

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Latam Hydro LLC and CH Mamacocha S.R.L.

v.

Republic of Peru

(ICSID Case No. ARB/19/28)

PROCEDURAL ORDER No. 5

on the Production of Documents

Members of the Tribunal

Prof. Albert Jan van den Berg, President of the Tribunal
Prof. Dr. Guido Santiago Tawil, Arbitrator
Prof. Raúl E. Vinuesa, Arbitrator

Secretary of the Tribunal

Ms. Ana Constanza Conover Blancas

Assistant to the Tribunal

Ms. Emily Hay

24 May 2021

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I. INTRODUCTION

1. On 23 March 2021, following exchanges between the Claimants and the Respondent (collectively, the “**Parties**”), the Parties submitted their respective applications to the Tribunal to decide on production of documents. The Parties’ applications were filed in a Redfern Schedule format, as described in Sections 15.2 to 15.4 of Procedural Order No. 2.
2. On 1 April 2021, the Tribunal issued Procedural Order No. 3 (“**PO 3**”), ruling on the Parties’ respective requests for document production.
3. On 3 May 2021, the Tribunal issued Procedural Order No. 4 (“**PO 4**”), deciding on a number of disputed claims of privilege between the Parties in relation to the production of documents.
4. On 9 May 2021, Claimants filed an application in relation to allegedly deficient document production by Respondent (“**Application**”).
5. On 14 May 2021, Respondent submitted its comments on Claimants’ Application (“**Response**”).
6. In this Procedural Order No. 5, the Tribunal decides upon Claimants’ Application.

II. PARTIES’ REQUESTS

7. Claimants request that the Tribunal:¹

. . . enter a further order compelling Respondent within five (5) calendar days to: (1) comply with PO 3 and produce any and all documents responsive to Claimants’ Document Requests Nos. 1, 2, 4, 5, 7, 9, 10, 11, 12, 15, 22, 24, 27, and 30, as well as any other documents Respondent may have that are responsive to other requests granted by the Tribunal; and (2) if applicable, Respondent should be further ordered to provide detailed explanations as to what it has done to identify and collect all responsive documents. (emphasis in original)

8. Respondent requests that the Tribunal:²

- *rechace las solicitudes en la Carta de las Demandantes; y*
- *condene a las Demandantes a todas las costas relacionadas con este incidente procesal.*

¹ Application, p. 18.

² Response, p. 14.

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III. APPLICABLE STANDARD

9. Article 43 of the ICSID Convention provides, in relevant part, that “[e]xcept as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings, (a) call upon the parties to produce documents or other evidence ...”
10. ICSID Arbitration Rule 34(2) further provides, in part, that the Tribunal “may, if it deems it necessary at any stage of the proceeding: (a) call upon the parties to produce documents, witnesses and experts...”
11. ICSID Arbitration Rule 34(3) states that:

The parties shall cooperate with the Tribunal in the production of the evidence and in the other measures provided for in paragraph (2). The Tribunal shall take formal note of the failure of a party to comply with its obligations under this paragraph and of any reasons given for such failure.
12. Procedural Order No. 2 dated 13 May 2020 (“**PO 2**”) set out the applicable rules for the document production phase. Pursuant to ¶ 16.9 of PO 2:

In all other matters regarding the receipt of evidence that are not covered by this Procedural Order or others issued by the Tribunal, this procedure may be guided by the IBA Rules on the Taking of Evidence in International Arbitration, approved on 29 May 2010 by Resolution of the IBA Council [**“IBA Rules”**].
13. The Tribunal will decide upon Claimants’ Application under the above applicable rules, guided by the IBA Rules as appropriate.

IV. TRIBUNAL’S ANALYSIS

14. In this Section, the Tribunal sets out the issues raised by Claimants with respect to Respondent’s allegedly deficient document production, and Respondent’s response thereto, and decides upon those matters. To the extent that the Tribunal does not set out in detail every argument made by the Parties, those arguments have been closely reviewed by the Tribunal and can be considered subsumed herein.

A. Procedural Conduct

(i) Claimants’ Position

15. Claimants submit that the Respondent attempts to hide key documents that are adverse to its defence in this arbitration. According to Claimants, they have been able to obtain certain government records through the Peruvian Transparency Law, even after Respondent sought to conceal public records from Claimants in this arbitration. In Claimants’ view,

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Respondent's application to expunge parts of Claimants' Notice of Intent and Request for Arbitration in reliance upon a Confidentiality Agreement at the commencement of this arbitration (which was rejected by the Tribunal in Procedural Order No. 1) foreshadowed Respondent's attempts during document production to conceal contemporaneous records of decision-making. Claimants further argue that Respondent has refused to produce documents in these proceedings that its own agency determined had to be released under the Peruvian Transparency Law. Claimants assert that this highlights Respondent's failure to carry out the Tribunal's production orders in good faith.

16. Claimants contend that Respondent's limited production of documents must be evaluated in the context of what Claimants know to be the broader universe of documents regularly maintained in the administrative files for every government decision, and in the context of its attempts to conceal in these proceedings public documents that have been disclosed by its own administrative agencies.
17. According to Claimants, Respondent's failure to produce responsive documents undermines Claimants' right to put its case. In Claimants' view, Respondent's delayed and deficient production will affect their ability to respond to Respondent's Counter-Memorial. Claimants reserve their right to seek an extension of time for filing their Reply on this basis, and request expeditious review of their Application and a short deadline for Respondent to fulfil its production obligation.

(ii) Respondent's Position

18. Respondent submits that Claimants' Application reveals abusive procedural conduct on the part of Claimants, among other things by pursuing two parallel means to attempt to obtain documents, i.e., via Peru's Transparency Law as well as this arbitration's document production phase. According to Respondent, it has had to allocate resources to respond to the same requests in two fora.
19. In addition, Respondent contends that Claimants have used Respondent's privilege log to request the production of the documents contained within it via Peru's Transparency Law. In this way, Respondent argues that the Claimants attempt to bypass the document production mechanism in this arbitration and undermine the Tribunal's authority. In this regard, Respondent annexes a list of documents which were included in its privilege log and days later were the subject of a request to the Ministry of Energy and Mines and the Ministry of Economy and Finance by Ms. Mariana Mallea Quiróz, who works in the same firm as one of Claimants' legal representatives.
20. Respondent further submits that on 10 May 2021, Claimants made a request under the Transparency Law for a document ("*Acta de la Comisión Especial del 13 de diciembre de 2017*"), on the same date that Respondent had produced the same document to the Claimants as ordered by the Tribunal in PO 4.

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21. In Respondent's view, Claimants' conduct is also contrary to a good faith exercise of the right to access public information under Peruvian law.
22. Respondent objects to Claimants' reservation of rights to seek an extension of time for the filing of their Reply. According to Respondent, this reservation demonstrates that the Claimants depend on the results of their "fishing expedition" to substantiate their claims. Respondent submits that they seek to buy time and formulate an inappropriate request for adverse inferences, since they were not successful in their strategy.

(iii) Tribunal's Analysis

23. The Tribunal notes the position taken by each Party with respect to the procedural conduct of the other Party. Subject to its directions issued below, the Tribunal does not consider it necessary to make further directions in relation to the Parties' procedural conduct at this time. The Tribunal does not consider the document production procedure in this arbitration to exclude other means of obtaining documents available to the Parties under applicable law. To the extent that there is an issue with the provenance of information used in such other procedures, in the Tribunal's view that should be addressed within the mechanisms of such other proceedings.
24. The Tribunal takes note of Claimants' reservation of rights with respect to an extension of time, while no request has been made at this stage.

B. Alleged Failure to Produce Documents Contained in the Relevant Government Agencies' Administrative "File" for Official Decisions

(i) Claimants' Position

25. According to Claimants, the complete "file" of documents which Claimants know was maintained in the regular course of Respondent's administrative process was not produced in response to, at least, Requests Nos. 1, 7, 11 and 12. In this respect, Claimants contend that when Respondent issues a formal decision, there is a detailed administrative process recorded in a "file" for every official decision. Claimants submit that in certain instances Respondent did not produce any documents from the file, or if it produced documents, few of the known essential documents supporting each decision have been provided. Claimants argue with respect to each of Requests Nos. 1, 7, 11 and 12, that production of the full "file" was ordered by the Tribunal, and Respondent has failed to provide it.

(ii) Respondent's Position

26. Respondent argues that in their Requests Nos. 1, 7, 11 and 12 Claimants did not request the administrative file, and are now retroactively attempting to expand the scope of their document requests. Accordingly, Respondent submits that the Tribunal did not order the production of those files in PO 3. Respondent submits that it would be unjust and contrary

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to good practice in investment arbitration for Claimants to be permitted to expand their requests at the end of the document production process.

(iii) Tribunal's Analysis

27. Claimants' Request No. 1 was granted by the Tribunal ". . . in respect of Documents containing and/or evidencing the reasons, circumstances, and motives behind Respondent's decision to promulgate Supreme Decree No. 024-2013-EM, limited to the Documents set out in (a)-(e)" of the Request. These items are:

All Documents containing and/or evidencing the reasons, circumstances, and motives behind Respondent's decision to promulgate Supreme Decree No. 024-2013-EM, including but not limited to:

a) technical reports from MINEM and/or OSINERGMIN that analyzed the need for the changes adopted by this Supreme Decree, including but not limited to reports analyzing the delays to the RER projects awarded under the first two public auctions of the RER Promotion as identified in paragraphs 94-96 of the Counter-Memorial and paragraph 44-46 in the Witness Statement of Jaime Raul Mendoza Gacon;

b) legal reports from MINEM and/or OSINERGMIN that analyzed and/or recommended the changes adopted by this Supreme Decree;

c) resolutions and orders approving this Supreme Decree;

d) correspondence between government officials that pre-date July 6, 2013 (the date that this Supreme Decree went into effect) and concern the need to promulgate this Supreme Decree;

e) all other Documents that record the Supreme Decree's legislative history;

....

28. The Tribunal agrees with Respondent that the request for documents does not explicitly request the entire administrative file behind Supreme Decree No. 024-2013-EM. However, many of the documents specifically set out in categories (a) to (e) of Request No. 1 are the type of documents that would be contained in such a file. The Tribunal understands that Respondent has produced two documents responsive to this Request, being (i) a copy of Supreme Decree No. 024-2013-EM; and (ii) the Statement of Motives corresponding to the Decree. A claim of privilege was made in relation to one additional document, which was upheld by the Tribunal in PO 4.
29. In the circumstances, and without expanding the original order, the Tribunal invites the Respondent to confirm whether any further documents responsive to Request No. 1 are in

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- its possession, custody or control, i.e., (a) technical reports from MINEM and/or OSINERGMIN; (b) legal reports from MINEM and/or OSINERGMIN; (c) resolutions and orders; (d) correspondence between government officials; or (e) the record of the Supreme Decree's legislative history in the terms set out in Request No. 1, whether contained in the administrative file referred to by the Claimants or not. To the extent that further responsive documents are located, Respondent is directed to produce those documents within 7 days of this Order.
30. Similar considerations apply to Requests Nos. 7, 11 and 12, in relation to which Respondent has produced limited documents. Those Requests also set out a number of categories of documents requested and granted by the Tribunal, subject to completion of a privilege log in respect of claims of privilege.
31. Request No. 7 was granted in respect of “[d]ocuments containing and/or evidencing the reasons, circumstances, and motives behind MINEM’s decision to execute Addendum 1 to the RER Contract” in the following categories:
- a) technical reports from MINEM, OSINERGMIN, or third-party professionals analyzing CHM’s requests for extensions to the works schedule and other contractual deadlines;
 - b) legal reports from MINEM, OSINERGMIN, or third-party professionals that analyzed and/or recommended the extensions granted under Addendum 1;
 - c) ministerial resolutions and executive orders that approved the extensions granted under Addendum 1;
 - d) correspondence from, to, or between MINEM or OSINERGMIN officials, between November 24, 2014 (the date CHM requested the extensions) and July 3, 2015 (the date MINEM granted the extensions), concerning the extension that were ultimately formalized under Addendum 1. . . .
32. Respondent produced three documents in response to Request No. 7, and included one document in its privilege log. Without expanding the original order, the Tribunal invites the Respondent to confirm whether any further documents responsive to Request No. 7 are in its possession, custody or control, i.e., (a) technical reports from MINEM, OSINERGMIN or third-party professionals; (b) legal reports from MINEM, OSINERGMIN and/or third-party professionals; (c) ministerial resolutions and executive orders; or (d) correspondence between MINEM or OSINERGMIN officials in the terms set out in Request No. 7, whether contained in the administrative file referred to by the Claimants or not. To the extent that further responsive documents are located, Respondent is directed to produce those documents within 7 days of this Order.
33. Request No. 11 requested, and the Tribunal granted, “[a]ll Documents reviewed and/or created by ARMA related to its resolution, dated December 12, 2016, that recommended a

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legal challenge to the environmental permits for the Mamacocha Project”. Respondent produced one document in response, being a copy of the ARMA resolution, and included one document in its privilege log.

34. Without expanding the original order, the Tribunal invites the Respondent to confirm whether any further documents responsive to Request No. 11 exist, whether contained in the administrative file referred to by the Claimants or not. To the extent that further responsive documents are located, Respondent is directed to produce those documents within 7 days of this Order.
35. Request No. 12 requested, and the Tribunal granted:
- All Documents containing and/or evidencing the reasons, circumstances, and motives behind the RGA’s decision to file the RGA Lawsuit, including but not limited to:
- a) technical reports from the RGA or ARMA that analyzed the allegations adopted by the RGA Lawsuit;
- b) legal reports from the RGA that analyzed and/or recommended the Lawsuit, including but not limited to the legal report referenced in the Regional AG Report in which the Regional AG’s Office “pointed out that the likelihood of succeeding in [the RGA Lawsuit] would be minimal”(C-0096);
- c) ministerial resolutions and executive orders that approved the filing of the RGA Lawsuit;
- d) correspondence from, to, or between RGA officials between December 12, 2016 and March 14, 2017 that concern the drafting and/or filing of the RGA Lawsuit. . . .
36. Respondent produced two documents in response to this Request. Without expanding the original order, the Tribunal invites the Respondent to confirm whether any further documents responsive to Request No. 12 are in its possession, custody or control, i.e., (a) technical reports from the RGA or ARMA; (b) legal reports from the RGA; (c) ministerial resolutions and executive orders; or (d) correspondence between RGA officials in the terms set out in Request No. 12, whether contained in the administrative file referred to by the Claimants or not. To the extent that further responsive documents are located, Respondent is directed to produce those documents within 7 days of this Order.

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C. Alleged Failure to Produce Documents Responsive to Requests Nos. 4, 5, 22, 27 and 30

(i) Claimants' Position

37. Claimants argue that Respondent failed to produce any documents at all in response to Document Requests Nos. 4, 5, 22, 27 and 30, and made only one entry on its privilege log (Request No. 5). According to Claimants, Respondent was given ample opportunity during the Redfern Schedule process to explain that it did not have any documents responsive to Claimants' specific requests, but did not offer such explanation. In Claimants' view, in light of Respondent's vigorous objections to these requests, responsive documents must exist. In this regard, Claimants specify in relation to each of the Requests Nos. 4, 5, 22, 27 and 30 why they believe such documents must exist. Claimants request the Tribunal to order Respondent to comply with the Tribunal's orders and produce responsive documents to these requests.

(ii) Respondent's Position

38. In Respondent's view, Claimants' objection is based on an erroneous premise. Respondent argues that it was not obliged to indicate at the moment of objecting to Claimants' requests whether any documents exist. At that point in time, the Respondent contends that its government agencies were still in the process of searching for and identifying the requested documents, rendering any such confirmation impossible at that time. In addition, Respondent disputes that its objections to the Requests constitute any confirmation of the existence of the documents, which were made on the basis of the descriptions in the Redfern Schedule. Respondent further denies any procedural misconduct in relation to the absence of documents responsive to these requests.

(iii) Tribunal's Analysis

39. The Tribunal agrees with Respondent that objections to the production of documents made in the Redfern Schedule do not presuppose the existence of the documents in question. The Tribunal takes into account the details given by Respondent in relation to its search for responsive documents, including contacting relevant government agencies who searched in parallel to the Redfern Schedule process. The Tribunal is satisfied that the Respondent has carried out a reasonable search for responsive documents, and notes Respondent's confirmation that no responsive documents were identified as a result of its search. The Tribunal does not consider further directions to be necessary on this issue.

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D. Allegedly Deficient or Irrelevant Production to Requests Nos. 2, 9, 10, 15 and 24

(i) Claimants' Position

40. Claimants submit that Respondent made materially deficient or irrelevant productions in response to Claimants' Requests Nos. 2, 9, 10, 15 and 24. In their view, the documents tendered did not complete a comprehensive, good faith production. Claimants argue that it is reasonably clear that additional responsive documents must be in Respondent's possession, custody or control.
41. According to Claimants, Respondent's deficient or irrelevant production must be rectified to protect Claimants' ability to present their case, and the Tribunal should order Respondent to comply fully with PO 3 and produce further documents relating to these Requests. Claimants provide details of the documents produced in relation to each of the Requests and why they believe additional documents must exist, as follows:
- (a) Request No. 2: Claimants argue that only two documents were produced in response to this Request, but Respondent has failed to explain why the process of reviewing and backtracking on its draft Supreme Decree did not generate a significant file of responsive documents.
 - (b) Request No. 9: Claimants submit that the Respondent produced two irrelevant documents in response to this request, and made one entry in its privilege log. According to Claimants, the two documents produced post-date the "Sosa Report" (Exhibit C-0012), while Claimants had requested documents "referenced in and/or relied upon by MINEM" in drafting that Report. Claimants contend that Respondent's failure to produce MINEM documents prior to the Sosa Report appears to be part of its concealment of any adverse information.
 - (c) Request No. 10: According to Claimants, Respondent belatedly produced seven single page documents showing that seven individuals were subpoenaed to appear and provide testimony before the Regional Council in furtherance of its investigation. Claimants state that the seven documents specifically state that the witnesses provided recorded testimony, but Respondent failed to produce either the individuals' testimony or the audio or video recordings. Claimants request that Respondent be ordered to produce all recordings of this testimony before the Regional Council. Claimants also argue that it is implausible that the Regional Council's consideration of the environmental permits for the Mamacocha Project did not generate correspondence, memoranda and analyses responsive to this request.
 - (d) Request No. 15: Claimants state that Respondent produced 13 documents responsive to this Request, which relates to correspondence between Peru's Special Commission to other governmental bodies in Peru, in relation to Claimants' first Notice of Intent. Claimants submit that one of the produced documents is a letter from the RGA to

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Ricardo Ampuero Llerena, which refers to two legal memoranda, one of which was listed in Respondent's privilege log (*Informe No. 900-2017-GRA/ORAJ*). The privilege claim was upheld by the Tribunal in PO 4. Claimants argue that the other legal memorandum (*Informe No. 730-2017-GRA/ARMA*) was neither produced nor included in Respondent's privilege log, and Respondent should be ordered to produce it. In addition, Claimants assert that Respondent belatedly produced two letters from ARMA to the Special Commission, which enclose detailed legal memoranda and hundreds of documents from the ARMA file on the Project, without producing the said attachments. Claimants submit that Respondent should be ordered to produce the documents appended to the letters.

- (e) Request No. 24: Claimants state that Respondent produced only three documents in response to this Request, and included one document on its privilege log. This Request relates to correspondence between Peru's Special Commission and other governmental bodies in Peru, in relation to Claimants' second Notice of Intent. According to Claimants, in one of the letters produced, Mr. Ampuero asks Governor Osorio to transmit the RGA's files relating to delays caused by the lawsuit brought by the Regional Government of Arequipa ("**RGA Lawsuit**"). Claimants submit that Respondent should be ordered to produce all additional correspondence or internal analyses that are likely to exist.

(ii) *Respondent's Position*

42. In relation to each of the Requests, Respondent responds as follows:

- (a) Request No. 2: According to Respondent, Claimants merely speculate that further documents exist. However, Respondent states that it has conducted a diligent and reasonable search and produced documents corresponding to the descriptions that the Tribunal ordered.
- (b) Request No. 9: In Respondent's view, Claimants are mistaken in relation to the date of Report No. 166-2016-EM-DGE ("Sosa Report"). While Claimants state that it is dated 6 October 2016, the correct date (listed on page 15) is 22 November 2016. As such, Respondent submits that the documents it produced do predate the Report, contrary to Claimants' contention.
- (c) Request No. 10: Respondent contends that despite conducting a reasonable search, it was unable to locate the audio recordings referred to in the responsive documents already produced. In Respondent's view, in light of the date of the documents (2016) and the audio format, the recordings likely no longer exist.
- (d) Request No. 15: Respondent submits that contrary to Claimants' allegation, *Informe No. 730-2017-GRA/ARMA* was produced by Respondent, and that the annex to the report was included in Respondent's privilege log on 30 April 2021. Since the Tribunal upheld the claim of privilege in PO 4, Respondent argues that Claimants are unaware

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of or challenge the Tribunal's order. In addition, in relation the letters which attach legal reports and other documents from an administrative file, Respondent contends that after a diligent and reasonable search, it has not located the documents referred to in the letters.

- (e) Request No. 24: According to Respondent, Claimants seek to expand the scope of this Request, by requesting "all additional correspondence or internal analyses that are likely to exist", which should not be permitted.

(iii) *Tribunal's Analysis*

43. The Tribunal decides as follows in relation to the disputed production of documents under each of the Requests.
44. Request No. 2: Respondent has described the procedure for its search for responsive documents, including by contacting government agencies that could reasonably be in possession, control or custody of responsive documents and requesting them to carry out a search in their documentary archives. Documents responsive to Claimants' requests were then analysed by the Special Commission and Respondent's counsel to identify whether they were subject to privilege or confidentiality. A first disclosure was made on 13 April 2021 (the deadline under the revised procedural timetable for the production of documents), and as a result of continued searches by state agencies, a second disclosure was made on 30 April 2021 (after the original deadline for the production of documents). The Tribunal is satisfied, based on Respondent's account, that it has carried out a reasonable and diligent search for responsive documents, including as regards Claimants' Request No. 2. The Tribunal declines to issue further directions in relation to this Request.
45. Request No. 9: While the first page of the "Sosa Report" (Exh. C-0012) is dated 6 October 2016, the final stamped and signed page (p. 15) is dated 22 November 2016. On this basis, the documents that were produced in response to this Request (dated 3 November 2016 and 14 November 2016) were indeed issued prior to the Report. In light of this circumstance, and taking into account Respondent's description of the process undertaken to identify responsive documents, the Tribunal declines to issue further directions in relation to this Request.
46. Request No. 10: The Tribunal takes note of Respondent's statement that it was unable to locate the audio recordings referred to in the documents produced in response to this Request. The Tribunal declines to issue further directions in relation to this Request.
47. Request No. 15: To the extent that *Informe No. 730-2017-GRA/ARMA* has been produced by Respondent on 30 April 2021 as it represents, and an annex to that Report included in Respondent's privilege log, no further directions are made in relation to that document at this time. In relation to the transmittal letters to the Special Commission produced by Respondent without the documents attached, the Tribunal takes note of Respondent's

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statement that it was unable to locate the documents attached to these letters and declines to issue further directions in relation to this Request.

48. Request No. 24: This Request was granted in relation to “correspondence between the Special Commission and Peruvian State entities in response to Claimants’ second Notice of Intent”, including “requests for information from the Special Commission to Peruvian State entities” and “responses from the Peruvian state entities to the Special Commission’s request for information”. One document produced in response to this request is a letter dated 25 July 2018 in which Mr. Ampuero (of the Special Commission) asks Governor Osorio (the Governor of Arequipa) to transmit the RGA’s files relating to the delays caused by the RGA Lawsuit, being the subject of Claimants’ second Notice of Intent. The Tribunal considers that any response by the Governor of Arequipa (or other state entity) to this letter would be a “response” falling under Request No. 24 and would not expand the scope of the original Request. Any such response should therefore be produced by Respondent. To the extent that Claimants seek additional documents beyond those falling under Request No. 24 as originally drafted, the Tribunal rejects the request.

V. ORDER

49. The Tribunal has carefully considered the applications of the Parties. As set out above, the Tribunal orders:
- (A) Request No. 1, 7, 11 and 12: Respondent is invited to confirm that whether any further documents responsive to Request No. 1 are in its possession, custody or control, whether contained in the administrative file referred to by the Claimants or not. To the extent that further responsive documents are located, Respondent is directed to produce those documents.
 - (B) Request No. 7: Respondent is invited to confirm that whether any further documents responsive to Request No. 7 are in its possession, custody or control, whether contained in the administrative file referred to by the Claimants or not. To the extent that further responsive documents are located, Respondent is directed to produce those documents.
 - (C) Request No. 11: Respondent is invited to confirm that whether any further documents responsive to Request No. 1 are in its possession, custody or control, whether contained in the administrative file referred to by the Claimants or not. To the extent that further responsive documents are located, Respondent is directed to produce those documents.
 - (D) Request No. 12: Respondent is invited to confirm that whether any further documents responsive to Request No. 1 are in its possession, custody or control, whether contained in the administrative file referred to by the Claimants or not. To the extent

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that further responsive documents are located, Respondent is directed to produce those documents.

(E) Request No. 24: Respondent is invited to produce any response by the Governor of Arequipa (or other state entity) to the letter dated 25 July 2018 in which Mr. Ampuero (of the Special Commission) asks Governor Osorio (the Governor of Arequipa) to transmit the RGA's files relating to the delays caused by the RGA Lawsuit.

50. Respondent should comply with the above orders by Monday, 31 May 2021.

51. All other requests are rejected.

52. The issue of costs is reserved.

On behalf of the Tribunal,

[Signed]

Prof. Albert Jan van den Berg
President of the Tribunal
Date: 24 May 2021