Peru’s Law on the Executive Power requires to be approved by Supreme Decree, are policies designed and formulated by the Executive Branch (for example,

¹¹⁴⁹ Reply, ¶¶ 72-73; Yaya Second Expert Report, ¶¶ 181-185, 212.

¹¹⁵⁰ Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), p. 6 [PDF].

¹¹⁵¹ Mr. Guzmán confirms Perupetro’s adherence to such preference. As a Perupetro official with more than 16 years of experience, Mr. Guzmán attests that Perupetro has historically been consistent with its policy of awarding long-term exploitation contracts through selection processes, with Perupetro’s files confirming that practice. *See* Guzmán Second Witness Statement, ¶ 9. As explained in Section II.A.2 above, Exhibit RG-1 confirms Perupetro’s policy as described by Mr. Guzmán, establishing that Perupetro has signed 22 long-term exploitation contracts, including those for Blocks III and IV in 2015. The large majority (16 to be precise) were adjudicated pursuant to a public tender process, in keeping with Perupetro’s policy. The handful of exceptions adjudicated via direct negotiation respond to specific circumstances only, namely non-producing blocks, a congressional mandate, a contract derived from an agreement that predated Perupetro’s existence, and a contract for the benefit of an educational institution. These exceptions are plainly inapplicable to Blocks III and IV. *See* § II.A.2.d *supra*; Relación de Contratos de Explotación de Hidrocarburos y Mecanismo de Adjudicación (**RG-1**).

¹¹⁵² Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 11.

by the Ministry of Energy and Mines).¹¹⁵³ Perupetro’s policy favoring public tender is different. As Mr. Guzmán confirms,¹¹⁵⁴ it is not an Executive Branch policy; it is an internal policy adopted by Perupetro—a private company under Peruvian law—in the exercise of the discretion granted to it by Article 11 of the Hydrocarbons Law.¹¹⁵⁵ Treating those two categories as the same is wrong.

628. *Third*, Amorrortu and his experts contend that when the Alleged Proposal was submitted on 28 May 2014, it was not yet known that Blocks III and IV would be subject to bidding.¹¹⁵⁶ They say this is because Perupetro did not formally announce the bidding processes until 14 July 2014.¹¹⁵⁷

629. That is demonstrably false. The record shows that, well before May 2014, it was publicly known and personally known to Amorrortu that the blocks would be awarded by tender:

- a. As early as 2012, Perupetro had made available on its website Board of Directors’ Agreements No. 100-2010 (dated 14 July 2010) and No. 002-2012 (dated 12 January 2012), which expressly stated that “PERUPETRO S.A. would conduct a selection process, by tender, for the allocation of new contracts for the exploitation of Blocks III and IV”;¹¹⁵⁸

¹¹⁵³ Organic Executive Power Law (Law No. 29158) (20 December 2007) (**RLA-214**), Art. 4.1.

¹¹⁵⁴ Guzmán Second Witness Statement, ¶ 8.

¹¹⁵⁵ Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 11 (“The contracts referred to in Article 10 may be entered into, at the discretion of the Contracting Party [i.e., Perupetro], through direct negotiation or by public tender.”) (translation provided by Counsel; in the original Spanish: “*Los contratos a que se refiere el Artículo 10 podrán celebrarse, a criterio del Contratante [i.e., Perupetro], previa negociación directa o por convocatoria.*”).

¹¹⁵⁶ Quiroga Second Expert Report, ¶ 4.5; Yaya Second Expert Report, ¶ 213.

¹¹⁵⁷ Reply, ¶ 483; Yaya Second Expert Report, ¶ 213.

¹¹⁵⁸ Perupetro’s Board of Directors, *Agreement No. 100-2010, Perupetro S.A. is required to carry out a selection process to enter into new contracts for hydrocarbons in lots in the Northwest, whose contracts are close to expire*. (14 July 2010) (**R-15**), p. 3; Perupetro’s Board of Directors, *Agreement No. 002-2012, Approving that in all cases of expiration of the term of Hydrocarbon contracts, these shall be subject to new selection processes* (12 January 2012) (**R-17**), p. 3.

- b. On 12 August 2013, Mr. Ortigas of Perupetro personally informed Amorrortu that “Block [III] [was] not an area [...] available for direct negotiation”;¹¹⁵⁹
- c. On 20 March 2014, exercising its prerogative under Article 11 of the Hydrocarbons Law,¹¹⁶⁰ Perupetro adopted Board of Directors’ Agreements No. 032-2014 and No. 033-2014, announcing Blocks III and IV would be awarded via tender;¹¹⁶¹
- d. On 24 March 2014, a news article was published recounting Perupetro’s victory in the ICC arbitration with InterOil, noting that as a result, Perupetro would need to execute temporary contracts since “Blocks III and IV will be put out to international tender.”¹¹⁶²
- e. On 5 April 2014, Peru’s Official Gazette published Supreme Decrees No. 012-2014-EM and No. 013-2014-EM, which reflected Perupetro’s decision to award Blocks III and IV via tender. The decrees left no room for ambiguity: temporary contracts had been granted to InterOil solely to prevent the shutdown of operations in the blocks (and the resulting loss of royalty and canon revenues) while Perupetro conducted the tender process for new license contracts.¹¹⁶³

¹¹⁵⁹ Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (**C-6**).

¹¹⁶⁰ Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 11 (“The contracts referred to in Article 10 may be entered into, at the discretion of the Contracting Party [i.e., Perupetro], through direct negotiation or by public tender.”) (translation provided by Counsel; in the original Spanish: “*Los contratos a que se refiere el Artículo 10 podrán celebrarse, a criterio del Contratante [i.e., Perupetro], previa negociación directa o por convocatoria.*”).

¹¹⁶¹ Perupetro, Board of Directors Agreement No. 032-2014 (20 March 2014) (**R-78**); Perupetro, Board of Directors Agreement No. 033-2014 (20 March 2014) (**R-79**).

¹¹⁶² See Gestión, “The development of blocks III and IV in Piura requires an additional US\$50 million,” *available at*: <https://gestion.pe/impresia/explotacion-lotes-iii-iv-piura-requiere-us-50-millones-7368-noticia/> (24 March 2014) (**R-80**).

¹¹⁶³ Ministry of Energy and Mines of Peru, *Supreme Decree No. 012-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block III, and Supreme Decree No. 013-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block IV* (5 April 2014) (**CLA-59**), p. 1 [PDF] (noting that it was “necessary for PERUPETRO S.A. to [...] ensure that the continuity of operations and hydrocarbon production in Block IV is not affected, so as to prevent the shutdown of production [...], which would substantially affect [...] royalty revenues and transfers related to canon and sobrecanon,” and that, “in that regard, it is necessary to execute a Temporary License Contract for a period that will allow PERUPETRO S.A. to carry out the selection process for the execution of a new License Contract for

630. Thus, contrary to Amorrortu’s position, when he submitted his Alleged Proposal in May 2014, it was public knowledge that Blocks III and IV would be awarded by public tender. Amorrortu *knew* this. As explained above, Perupetro had personally informed him that Block III was unavailable for direct negotiation.¹¹⁶⁴ And the Alleged Proposal itself confirms that he knew both Blocks were unavailable: it cites Perupetro’s Board of Directors’ Agreements No. 032-2014 and No. 033-2014 and Supreme Decrees No. 012-2014-EM and No. 013-2014-EM,¹¹⁶⁵ both of which confirmed that a tender process would take place. Tellingly, the Alleged Proposal describes the Board Agreements as “publicly available documents,”¹¹⁶⁶ thereby conceding both Amorrortu’s knowledge and the public nature of the Blocks III and IV tenders.

631. *Fourth*, faced with this reality, Amorrortu and Ms. Yaya advance an alternative argument. They contend that the reference in Supreme Decrees No. 012-2014-EM and No. 013-2014-EM to a “*proceso de selección*” does not exclude direct negotiation. According to them, this is because direct negotiation is itself one of the two “*procesos de selección*” authorized by Article 11 of the Hydrocarbons Law for granting license contracts,¹¹⁶⁷ and because Activity 21 in Perupetro’s Procedure 8 contemplates a “*proceso de selección*” when competing third-party interest arises during direct negotiation.¹¹⁶⁸

632. This argument fares no better. As Dr. Vizquerra confirms, it is well known in Peru’s petroleum industry that Perupetro uses “*proceso de selección*” to refer specifically to public

Hydrocarbon Exploitation in Block IV.”) (translation provided by counsel; in the Spanish original: “resulta necesario que PERUPETRO S.A. tome acciones inmediatas, con la finalidad de que no se afecte la continuidad de las operaciones y la producción de hidrocarburos [...], lo cual afectaría sustancialmente [...] los ingresos por regalía y las transferencias por concepto de canon y sobrecanon,” y que, “en este orden de ideas, resulta necesario suscribir un Contrato de Licencia Temporal, por un período que permita a PERUPETRO S.A. llevar a cabo el proceso de selección para la celebración de un nuevo Contrato de Licencia para la Explotación de Hidrocarburos en el Lote IV.”).

¹¹⁶⁴ Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetro) (12 August 2013) (C-6); SoD, ¶ 69.

¹¹⁶⁵ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 13 [PDF]

¹¹⁶⁶ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 13 [PDF] (translation provided by Counsel. The original in Spanish: “Según documentos hechos públicos, mediante Acuerdos de Directorio No. 032-2014 y No. 033-2014, de 20 de marzo de 2014 [...]).”.

¹¹⁶⁷ Reply, ¶ 208.

¹¹⁶⁸ Yaya Second Expert Report, ¶ 241.

bidding.¹¹⁶⁹ Activity 21 in Procedure 8 confirms this point: when third-party interest arises during direct negotiation, the negotiation ends and a public bidding (a “*proceso de selección – contratación por convocatoria*”) takes place instead.¹¹⁷⁰

e. Baspetro did not fulfill all the procedural requirements for the granting of the Blocks III and IV License Contracts

633. An additional reason no causal link exists is that any direct negotiation between Perupetro and Baspetro would not have guaranteed the execution of license contracts. Indeed, once direct negotiation begins, Procedure 8 triggers a 60-day period to reach agreement; if no agreement is reached, negotiations end. And even if agreement is reached, the contract must still be reviewed and approved by the Ministry of Energy and Mines and the Ministry of Finance.¹¹⁷¹

634. Mr. Quiroga argues that, because a direct negotiation allegedly occurred, Baspetro “complied with all the procedural rules for the approval of oil exploitation contracts” for Blocks III and IV.¹¹⁷²

635. That is a *non sequitur*. Even if direct negotiation had commenced (*quod non*), that would not establish that Baspetro satisfied the procedural requirements for the award of license contracts. Procedure 8 makes clear that commencing direct negotiations is only the first step in a multi-step process. The parties still must negotiate and agree on contract terms, an inherently uncertain outcome. And even if they reach agreement, the contract must be reviewed and approved by the Ministry of Energy and Mines and the Ministry of Finance, which is also inherently uncertain, particularly here. Peruvian law requires Perupetro to submit the contract to the Ministries with a report justifying its execution. Given Baspetro’s complete lack of technical capacity and financial resources, it would have been impossible to justify entrusting Peru’s

¹¹⁶⁹ Vizquerra First Expert Report, ¶ 57; Vizquerra Second Expert Report, ¶ 52.

¹¹⁷⁰ Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (CLA-44), pp. 6, 13 [PDF].

¹¹⁷¹ SoD, ¶ 495.

¹¹⁷² Quiroga Second Expert Report, ¶ 3.33.

valuable natural resources—Blocks III and IV—to Baspetro, a company that, by Amorrortu’s own admission, “had not yet carried out any operations.”¹¹⁷³

B. Amorrortu Is Not Entitled to the Damages He Claims Because He Has Failed to Prove Them

636. The Parties agree that, under international law, Amorrortu bears the burden of proving his alleged damages with “reasonable certainty.”¹¹⁷⁴ That standard excludes damages “based on conjecture or speculation,”¹¹⁷⁵ rejecting losses that are found “too uncertain or speculative or otherwise unproven.”¹¹⁷⁶

637. Amorrortu’s damages claim fails to meet that standard. As demonstrated in Section VI.A above, it assumes that Baspetro would have obtained and profitably operated the Blocks III and IV License Contracts despite not being qualified to do so. In addition, Amorrortu’s use of the FMV methodology is disconnected from his own counterfactual and therefore produces a speculative damages figure (**Section 1**); his DCF analysis projects future profits for Baspetro, even though Baspetro was a newly formed company with no operational track record or demonstrated ability to raise capital (**Section 2**); and even if Amorrortu’s DCF were theoretically appropriate (*quod non*), it rests on flawed and unsupported assumptions that overstate revenues and understate costs (**Section 3**).

¹¹⁷³ SoD, ¶¶ 501-503; Baspetro, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] (translation provided by Counsel. In the original Spanish: “*BASPETROL SAC es una EP que no ha realizado operaciones aún.*”).

¹¹⁷⁴ SoD, ¶ 533; Reply, ¶ 506 (invoking Article 7.4.3(2) of the UNIDROIT Principles of International Commercial Contracts, which provides that “[c]ompensation is due only for harm, including future harm, that is established with a reasonable degree of certainty.”).

¹¹⁷⁵ *Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*, SCC Case No. V (064/2008), Final Award (8 June 2010) (**RLA-111**), ¶ 39; *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012) (**RLA-119**), ¶¶ 437-439; SoD, ¶ 533.

¹¹⁷⁶ *Gemplus S.A., and others v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award (16 June 2010) (**CLA-84**), ¶ 12-56; SoD, ¶ 533.

1. Amorrortu's FMV theory is disconnected from his own counterfactual and produces speculative results

638. Peru's Statement of Defense explained that Amorrortu's reliance on the FMV standard is misplaced because Peru's purported breach—a denial of fair and equitable treatment—is not expropriatory in nature.¹¹⁷⁷ Amorrortu's Reply fails to engage with this point, underscoring the defect in his valuation.

639. FMV measures what “a willing buyer would normally pay to a willing seller after taking into account the nature of the investment, the circumstances in which it would operate in the future [...] and other relevant factors pertinent to the specific circumstance of each case.”¹¹⁷⁸ The standard values an investment at a particular point in time, typically immediately before an expropriation. It asks what a hypothetical buyer would have paid a hypothetical seller for the investment.

640. That is not Amorrortu's counterfactual. Amorrortu does not allege that, absent Peru's purported breach, he would have sold his alleged interest in the Block III and IV License Contracts to a third party. Rather, his position is that Baspetro “would have operated the Blocks profitably.”¹¹⁷⁹ Consequently, quantifying Amorrortu's damages as the value of his alleged interest in the License Contracts from the perspective of a hypothetical willing buyer and seller as of 14 July 2014 does not place him in the position he claims he would have been but for Peru's purported breach. It places him in a different—and potentially more favorable—position, thus making his damages valuation entirely speculative.

641. The oil-price assumptions on which Amorrortu relies illustrate the problem. Amorrortu and BRG's Mr. Dellepiane calculate damages using, among other inputs, crude oil forecasts available as of Amorrortu's 14 July 2014 valuation date. But under Amorrortu's own

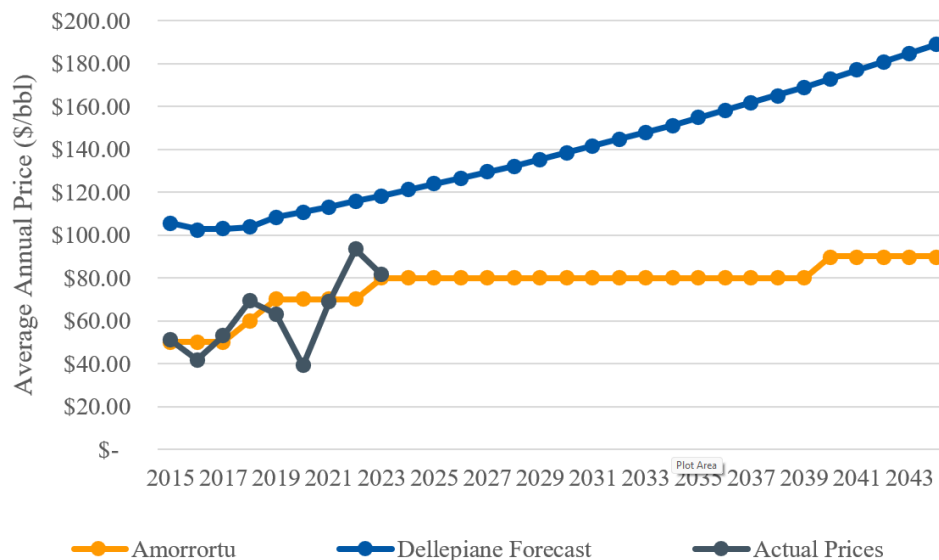
¹¹⁷⁷ SoD, ¶¶ 525-531.

¹¹⁷⁸ SoC, ¶ 383 (citing The World Bank Group, *Legal Framework for the Treatment of Foreign Investment* (Vol. II, 1992) (CLA-55), ¶¶ 5-6).

¹¹⁷⁹ SoC, ¶ 377. *See also id.*, ¶ 371.

counterfactual, Baspetrol would have “operated the Blocks” over 30 years,¹¹⁸⁰ and thus Baspetrol’s revenues would have depended on actual oil prices during that period, not forecasts made in July 2014. Figure 2 of Mr. Strunk’s Second Report illustrates the point by comparing Mr. Dellepiane’s forecasts with actual oil prices and with the prices Amorrortu allegedly projected in his “recreated” business model:¹¹⁸¹

Figure 2: Comparison of Oil Prices⁷¹



642. Using actual oil prices, Mr. Strunk shows that Baspetrol’s operation of Blocks III and IV would have produced losses of US\$ 65.9 million,¹¹⁸² not profits of US\$ 266.6 million,¹¹⁸³ even assuming *arguendo* that all other inputs in Amorrortu’s damages calculation were correct.

¹¹⁸⁰ SoC, ¶ 377; Reply, ¶ 519.

¹¹⁸¹ Strunk Second Expert Report, Figure 2; Excel Sheet Detailed Business Plan Baspetrol Blocks III & IV (2014) (C-185).

¹¹⁸² Strunk Second Expert Report, ¶ 80.

¹¹⁸³ BRG Second Expert Report, ¶ 7.

Amorrortu's FMV approach therefore fails the "reasonable certainty" standard under international law: it converts a loss-making counterfactual into a damages windfall.

2. Amorrortu's DCF is inappropriate for Baspetrol, a newly formed company with no operating record

643. Peru's Statement of Defense also showed that DCF—whether based on ex ante FMV data or ex post data—is inappropriate under international law for a newly formed company like Baspetrol, which had almost no funds and no operating history.¹¹⁸⁴ Peru explained, relying on investment guidelines and case law, that DCF depends on a company's ability to generate future positive returns and is therefore inappropriate unless the company is a "going concern with a proven record of profitability."¹¹⁸⁵ The reason is straightforward: as the *Metalclad v. Mexico* tribunal explained, "where the enterprise has not operated for a sufficiently long time to establish a performance record or where it has failed to make a profit, [...] any award based on future profits would be wholly speculative."¹¹⁸⁶

¹¹⁸⁴ SoD, ¶¶ 539-546.

¹¹⁸⁵ World Bank Development Committee, *Guidelines on the Treatment of Foreign Direct Investment (RLA-55)*, § IV.6 (explaining that DCF valuation is appropriate only "for a going concern with a proven record of profitability," and defining a "going concern" as "an enterprise consisting of income-producing assets which has been in operation for a sufficient period of time to generate the data required for the calculation of future income and which could have been expected with reasonable certainty, if the taking had not occurred, to continue producing legitimate income over the course of its economic life."); *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award (22 May 2007) (CLA-94), ¶ 385 (explaining, *sensu contrario*, that "[s]ince DCF reflects the companies' capacity to generate positive returns in the future, it appears as the appropriate method to value a 'going concern' as TGS.").

¹¹⁸⁶ *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (30 August 2000) (RLA-75), ¶¶ 120-121. See also *PSEG Global Inc. and another v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award (19 January 2017) (RLA-150), ¶ 310 (noting that investor-State tribunals are "reluctant to award lost profits for [...] unperformed work" and that this measure "is normally reserved for the compensation of investments that have been substantially made and have a record of profits, and refused when such profits offer no certainty."); *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 August 2016) (CLA-29), ¶ 759 (holding that "DCF works properly if all, or at least a significant part, of the following criteria are met: [t]he enterprise has an established historical record of financial performance; [t]here are reliable projections of its future cash flow, ideally in the form of a detailed business plan adopted *in tempore insuspecto*, prepared by the company's officers and verified by an impartial expert; [t]he business plan can be financed with self-generated cash, or, if additional cash is required, there must be no uncertainty regarding the availability of financing; [i]t is possible to calculate a meaningful WACC, including a reasonable country risk premium, which fairly represents the political risk in the host country; [t]he enterprise is active in a sector with low regulatory pressure, or, if the regulatory pressure is high, its scope and effects must be predictable: it should be possible to establish the impact of regulation on future cash flows with a minimum degree of certainty.").

644. Amorrortu’s Reply again does not answer the point. His only related response—placed outside his damages arguments—is that “while Baspetrol was a newly formed company, it is not the case that it had ‘no track record’,” given “the long and proven trajectory of Amorrortu in the very region and Lot for which the Proposal was being submitted.”¹¹⁸⁷ That argument fails.

645. Amorrortu improperly conflates his personal background with the operational and financial record of Baspetrol—the corporate entity whose cash flows Amorrortu’s DCF purports to project. The “proven record of profitability” required to justify DCF must belong to the company whose future cash flows are being projected. The *Enron v. Argentina* tribunal, for example, accepted DCF because the operating company being valued was itself a going concern.¹¹⁸⁸ The *Metalclad* tribunal likewise made clear that an enterprise’s future profits cannot be used to determine its value “where the enterprise has not operated for a sufficiently long time to establish a performance record.”¹¹⁸⁹ Baspetrol, however, had no such record, as it was a newly formed company with no operational history and no demonstrated capacity to raise capital, operate the Blocks, or generate returns from which future income could be projected with reasonable certainty.

646. Even if Amorrortu’s experience could be attributed to Baspetrol (*quod non*), it still would not justify DCF. Amorrortu is not a “going concern with a proven record of profitability.”

¹¹⁸⁷ Reply, ¶ 226.

¹¹⁸⁸ *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award (22 May 2007) (CLA-94), ¶ 385 (“Since DCF reflects the companies’ capacity to generate positive returns in the future, it appears as the appropriate method to value a ‘going concern’ as TGS.”).

¹¹⁸⁹ *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (30 August 2000) (RLA-75), ¶¶ 120-121. See also *PSEG Global Inc. and another v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award (19 January 2017) (RLA-150), ¶ 310 (noting that investor-State tribunals are “reluctant to award lost profits for [...] unperformed work” and that this measure “is normally reserved for the compensation of investments that have been substantially made and have a record of profits, and refused when such profits offer no certainty.”); *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 August 2016) (CLA-29), ¶ 759 (holding that “DCF works properly if all, or at least a significant part, of the following criteria are met: [t]he enterprise has an established historical record of financial performance; [t]here are reliable projections of its future cash flow, ideally in the form of a detailed business plan adopted *in tempore insuspecto*, prepared by the company’s officers and verified by an impartial expert; [t]he business plan can be financed with self-generated cash, or, if additional cash is required, there must be no uncertainty regarding the availability of financing; [i]t is possible to calculate a meaningful WACC, including a reasonable country risk premium, which fairly represents the political risk in the host country; [t]he enterprise is active in a sector with low regulatory pressure, or, if the regulatory pressure is high, its scope and effects must be predictable: it should be possible to establish the impact of regulation on future cash flows with a minimum degree of certainty.”).

His asserted “long and proven trajectory” is the experience of his former company, Propetsa. But Propetsa’s track record does not cure Baspetro’s lack of one. When Amorrortu submitted his Alleged Proposal in May 2014, Propetsa—if it still existed—had been inactive for over 17 years, since leaving Block III in 1997.¹¹⁹⁰ A company dormant for nearly two decades cannot provide a reliable basis for projecting the future revenues of a newly formed and different entity. That is exactly the type of speculation that the going-concern requirement aims at preventing.

647. For its part, BRG alleges that “Blocks III and IV were effectively going concerns, with a long track record of historical operations.”¹¹⁹¹ That also misses the point. The fact that Blocks III and IV are mature blocks in production (as opposed to unexplored blocks) does not satisfy the going concern requirement. Oil and gas blocks do not operate themselves. They require an operator able to manage complex field operations, perform the work needed to sustain and increase declining production, control costs, and finance capital-intensive operations. The production history of Blocks III and IV says nothing about whether Baspetro (a newly formed, unfunded company with no operating record) could do any of that.

3. Amorrortu’s DCF rests on flawed, unreliable, and inflated assumptions

648. Even if DCF were an appropriate method here (*quod non*), Amorrortu’s damages valuation still fails, as it rests on unsupported, unreliable, and inflated assumptions that make his claimed damages entirely speculative. Peru assesses each of these assumptions in turn.

a. Amorrortu’s DCF ignores his 40 percent ownership of Baspetro

649. Peru explained in its Statement of Defense that Amorrortu’s DCF fails to account for his 40 percent ownership interest in Baspetro. Even if Baspetro had won the Blocks III and

¹¹⁹⁰ SoD, ¶ 20.

¹¹⁹¹ BRG Second Expert Report, ¶ 46.

IV License Contracts (*quod non*), Amorrortu could have received only 40 percent of any value Baspetro obtained.¹¹⁹²

650. The Reply and Amorrortu's Second Witness Statement do not dispute that Amorrortu held only a 40 percent interest in Baspetro. The witness statements of his sons, Messrs. Sebastian Amorrortu and Basilio Cesar Amorrortu, confirm that they held the remaining 60 percent¹¹⁹³ and were entitled to profits from that share.¹¹⁹⁴ Thus, under Amorrortu's own counterfactual, he would have received only 40 percent of any value derived from the License Contracts.

651. In sum, assuming *arguendo* that Amorrortu's DCF and its underlying assumptions were otherwise correct (*quod non*), his alleged damages—based on Amorrortu's purported interest in Baspetro's operation of Blocks III and IV—would, at a minimum, need to be reduced by 60 percent to reflect his actual ownership interest in Baspetro.¹¹⁹⁵ Amorrortu's and BRG's failure to make that basic adjustment renders their damages calculation unreliable and grossly overstated.

b. Amorrortu's DCF ignores the international partner contemplated in his own Alleged Proposal

652. Peru's Statement of Defense also showed that Amorrortu's DCF fails to account for the participation of an international oil company in Baspetro's supposed operation of Blocks III and IV. Amorrortu's Alleged Proposal stated that Baspetro would enter into a consortium agreement with a "well-known international petroleum company."¹¹⁹⁶ Thus, in Amorrortu's

¹¹⁹² SoD, ¶ 549.

¹¹⁹³ Witness Statement of Basilio Cesar Amorrortu (22 December 2025) ("**Basilio Cesar Amorrortu's Witness Statement**"), ¶ 5; Witness Statement of Sebastian Amorrortu (22 December 2025) ("**Sebastian Amorrortu's Witness Statement**"), ¶ 5.

¹¹⁹⁴ Basilio Cesar Amorrortu's Witness Statement, ¶ 17 (explaining that he owned 30 percent of Baspetro so that he could "engage in a profitable investment."); Sebastian Amorrortu's Witness Statement, ¶ 17 (explaining that he owned 30 percent of Baspetro so that he could "engage in a profitable investment.").

¹¹⁹⁵ Strunk Second Expert Report, § III.C.3.

¹¹⁹⁶ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), pp. 1, 18 [PDF].

counterfactual, Baspetrol's (and by extension Amorrortu's) interest in the License Contracts would have been reduced by the consortium partner's stake.¹¹⁹⁷

653. In his Reply, Amorrortu now says that his "proposal was submitted with the contemplation that it would be a sole venture, not one undertaken by any form of consortium."¹¹⁹⁸ BRG likewise asserts that the participation of an international oil company was only a possibility.¹¹⁹⁹

654. Those arguments misstate the Alleged Proposal. That document expressly refers to a "well-known petroleum company" supporting Baspetrol as its "strategic partner."¹²⁰⁰ It also specifically contemplates a consortium between Baspetrol and that company. Thus, the consortium was not a mere possibility, and Amorrortu cannot amend his own Alleged Proposal as a sole-venture proposal now.

655. BRG further contends that if that international petroleum company had joined Baspetrol as a partner, such participation would have required payment to Amorrortu of the market value of the ownership interest acquired.¹²⁰¹ That is wrong. Because Baspetrol lacked the required technical and financial capabilities, the Qualification Regulation required Baspetrol to have either a *compromiso de asociación* or a *contrato* with another oil company before it could be awarded the Blocks III and IV License Contracts.¹²⁰² Baspetrol's partner thus would have shared costs and profits according to its participation percentage in exchange for making Baspetrol's application viable. In fact, Mr. Strunk confirms that "[g]iven Baspetrol's lack of financial resources, it is

¹¹⁹⁷ SoD, ¶ 548.

¹¹⁹⁸ Reply, ¶ 532.

¹¹⁹⁹ BRG Second Expert Report, ¶ 45.

¹²⁰⁰ Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 1 [PDF] ("Para los efectos de garantizar el mantenimiento de una producción sostenida de los hidrocarburos, BASPETROL SAC, formalizará en la etapa de las negociaciones, su participación como 'operador' de los Lotes, y el apoyo de una conocida Empresa Petrolera Internacional como socio estratégico.").

¹²⁰¹ BRG Second Expert Report, ¶ 46.

¹²⁰² Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (CLA-3), Art. 6.b.

plausible that in practice a large share of the License Contracts' profits would have flowed to Baspetro's hypothetical international partner."¹²⁰³

c. Amorrortu's DCF ignores PETROPERU's participation contemplated in his own Alleged Proposal

656. The Statement of Defense also explained that Amorrortu's DCF fails to account for PETROPERU's participation in up to 25 percent of the Blocks III and IV License Contracts. Amorrortu's own Alleged Proposal contemplates the possibility of PETROPERU's participation.¹²⁰⁴ His DCF should therefore reduce Baspetro's stake in the License Contracts by 25 percent.¹²⁰⁵

657. In his Reply, Amorrortu resists PETROPERU's 25 percent participation arguing that it was only an "open possibility" and that PETROPERU did not participate after Graña y Montero was awarded the contracts.¹²⁰⁶

658. That argument fails on Amorrortu's own case. According to Amorrortu, PETROPERU did not exercise its right to a 25 percent interest only because Graña y Montero allegedly "sought and obtained the removal of PetroPeru from the operation of Blocks III and IV" as part of the alleged corruption scheme.¹²⁰⁷ In Amorrortu's but-for world, there would have been no such purported scheme, Graña y Montero would not have allegedly removed PETROPERU, and PETROPERU would have exercised its 25 percent right. Thus, Amorrortu's DCF must account for PETROPERU's participation.

¹²⁰³ Strunk Second Expert Report, ¶ 46.

¹²⁰⁴ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), pp. 10, 18 [PDF]. Amorrortu's Statement of Claim also points out that "PetroPeru had the right to participate up to 25% in the license contracts of Blocks III and IV." See SoC, ¶ 167.

¹²⁰⁵ SoD, ¶ 548.

¹²⁰⁶ Reply, ¶ 531.

¹²⁰⁷ SoC, p. 58.

d. Amorrortu's valuation date remains flawed and opportunistic

659. Peru showed in its Statement of Defense that Amorrortu's proposed valuation date (14 July 2014) does not fit his own counterfactual. Under that counterfactual, Amorrortu's Alleged Proposal would have been accepted, Baspetro would have been awarded the Blocks III and IV License Contracts in December 2014, and petroleum operations would have begun in May 2015.¹²⁰⁸ In other words, on 14 July 2014, Amorrortu would have had no contracts, no operations, and no revenues. Valuing that position at US\$ 266.6 million is therefore baseless.¹²⁰⁹ Peru also explained that the valuation date is opportunistic because it coincides with a peak in oil prices.¹²¹⁰ Moving the valuation date to 1 April 2015, when Graña y Montero signed the license contracts, reduces Amorrortu's alleged damages to zero or very close to zero.¹²¹¹

660. In his Reply, Amorrortu does not dispute that his 14 July 2014 valuation date is opportunistic or misaligned with his Alleged Proposal. He simply asserts that Peru and Mr. Strunk "provide no data on how much [his damages] should be reduced by between the July and April figures [i.e., valuation dates]."¹²¹²

661. That is demonstrably wrong. Peru's Statement of Defense and Mr. Strunk's First Report expressly assessed the impact of moving the valuation date from 14 July 2014 to the more reasonable date of 1 April 2015, concluding that Amorrortu's damages would fall to "zero or very close to it."¹²¹³ Mr. Strunk further confirms that moving the valuation date to December 2014,

¹²⁰⁸ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 1 [PDF].

¹²⁰⁹ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 10 [PDF].

¹²¹⁰ SoD, ¶ 554.

¹²¹¹ Strunk First Expert Report, ¶ 79.

¹²¹² Reply, ¶ 533.

¹²¹³ SoD, ¶ 554 (citing Strunk First Expert Report, ¶ 79).

when Amorrortu himself expected Baspetro to sign the License Contracts,¹²¹⁴ also reduces Amorrortu's "damages to zero or very close to it."¹²¹⁵

662. Amorrortu's other arguments in the Reply only underscore the problem. As noted above, the Reply expands Amorrortu's original but-for scenario. In his Statement of Claim, he alleged that, but for Peru's supposed breach, Perupetro would not have launched the Blocks III and IV bidding process and instead would have awarded the License Contracts to Baspetro through direct negotiations.¹²¹⁶ In the Reply, he advances a new counterfactual: absent Peru's supposed breach, Baspetro would have won that bidding process.¹²¹⁷ However, Baspetro did not submit its bid until 31 October 2014,¹²¹⁸ four months after the proposed valuation date. In Amorrortu's new but-for world, it is impossible that any value associated with Baspetro's alleged participation and success in the bidding process could have been lost before Baspetro even applied to participate.

e. Amorrortu's production estimates remain grossly overstated

663. The Statement of Defense showed that Amorrortu's production estimate (59.4 million barrels over 30 years) is grossly inflated.¹²¹⁹ As Mr. Strunk confirms, Amorrortu assumes Baspetro would have lifted more than twice the proven reserves in Blocks III and IV, and almost twice all proven, probable, and possible reserves reported by Perupetro for the blocks as of Amorrortu's 14 July 2014 valuation date.¹²²⁰

¹²¹⁴ Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 10 [PDF].

¹²¹⁵ Strunk Second Expert Report, ¶ 67.

¹²¹⁶ SoC, ¶ 358; BRG First Expert Report, ¶ 51.

¹²¹⁷ Reply, ¶¶ 510-511 ("Here, if the Tribunal were to ignore the Direct Negotiation Process that Baspetro had commenced and determines that a public bidding process was necessary, the outcome would be no different. None of the companies that could try to compete in a corruption free process had the level of experience in the Talara Basin and in operating the oil Blocks that Amorrortu had with his more than two decades of experience in the area and years operating Block III under Propetsa [...]. Amorrortu would have been awarded the contract.").

¹²¹⁸ Baspetro, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (R-35).

¹²¹⁹ SoD, ¶¶ 555-556.

¹²²⁰ Strunk First Expert Report, ¶ 80.

664. In his Reply, Amorrortu does not dispute that his 59.4-million-barrel projection exceeds the reserves in Blocks III and IV as of his valuation date. Instead, he argues that the projection is consistent with (i) what he was expected to achieve; (ii) total extractable crude oil as of the valuation date, including 31.8 million barrels of reserves and 55.9 million barrels of resources; and (iii) total extractable crude oil as of 2023, including 56.5 million barrels of reserves and 29.3 million barrels of resources.¹²²¹ Each point fails.

665. *First*, the 59.4-million-barrel projection is not consistent with what Amorrortu supposedly expected to achieve. His “recreated” business proposal projected total production of only 44.9 million barrels.¹²²² Even if those projections were genuine contemporaneous projections by Amorrortu (*quod non*), they would still be 14.5 million barrels (or 25 percent) below the 59.4 million barrels assumed in Amorrortu’s DCF.

666. *Second*, Amorrortu cannot use resources to support his DCF valuation. The distinction is critical:

- a. Reserves are quantities of hydrocarbons shown to be commercially recoverable. They comprise *proven* reserves, with at least a 90 percent chance of economic recovery; *probable* reserves, with at least a 50 percent chance of economic recovery; and *possible* reserves, with at least a 10 percent but not more than 50 percent chance of economic recovery.¹²²³
- b. Resources, by contrast, are petroleum quantities that include sub-commercial or undiscovered quantities and therefore are not economically recoverable at the time the reserve report is prepared.¹²²⁴

¹²²¹ Reply, ¶¶ 538-539.

¹²²² Excel Sheet Detailed Business Plan Baspetrol Blocks III & IV (2014) (C-185).

¹²²³ Strunk Second Expert Report, ¶ 53.

¹²²⁴ Strunk Second Expert Report, ¶ 53

667. Projecting cash flows from resources as if they were reserves is impermissibly speculative. Investor-State jurisprudence confirms that point. In *Caratube v. Kazakhstan (II)*, the tribunal rejected the use of resources because “they [were not] sufficiently certain and that they thus should [not] be taken into consideration by this Tribunal for the purposes of [the claimant’s] lost profits claim.”¹²²⁵ In *Occidental v. Ecuador (II)*, the tribunal went further: it cautioned against using anything other than *proven* reserves for DCF assessments, applied a 50 percent adjustment to probable reserves and 25 percent to possible reserves,¹²²⁶ and rejected DCF for more speculative categories such as resources.

668. Amorrortu’s use of resources is therefore fatal to his DCF. International law requires Claimant to prove damages with reasonable certainty¹²²⁷—that is, by a preponderance of the evidence or more likely than not.¹²²⁸ A DCF built on *possible* reserves, which by definition have a likelihood of recovery between 10 and 50 percent, and on resources, which are speculative by definition, cannot satisfy that standard.

669. *Third*, Amorrortu’s reliance on the 2023 estimate of 56.5 million barrels of reserves is misplaced. His damages valuation is (erroneously) “based on the standard of fair market value (‘FMV’) as of [...] 14 July 2014.”¹²²⁹ If that is so, post-valuation events cannot support his claim.

670. International law requires FMV to be assessed as of the valuation date, without recourse to *ex post* information that was not known or knowable then. As the *Murphy v. Ecuador* tribunal explained, “conditions that were not known or knowable at the valuation date[] would not ordinarily be incorporated into a valuation [...] ‘because a valuation is performed as of a point in

¹²²⁵ *Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan (II)*, ICSID Case No. ARB/13/13, Award (27 September 2017) (**RLA-225**), ¶ 1116.

¹²²⁶ *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11 (**RLA-123**), Award (5 October 2012), ¶ 748.

¹²²⁷ SoD, ¶ 533.

¹²²⁸ *Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan (II)*, ICSID Case No. ARB/13/13, Award (27 September 2017) (**RLA-225**), ¶ 1151 (“The Claimants, who bear the burden of proof with respect to their damages, must thus show that it is more probable than not, by a preponderance of evidence, that the facts they allege are true.”).

¹²²⁹ BRG Second Expert Report, ¶ 4.

time – the valuation date – and the events [...] occurring subsequent to that date[] are not relevant to the value determined as of that date.”¹²³⁰ For Amorrortu, information after 14 July 2014 is irrelevant to damages. As of July 2014, reserves in Blocks III and IV were approximately 31.3 million barrels—nearly half the 56.5 million barrels he now invokes¹²³¹—and it was not known or knowable that reserves would increase to that amount by 2023. He therefore cannot rely on that later figure.

671. In any event, the 2023 figure would not save Amorrortu’s valuation even if *ex post* information were admissible (*quod non*). Although reported reserves in Blocks III and IV had increased to 56.5 million barrels by 2023, Mr. Strunk confirms those reserves would still require a Reserve Adjustment Factor (“**RAF**”), an oil-industry adjustment for the risk that technically recoverable reserves may not be economically recoverable in practice.¹²³² RAFs are standard practice, as investor-State jurisprudence confirms,¹²³³ and as BRG’s own market approach reflects.¹²³⁴ Applying BRG’s own RAFs yields reserve equivalents of only 40.2 million barrels.¹²³⁵ That remains far below the 59.4 million barrels assumed in Amorrortu’s DCF, confirming that his projections are overstated.

¹²³⁰ *Murphy Exploration and Production Company International v. Republic of Ecuador*, PCA Case No. 2012-16, Partial Final Award (6 May 2016) (CLA-090), ¶ 482.

¹²³¹ Strunk Second Expert Report, ¶ 60.

¹²³² Strunk Second Expert Report, ¶ 55.

¹²³³ *Occidental Petroleum Corporation et al. v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Award (5 October 2012) (RLA-123), ¶ 739 (stating, with respect to “Reserve Adjustment Factors (‘RAFTs’)”, that “[w]hen reserves are estimated, it is standard practice in the oil industry business to adjust them according to their category in order to estimate future productions. Such estimates are used in the actual planning and operation of oil extraction, as well as for financial reporting purposes including future profit forecasts.”).

¹²³⁴ BRG First Expert Report, ¶ 44 (“To assess the full amount of reserves in an oilfield using a single metric, analyst often analyze reserve equivalents, which adjust downward the values of probable and possible reserves according to their lower likelihood of extraction to enable easier comparison to proved reserves. Accordingly, I calculate total reserve equivalents by considering 100% of proved reserves, 50% of probable reserves and 25% of possible reserves in line with the Occidental Petroleum v. Ecuador Award.”).

¹²³⁵ Strunk Second Expert Report, ¶ 62.

f. Amorrortu's projection for new wells remains unsupported and speculative

672. Peru's Statement of Defense explained that Amorrortu's new-wells assumptions are speculative because they double the 154 wells contemplated by the 2014 Bidding Rules and lack any supporting technical analysis.¹²³⁶ It also showed that Amorrortu's and BRG's assumed production-decline rates are speculative because they lack petroleum-engineering support.¹²³⁷

673. In his Reply, Amorrortu confusingly says that "the number of new wells would follow the minimum drilling requirement of 14 wells per year as required under the [Blocks III and IV bidding rules]."¹²³⁸ That is not true. The 2014 Bidding Rules contemplated 14 wells per year during the first 11 years of operations, for a total of 154 wells. Amorrortu's DCF assumes 307 wells over 30 years, with no evidence showing that assumption is reasonable.¹²³⁹

674. BRG responds that the 154 wells in the 2014 Bidding Rules were a minimum requirement, not a ceiling, and that it would be unreasonable to assume an operator would drill only during the first 11 years.¹²⁴⁰ Even assuming that were so (*quod non*), neither Amorrortu nor BRG provides any technical or geological analysis supporting the 307-well projection. It thus remains pure speculation.

675. BRG also argues that Amorrortu's new-wells projection is supported by Graña y Montero's commitment to drill 230 wells in Block III and 330 wells in Block IV.¹²⁴¹ That benchmark is misguided. Graña y Montero and Baspétrol are not comparable. Graña y Montero was a large engineering and construction company with access to capital markets and a New York Stock Exchange listing.¹²⁴² By contrast, Baspétrol was newly incorporated, had no operational

¹²³⁶ SoD, ¶ 556.

¹²³⁷ SoD, ¶ 556.

¹²³⁸ Reply, ¶ 535.

¹²³⁹ SoD, ¶ 556.

¹²⁴⁰ BRG Second Expert Report, ¶ 55.

¹²⁴¹ BRG Second Expert Report, ¶ 56.

¹²⁴² BRG Second Expert Report, ¶ 33.

track record, had no demonstrated technical capabilities, and had only US\$ 80,000 in share capital. BRG offers no analysis showing that Baspetrol could have replicated Graña y Montero's drilling commitments. Nor could it: Graña y Montero's SEC filings show an average cost of US\$ 0.66 million per well, such that replicating Graña y Montero's drilling program would have cost Baspetrol around US\$ 202 million. There is no evidence that Baspetrol could have raised that capital.¹²⁴³ In fact, Baspetrol's US\$ 80,000 capital and lack of credentials show it could not have.

g. Amorrortu's oil-price projection remains overstated

676. Peru's Statement of Defense showed that Amorrortu's and BRG's oil-price forecasting method produces artificially high prices. The Consensus Economics forecasts on which they rely exceeded levels observed in oil markets as of 14 July 2014, which at that time expected a decline from 2015 through 2022. Using exchange-traded futures prices, the gap between market expectations and Amorrortu's forecast reaches US\$ 18 per barrel in 2019 and continues to grow thereafter.¹²⁴⁴

677. In his Reply, Amorrortu relies on BRG to defend Consensus Economics forecasts, arguing that exchange-traded futures prices reflect contractually agreed prices rather than market consensus about future prices.¹²⁴⁵ BRG adds that futures prices lose usefulness for longer-term valuations because outstanding contract volumes decline toward later contract dates,¹²⁴⁶ and because futures prices do not efficiently predict future spot prices.¹²⁴⁷

678. Those objections fail.

679. *First*, Mr. Strunk explains that oil and gas valuations commonly use exchange-traded futures prices to determine expected oil sale revenue, and analysts use those futures prices as proxies for expected spot prices. Market participants also adjust their investment strategies in

¹²⁴³ Strunk Second Expert Report, ¶ 64.

¹²⁴⁴ SoD, ¶¶ 557-558; Strunk First Expert Report, ¶¶ 83-86.

¹²⁴⁵ Reply, ¶ 541.

¹²⁴⁶ BRG Second Expert Report, ¶ 70.

¹²⁴⁷ BRG Second Expert Report, ¶ 71.

response to changes in futures prices. Amorrortu's and BRG's attempt to dismiss futures prices as mere private contractual prices therefore ignores how futures prices are actually used in valuation in the oil and gas industry.¹²⁴⁸

680. *Second*, BRG's criticism that futures prices become less useful in longer-term valuations does not justify using Consensus Economics forecasts. Mr. Strunk explains that the same limitation applies to those forecasts: as BRG itself acknowledges,¹²⁴⁹ Consensus Economics did not anticipate the sharp decline in oil prices that began in the second half of 2014.¹²⁵⁰

681. *Third*, Mr. Strunk explains that it is appropriate to rely on futures prices when forecasting revenues, at least for near-term oil sales, or to use a blend of futures prices for near-term sales and forecasts for longer-term sales. Mr. Dellepiane did neither; he relied on high forecasts for near-term oil sales and ignored the lower futures prices that market participants often use to lock in prices and mitigate risk. As Mr. Strunk confirms, that approach is inappropriate and overstates value.¹²⁵¹

h. Amorrortu's cost projections remain understated

(1) OPEX

682. Peru showed in its Statement of Defense that Amorrortu's OPEX projections are understated. Relying on Mr. Strunk's First Report, Peru explained that Amorrortu and BRG calculated OPEX using the 2009-2013 average for Blocks III and IV, US\$ 15.15 per barrel, despite a significant upward trend during that period. In 2015, when Amorrortu claims Baspetro would

¹²⁴⁸ Strunk Second Expert Report, ¶ 70.

¹²⁴⁹ BRG Second Expert Report, ¶ 74.

¹²⁵⁰ Strunk Second Expert Report, ¶ 71.

¹²⁵¹ Strunk Second Expert Report, ¶ 72.

have begun operations,¹²⁵² Graña y Montero reported OPEX in Blocks III and IV of US\$ 28.64 per barrel.¹²⁵³

683. Amorrortu and BRG respond that (i) Peru ignores InterOil's "operating expenses between 2009-2011, which are informative to determine Baspetro's expected cash flows;¹²⁵⁴ (ii) InterOil's 2013 restructuring and lower production in Blocks III and IV in 2012-2013 increased its OPEX;¹²⁵⁵ and (iii) Graña y Montero's 2015 per-barrel OPEX of US\$ 28.64 should be disregarded because Exhibit NERA-32, where they are stated, is a single page with no source, context, or breakdown excluding depreciation and amortization.¹²⁵⁶ BRG also states that Graña y Montero's 2015 SEC filings, which disclose average OPEX of US\$ 12.5 per barrel across Blocks I, III, IV, and V, provide a benchmark consistent with BRG's US\$ 15.15 per-barrel assumption.¹²⁵⁷

684. Each of these arguments fails.

685. *First*, Peru does not ignore InterOil's OPEX from 2009 to 2011. Mr. Strunk's First Report expressly accounts for those costs and explains that "the opex per barrel cost has a significant upward trend from the years 2008 to 2013."¹²⁵⁸ It is Amorrortu who ignores the full 2008-2013 data set and the upward trend it shows. Figure 5 in Mr. Strunk's Second Report illustrates that trend:

¹²⁵² Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 10 [PDF].

¹²⁵³ SoD, ¶ 559; Strunk First Expert Report, ¶ 87.

¹²⁵⁴ BRG Second Expert Report, ¶ 82.

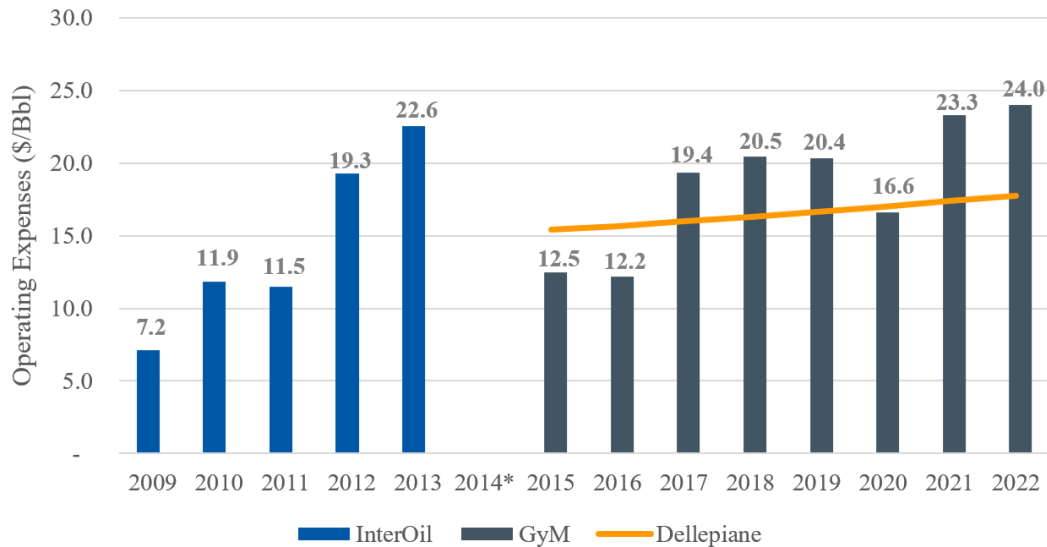
¹²⁵⁵ Reply, ¶ 545; BRG Second Expert Report, ¶¶ 82-83.

¹²⁵⁶ Reply, ¶ 546; BRG Second Expert Report, ¶¶ 87-88.

¹²⁵⁷ BRG Second Expert Report, ¶¶ 89-90.

¹²⁵⁸ Strunk First Expert Report, ¶ 87.

Figure 5: Upward Trend in Operating Expenses Ignored by Mr. Dellepiane¹⁷⁹



* No data for 2014.

686. *Second*, InterOil’s restructuring does not explain the 2012-2013 OPEX increase. The restructuring affected the company’s corporate structure, not field operations in Peru. InterOil’s 2013 Annual Report confirms this, stating that the restructuring involved “a significant downsizing of the Oslo office, the liquidation of the Zurich office, and the abandonment of the African operations, through the liquidation of the Norwegian holding companies owning these assets.”¹²⁵⁹ The report does not suggest any impact on Peruvian operations. And although BRG notes that InterOil ASA incurred “significant restructuring expenses related to the overhead cost reduction program and the corporate restructuring,”¹²⁶⁰ InterOil attributed those expenses to “high administration expenses in 1H 2013” at the parent-company level,¹²⁶¹ not to higher OPEX in Blocks III and IV.

¹²⁵⁹ InterOil, Company Presentation (February 2013) (BRG-56), p. 5 [PDF].

¹²⁶⁰ BRG Second Expert Report, ¶ 82.

¹²⁶¹ InterOil, Company Presentation (February 2013) (BRG-56), p. 40 [PDF].

687. *Third*, Graña y Montero’s own data independently confirm that BRG’s US\$ 15.15 per-barrel OPEX estimate is understated.

688. Exhibit NERA-32, which shows Graña y Montero’s OPEX and which Amorrortu criticizes as unreliable,¹²⁶² is sourced from Graña y Montero itself. In Peru, oil operators must provide Perupetro with actual OPEX data. Exhibit NERA-32 reflects those data and shows Graña y Montero’s actual operating costs from 2015 to 2024.¹²⁶³ **The fact that Graña y Montero’s OPEX in Exhibit NERA-32 include depreciation and amortization does not change the key point: once Graña y Montero began operating in 2015, the upward trend in Blocks III and IV OPEX continued.** Indeed, BRG selectively relies on Graña y Montero’s 2015 Form 20-F from 2015 to argue that US\$ 12.5 per barrel is consistent with its US\$ 15.15 per-barrel assumption.¹²⁶⁴ But as Mr. Strunk explains, BRG ignores the significant increase reflected in Graña y Montero’s Forms 20-F from 2015 through 2023, which show OPEX rising from US\$ 12.5 per barrel in 2015 to US\$ 24 per barrel in 2022.¹²⁶⁵ Moreover, the US\$ 15.15 per-barrel figure on which BRG relies is an understated benchmark for the OPEX Baspetro would have incurred because it reflects “data averaged across four blocks (Blocks I, III, IV and V) representing economies of scale not available to an operator of just two blocks,”¹²⁶⁶ as Baspetro purported to be with respect to Blocks III and IV.

¹²⁶² Reply, ¶ 546.

¹²⁶³ Costos UNNA 2015-2024 (NERA-32).

¹²⁶⁴ BRG Second Expert Report, ¶ 89.

¹²⁶⁵ Strunk Second Expert Report, ¶ 87.

¹²⁶⁶ Strunk Second Expert Report, ¶ 86.

(2) Other costs

689. In its Statement of Defense, Peru demonstrated that Amorrortu's remaining costs are also understated, as BRG omits several material cost items from its DCF analysis.

690. *First*, Amorrortu's DCF fails to account for inter-segment costs, finance costs, and impairment costs.¹²⁶⁷ BRG responds that these costs are not operating costs.¹²⁶⁸ Even if these costs are not "operating costs," they are genuine costs that Baspetro would have incurred. They are part of Baspetro's general costs and thus should be included in Amorrortu's DCF.

691. *Second*, Amorrortu's DCF omits capital costs expressly contemplated in his Alleged Proposal, including investments in existing wells and horizontal drilling activities.¹²⁶⁹

692. For investments in existing wells, BRG argues that InterOil's 2009-2013 historical OPEX already captured those costs and that "[they] are already included in [BRG's] projection of operating expenses."¹²⁷⁰ That reasoning fails because BRG does not show how InterOil's historical costs could account for the additional investments contemplated in Amorrortu's Alleged Proposal. Moreover, Mr. Strunk explains that "[c]apital investments are accounted for differently from operating costs and should not be expected to be baked into InterOil's operating expenses." BRG's reliance on InterOil's historical OPEX therefore does not show that the DCF included the additional investments required for existing wells under Amorrortu's Alleged Proposal.¹²⁷¹

693. For horizontal drilling costs, BRG asserts that although "horizontal wells are more costly," they are "also more productive," so "assuming horizontal drilling would increase, not decrease, projected profitability."¹²⁷² That is a bare assertion unsupported by any quantitative analysis. Mr. Strunk explains that the omission is especially indefensible because BRG's

¹²⁶⁷ SoD, ¶ 560; Strunk First Expert Report, ¶ 88.

¹²⁶⁸ BRG Second Expert Report, ¶ 85.

¹²⁶⁹ SoD, ¶¶ 548, 560; Strunk First Expert Report, Table 3.

¹²⁷⁰ BRG Second Expert Report, ¶ 95.

¹²⁷¹ Strunk Second Expert Report, ¶ 83.

¹²⁷² BRG Second Expert Report, ¶ 96.

production projections are already unrealistically high: BRG cannot assume still higher production from horizontal drilling while refusing to account for the additional costs that horizontal drilling would entail.¹²⁷³

694. *Third*, Amorrortu’s DCF fails to account for asset-retirement and environmental obligations.¹²⁷⁴ BRG responds that InterOil bore no responsibility for such costs under its license contract, and that it would therefore be unreasonable to assume Amorrortu expected to incur them as of his 14 July 2014 valuation date.¹²⁷⁵ BRG’s argument does not withstand scrutiny. As a threshold matter, it is simply wrong that InterOil was not responsible for these costs. InterOil itself acknowledged in 2013 that it was responsible for site restoration and well abandonment, and accordingly recognized a corresponding provision based on communications with Peru’s environmental agency, OEFA.¹²⁷⁶

695. Moreover, BRG’s argument cannot be reconciled with either of Amorrortu’s two counterfactual scenarios:

- a. Under his first counterfactual, Amorrortu alleges that, but for Peru’s purported breach, Baspetro would have completed direct negotiations with Perupetro and obtained license contracts for Blocks III and IV. If that were true (*quod non*), Baspetro would have been subject to Peruvian environmental regulations holding operators “responsible for the environmental impacts that occur as a result of their [operations]”¹²⁷⁷ and for the abandonment of wells.¹²⁷⁸

¹²⁷³ Strunk Second Expert Report, ¶ 84.

¹²⁷⁴ SoD, ¶ 550; Strunk First Expert Report, ¶ 75.

¹²⁷⁵ BRG Second Expert Report, ¶ 97.a.

¹²⁷⁶ InterOil, *Annual Report* (2013) (**BRG-56**), p. 34 [PDF].

¹²⁷⁷ Supreme Decree No. 015-2006-EM (2 March 2006) (**R-71**), Art. 3.

¹²⁷⁸ Supreme Decree No. 039-2014-EM (5 November 2014) (**R-85**), Art. 99.

- b. Under his second counterfactual, Amorrortu alleges that, but for Peru's purported breach, Baspetro would have won the Blocks III and IV bidding process.¹²⁷⁹ If that were true (*quod non*), Baspetro would have had to comply with the same environmental regulations and with the Bidding Rules, which expressly required the operator to bear abandonment and environmental remediation costs.¹²⁸⁰

696. *Fourth*, Amorrortu's DCF omits the cost of providing performance security.¹²⁸¹ In response, BRG alleges that this cost is already included in InterOil's reported operating expenses under "insurance" and therefore in BRG's DCF.¹²⁸² That is wrong. The performance security required at that time by Perupetro was not an "insurance" policy; it was a guarantee for execution of the work program under the License Contracts.¹²⁸³ InterOil's "insurance" expenses are therefore entirely irrelevant.

697. *Fifth*, Amorrortu's DCF fails to account for the 5 percent employee profit sharing contemplated in Amorrortu's Alleged Proposal.¹²⁸⁴ In response, BRG contends that InterOil's historical expenses already include the charge,¹²⁸⁵ citing InterOil's annual reports from 2008 through 2013.¹²⁸⁶ However, of those six reports, only the 2013 report mentions profit sharing, and even then it does so without specifying the applicable rate.¹²⁸⁷ BRG therefore cannot rely on that report to show that InterOil's historical expenses included the same five percent profit sharing

¹²⁷⁹ Reply, ¶¶ 513-515.

¹²⁸⁰ Perupetro's Board of Directors, *Agreement No. 072- 2014, Approval of Rules for International Public Tender No. PERUPETRO-002-2014* (Full text) (30 June 2014) (**R-23**), p. 82 [PDF].

¹²⁸¹ SoD, ¶ 550; Strunk First Expert Report, ¶ 75.

¹²⁸² BRG Second Expert Report, ¶ 97.b.

¹²⁸³ Perupetro's Board of Directors, *Agreement No. 072- 2014, Approval of Rules for International Public Tender No. PERUPETRO-002-2014* (Full text) (30 June 2014) (**R-23**), p. 17 [PDF].

¹²⁸⁴ SoD, ¶ 548; Strunk First Expert Report, ¶ 75; Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 12 [PDF].

¹²⁸⁵ BRG Second Expert Report, ¶ 100.

¹²⁸⁶ BRG Second Expert Report, note 164 (citing InterOil, *Annual Report* (2008) (**BRG-51**); InterOil, *Annual Report* (2009) (**BRG-52**); InterOil, *Annual Report* (2010) (**BRG-53**); InterOil, *Annual Report* (2011) (**BRG-54**); InterOil, *Annual Report* (2012) (**BRG-55**); InterOil, *Annual Report* (2013) (**BRG-56**)).

¹²⁸⁷ InterOil, *Annual Report* (2013) (**BRG-56**), p. 54 [PDF].

contemplated in Amorrortu’s Alleged Proposal. Amorrortu’s own expert, Mr. Zamalloa, proves the opposite: he describes Amorrortu’s proposed 5 percent profit sharing as “an innovator and compelling concept in the history of the Contracts in the Talara Field and in Peru.”¹²⁸⁸ If the 5 percent profit sharing was an innovation introduced in Amorrortu’s 2014 Alleged Proposal, InterOil could not have incurred it historically before that Alleged Proposal existed.

i. Amorrortu’s tax assumptions remain incorrect

698. Peru showed in its Statement of Defense that Amorrortu’s tax assumptions are wrong because they ignore the 4.1 percent dividend tax that would apply to dividends Amorrortu received from Baspetro and repatriated to the United States.¹²⁸⁹

699. Amorrortu’s Reply says nothing on this point. BRG, for its part, argues that the DCF need not account for the 4.1 percent dividend tax because it is “uncertain whether any foreign distributions would occur, and therefore whether the tax would be paid,”¹²⁹⁰ and because the tax supposedly applies only to profit distributions to non-resident individuals.¹²⁹¹

700. Both arguments are wrong.

701. As to BRG’s second argument, Peruvian law is clear: the dividend tax applies to dividend distributions to individuals, regardless of whether the individual is resident in Peru.¹²⁹²

¹²⁸⁸ Zamalloa Expert Report, pp. 8, 32.

¹²⁸⁹ SoD, ¶ 562.

¹²⁹⁰ BRG Second Expert Report, ¶ 99; BRG First Expert Report, note 89.

¹²⁹¹ BRG Second Expert Report, ¶ 99.

¹²⁹² Supreme Decree No. 054-99-EF (13 April 1999) (**R-69**), Arts. 53-54 (“Dividends and any other form of profit distribution referred to in subsection i) of Article 24 of the Law shall be taxed at the rate of four point one percent (4.1%). [...] Natural persons [...] not domiciled in the country shall calculate their tax by applying the rate of thirty percent (30%) to pensions or remuneration for personal services performed in the country, royalties, and other income. In the case of income from dividends and other forms of profit distribution obtained from the legal entities referred to in Article 14 of the Law, the tax shall be determined by applying the rate of four point one percent (4.1%) to the amount distributed.”) (translation provided by Counsel. In the original Spanish: “*Los dividendos y cualquier otra forma de distribución de utilidades a que se refiere el inciso i) del Artículo 24 de la Ley estarán gravados con la tasa de cuatro punto uno por ciento (4.1%). [...] Las personas naturales [...] no domiciliadas en el país, calcularán su impuesto aplicando la tasa del treinta por ciento (30%) a las pensiones o remuneraciones por servicios personales cumplidos en el país, regalías y otras rentas. En caso de rentas por concepto de dividendos y otras formas de*”).

Amorrortu's Peruvian residence is thus irrelevant. He would have owed the tax on any dividends received from Baspetro.

702. As to BRG's first argument, Amorrortu's own case is that he is not resident in Peru. He claims to be a U.S. investor domiciled in Florida.¹²⁹³ As Section IV.B above explains, that is not true: Amorrortu's dominant and effective nationality at the time of Peru's purported breach in July 2014 was Peruvian, not American, and the Tribunal therefore lacks jurisdiction over his claim. But if Amorrortu is treated as a U.S. investor (*quod non*), then it would be unreasonable to assume, as BRG does, that the profits he supposedly would have received from Baspetro would never be distributed to the United States. Amorrortu cannot claim U.S. nationality to establish jurisdiction while assuming no U.S. distributions when calculating damages.¹²⁹⁴

j. Amorrortu's discount rate remains understated

703. Peru's Statement of Defense showed that Amorrortu's 9.5 percent discount rate understates country-risk premiums, omits a marketability discount, and assumes an artificially low cost of capital for Baspetro. The result is a discount rate for Baspetro that is lower than rates reported for well-established, well-capitalized U.S. companies, when the opposite should be true.¹²⁹⁵

704. In his Reply, Amorrortu seeks to justify the 9.5 percent rate by citing a March 2014 Duff & Phelps study relied on by Mr. Strunk. That study reports average and median WACC rates for U.S. oil-and-gas companies of 10.1 percent and 10.0 percent, respectively, in 2013.¹²⁹⁶ BRG also states its 9.5 percent discount rate is consistent with other independent benchmarks, which

distribución de utilidades que obtengan de las personas jurídicas a que se refiere el Artículo 14 de la Ley, el impuesto resulta de aplicar la tasa del cuatro punto uno por ciento (4.1%) sobre el monto que se distribuya.”)

¹²⁹³ Amorrortu First Witness Statement, ¶ 1.

¹²⁹⁴ Strunk Second Expert Report, ¶¶ 49-52.

¹²⁹⁵ SoD, ¶ 563; Strunk First Expert Report, ¶¶ 91-109.

¹²⁹⁶ Reply, ¶ 550; BRG Second Expert Report, ¶ 103.

report discount rates for oil-and-gas companies operating in Peru of 9.8 percent, 10.2 percent, and 10.3 percent.¹²⁹⁷

705. But Mr. Strunk confirms that the average of those benchmarks is 10.1 percent, and that even increasing Amorrortu's rate from 9.5 percent to 10.1 percent reduces damages by approximately US\$ 40 million, inclusive of interest.¹²⁹⁸ He also confirms that Amorrortu's 9.5 percent rate falls outside the range of discount rates reported by Mercer Capital for the oil-and-gas industry, ranging from 10 percent to 27 percent.¹²⁹⁹

k. Amorrortu's application of the market approach is erroneous

706. Finally, Peru showed in its Statement of Defense that Amorrortu's market approach, which he invokes only to confirm his DCF valuation, is inapt. It relies on companies and assets that, unlike Baspétrol, held contractual rights to oil production, and on transactions in jurisdictions such as Australia, Canada, Denmark, the United Kingdom, and the United States, where country-risk premia are substantially lower.¹³⁰⁰

707. In his Reply, Amorrortu states that Peru's "broad critique against the market approach [...] exclusively focus on the deal location."¹³⁰¹ That is not true. Peru's primary critique is that Amorrortu's market approach relies on transactions involving companies with contractual rights to oil production—rights that Amorrortu did not have on 14 July 2014 and could never have had.

708. Mr. Strunk identifies another flaw. Amorrortu's market approach uses transactions from the three years before 14 July 2014, a period of consistently high oil prices. But Baspétrol would not have held the Blocks III and IV License Contracts on that date even under Amorrortu's Alleged Proposal: the contracts would have been signed in December 2014, and operations would

¹²⁹⁷ BRG Second Expert Report, ¶¶ 111-112

¹²⁹⁸ Strunk Second Expert Report, ¶ 93.

¹²⁹⁹ Strunk Second Expert Report, ¶ 93.

¹³⁰⁰ SoD, ¶¶ 556-557.

¹³⁰¹ Reply, ¶ 553.

have begun in May 2015.¹³⁰² By then, oil prices had fallen by approximately 50 percent,¹³⁰³ and the values implied by Amorrortu's market approach would have fallen with them. The market approach therefore confirms nothing except the speculative nature of Amorrortu's damages case.

C. Amorrortu's Interest Claim Must Be Rejected

709. In its Statement of Defense, Peru explained that Amorrortu's 7.44 percent interest claim—which he purports to derive from his estimated cost of debt as of his 14 July 2014 valuation date—must be rejected, as it would compensate him for a risk he never bore during the pre-award period: the risk of taking on debt to finance his purported investment after he had already lost it.¹³⁰⁴ The appropriate rate is thus a low-risk rate.¹³⁰⁵

710. In his Reply, Amorrortu relies on BRG to argue that a low-risk or risk-free rate would violate the principle of full compensation.¹³⁰⁶ That is wrong.

711. A low-risk or risk-free rate is consistent with full reparation for a simple reason: if Amorrortu suffered any compensable loss as of his 14 July 2014 valuation date (*quod non*), the award would compensate him for the value of his purported investment as of that date. From then on, he would bear no business risk associated with that investment. Interest should compensate only for the time value of money. Nothing more.

712. Investor-State jurisprudence confirms this approach. Tribunals have repeatedly held that interest must not overcompensate a claimant by embedding a premium for risks the claimant no longer bore after the loss.

713. In *Bank Melli and Bank Saderat v. Bahrain*, the state expropriated the investors' investment in Future Bank. The investors sought pre-award interest based on Future Bank's

¹³⁰² Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (C-11), p. 10 [PDF].

¹³⁰³ Strunk Second Expert Report, ¶ 98.

¹³⁰⁴ SoD, ¶ 571.

¹³⁰⁵ SoD, ¶ 573.

¹³⁰⁶ Reply, ¶¶ 556-557; BRG Second Expert Report, ¶¶ 126-129.

WACC.¹³⁰⁷ The tribunal rejected this approach. It explained that WACC includes an element of “business risk that is incurred,” and that “it would be economically unjustified if the interest would also compensate for business risks associated with the investment for a period during which the Claimants did not bear these risks anymore because they had lost control of the investment.”¹³⁰⁸ The tribunal accordingly applied a risk-free interest rate.¹³⁰⁹

714. The *Saint-Gobain v. Venezuela* tribunal reached the same conclusion. The state had expropriated the investor’s investment in Norpro. The investor sought pre-award interest based on Norpro’s 13.04 percent cost of equity or, alternatively, PDVSA’s 9.08 percent cost of debt.¹³¹⁰ The tribunal rejected both rates because they “account[ed] for the risks of investing in a company located in Venezuela even though Claimant was no longer bearing these risks and, more importantly, would also not have been bearing these risks if it had been compensated” on the valuation date.¹³¹¹ The tribunal concluded that interest should compensate only for “the time value of money, without factoring in any risks that Claimant did not bear,” and awarded pre-award interest at a low-risk rate equal to 2 percent over the average 6-month US Treasury bill rate.¹³¹²

715. More recently, in *Odyssey v. Mexico*, the tribunal found that Mexico failed to accord the claimant’s investment fair and equitable treatment by denying environmental permits, and it awarded sunk costs as damages.¹³¹³ The investor sought interest at a rate equivalent to the

¹³⁰⁷ *Bank Melli Iran and Bank Saderat Iran v. Kingdom of Bahrain*, PCA Case No. 2017-25, Award (9 November 2021) (RLA-237), ¶ 798.

¹³⁰⁸ *Bank Melli Iran and Bank Saderat Iran v. Kingdom of Bahrain*, PCA Case No. 2017-25, Award (9 November 2021) (RLA-237), ¶¶ 799-800.

¹³⁰⁹ *Bank Melli Iran and Bank Saderat Iran v. Kingdom of Bahrain*, PCA Case No. 2017-25, Award (9 November 2021) (RLA-237), ¶ 800.

¹³¹⁰ *Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/13, Decision on Liability and the Principle of Quantum (30 December 2016) (CLA-51), ¶ 869.

¹³¹¹ *Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/13, Decision on Liability and the Principle of Quantum (30 December 2016) (CLA-51), ¶ 874.

¹³¹² *Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/13, Decision on Liability and the Principle of Quantum (30 December 2016) (CLA-51), ¶ 877.

¹³¹³ *Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1, Award (17 September 2024) (RLA-242), ¶ 758.

WACC of a typical investor in a pre-operational mining project in Mexico.¹³¹⁴ The tribunal rejected that request because the claimant’s proposed rate “include[d] business risks in the mining industry and [was] not suitable to calculate interest in [that] Arbitration, as a potential award of damages [would] not have been subject to those risks.”¹³¹⁵

716. This case is no different. As in *Bank Melli* and *Saint-Gobain*, applying Amorrortu’s cost of debt would compensate him for a business risk (taking on debt to finance his purported investment) during the period from his 14 July 2014 valuation date to the date of the award, when, on his own case, he no longer bore that risk because he had purportedly lost the investment. And as in *Odyssey*, that rate is inappropriate because any damages award would not have been subject to Amorrortu’s borrowing rate or the business risk associated with it.

717. In sum, Amorrortu’s 7.4 percent cost-of-debt rate would plainly overcompensate him. If the Tribunal awards any damages (*quod non*), it should apply the low-risk or risk-free rate that Peru proposed in its Statement of Defense.

D. Amorrortu’s Request for Non-Taxable Compensation Must Be Rejected

718. In its Statement of Defense, Peru showed that Amorrortu’s request that “the Award should not be subjected to any further taxes by Peru”¹³¹⁶ must be rejected. Peru explained that BRG’s purported accounting for taxes in its damages calculation does not justify exempting the award from taxation, as Amorrortu has failed to identify the specific taxes—or the applicable rates—that would apply to the Award in Peru or the potential overlap between those taxes and the

¹³¹⁴ *Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1, Award (17 September 2024) (RLA-242), ¶ 793.

¹³¹⁵ *Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1, Award (17 September 2024) (RLA-242), ¶ 794.

¹³¹⁶ SoC, ¶ 414.

taxes that BRG's damages calculation has purportedly accounted for. His request is therefore wholly speculative, contrary to international law, and should be rejected.¹³¹⁷

719. Amorrortu's Reply says nothing in response. BRG's Second Expert Report likewise says nothing. Peru accordingly treats that silence as acceptance of its position and reiterates its request that Amorrortu's claim for non-taxable compensation be rejected.

720. In sum, Amorrortu's damages claim must be dismissed in its entirety. He cannot establish causation: even absent Peru's alleged breach, Baspetrol—a newly formed company with no operations, no demonstrated technical or financial capacity, and almost no capital—could not have obtained the Blocks III and IV License Contracts. Nor can Amorrortu prove his alleged damages with the reasonable certainty required by international law: his DCF assumes more than half a billion dollars in future profits for a company that was not a going concern and had no demonstrated financial and technical capacity, and rests on flawed and entirely speculative assumptions disconnected from his own counterfactual.

721. If contrary to Peru's position, the Tribunal awards any damages, it should reject Amorrortu's 7.44 percent interest claim because it would overcompensate him for risks that an award would not bear, and instead apply Peru's proposed low-risk or risk-free rate. The Tribunal should also reject Amorrortu's request for non-taxable compensation, which remains speculative and which Amorrortu seems to have abandoned in his Reply.

VII. REQUEST FOR RELIEF

722. For the reasons stated in this Rejoinder and Reply on Jurisdiction, the Republic of Peru respectfully requests that the Tribunal render an Award that:

- a. Dismisses Amorrortu's claim for lack of jurisdiction and admissibility;

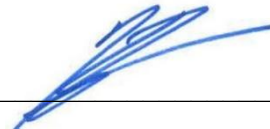
¹³¹⁷ SoD, ¶¶ 574-575.

- b. Dismisses Amorrortu's claim for lack of merit, should the Tribunal uphold jurisdiction to address the merits of his claim;
- c. Denies Amorrortu's request for damages, should the Tribunal determine the existence of State responsibility on any ground;
- d. Orders Amorrortu to pay all costs related to this arbitration, including any expenses and legal or expert fees incurred by the Republic of Peru in preparation of its defense; and
- e. Orders any other relief that the Tribunal determines to be appropriate.

723. The Republic of Peru reserves all its rights and presents this Rejoinder and Reply on Jurisdiction without prejudice to any other arguments or objections regarding jurisdiction, the merits, or otherwise.

Date: 14 July 2026

Respectfully submitted,



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