

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 (USA)

(the “Claimant”)

- and -

THE REPUBLIC OF PERU

(the “Respondent”, and together with the Claimant, the “Parties”)

PROCEDURAL ORDER NO. 4

Decision on Document Production

Tribunal

Hon. Justice Mr. David Unterhalter (Presiding Arbitrator)
Professor Bryan Schwartz
Mr. Hugo Perezcano Díaz

Registry

Permanent Court of Arbitration

29 August 2024

I. PROCEDURAL BACKGROUND

1. On 27 June 2023, the Tribunal issued Procedural Order No. 1, establishing the rules of procedure and the procedural calendar of the arbitration. Section 5 of Procedural Order No. 1 governs the procedure for the production of documents.
2. On 18 March 2024, the Tribunal issued Procedural Order No. 2 (Decision on Bifurcation), whereby it rejected the Respondent's request for bifurcation.
3. On 18 April 2024, the Tribunal issued Procedural Order No. 3 (Updated Procedural Calendar), whereby it adopted a revised procedural calendar for the arbitration (the "**Procedural Calendar**").
4. On 9 July 2024, in accordance with the Procedural Calendar, the Claimant and the Respondent filed with the Tribunal their respective Replies to Responses and/or Objections to Requests for Production of Documents and Applications to the Tribunal for the Production of Documents in the form of vertical Redfern Schedules (the "**Redfern Schedules**").
5. On 22 July 2024, the Tribunal informed the Parties that it did not expect to be in a position to issue this order by 24 July 2024.

II. THE TRIBUNAL'S ANALYSIS

6. In the **Annex** to this Procedural Order, the Tribunal rules on the Claimant's and the Respondent's outstanding requests for document production set forth in their respective Redfern Schedules.
7. When ruling on the Parties' document production requests, the Tribunal has taken into account the relevant provisions of the UNCITRAL Rules and Procedural Order No. 1. In accordance with Section 6.1 of Procedural Order No. 1, the Tribunal has also used, as an additional guideline, the *IBA Rules on the Taking of Evidence in International Arbitration 2020* (the "**IBA Rules**").
8. The Tribunal recalls that its decisions, as set out in the **Annex** to this Procedural Order, are based on a *prima facie* assessment of the relevance and materiality of the documents requested, and are without prejudice to its final determinations as to whether production will be ordered.
9. In respect of certain recurring issues in the Parties' requests for document production, the Tribunal makes the following determinations:
 - a. Certain members of the Tribunal are concerned that several of the Claimant's requests for document production as set out in his Redfern Schedule are overly broad (*see* Claimant's Requests Nos. 2, 3, 4, and 6). However, in view of the potential relevance and materiality of the documents falling under each of these requests, the Tribunal invites the Claimant, if he so wishes, to submit more focused requests for documents falling within the categories of documents referenced in these requests. Any such requests should be filed no later than **Friday, 6 September 2024**. If it so wishes, the Respondent may thereafter provide a response to the Claimant's amended requests by **Friday, 13 September 2024**.

- b. The Respondent objects to production in respect of several of the Claimant's requests for document production on the basis of privilege, political and institutional sensitivity and other related grounds. To permit the Tribunal adequately to consider the one request among those that the Tribunal would grant in principle on the grounds of relevance (*see* Claimant's Request No. 1) the Tribunal requires the Respondent to provide the Claimant with a privilege log for any responsive documents over which it claims privilege and/or confidentiality (Art. 9(2)(b) and (f) IBA Rules) identifying for each document (i) the author(s); (b) the recipient(s) (if any); (c) the subject matter of the document or portion thereof claimed to be privileged or confidential; (d) the date; (e) the basis for the claim of privilege, confidentiality or other grounds on which the responsive documents are withheld (whether under domestic or international law, or otherwise under an applicable legal or ethical standard and citations of the law or standard relied upon); and (f) an indication of which relevant interest(s), if any, might be prejudiced in the event the Tribunal were to order the production of the requested documents. The Respondent must provide such privilege log no later than no later than **Tuesday, 10 September 2024**. Thereafter, if he so wishes, no later than **Tuesday, 17 September 2024** the Claimant may re-submit the requests identified in this sub-paragraph by filing with the Tribunal a copy of any privilege log provided by the Respondent, together with any comments he might have on such privilege log, including what measures should be taken, if any, to safeguard the interests, identified by the Respondent, that may be prejudiced. The Respondent may then provide a response by **Friday, 20 September 2024**.
- c. The Claimant objects to production in respect of several of the Respondent's requests for document production on the basis of commercial privilege (*see* Respondent's Requests Nos. 4, 8, 9, 10, 11, and 12). To permit the Tribunal adequately to consider these requests, the Tribunal requires the Claimant to provide the Respondent with a privilege log for any responsive documents over which he claims privilege and/or confidentiality (Art. 9(2)(e) of the IBA Rules) identifying for each document (i) the author(s); (b) the recipient(s) (if any); (c) the subject matter of the document or portion thereof claimed to be privileged or confidential; (d) the date; (e) the basis for the claim of privilege, confidentiality or other grounds on which the responsive documents are withheld (whether under domestic or international law, or otherwise under an applicable legal or ethical standard and citations of the law or standard relied upon); and (f) an indication of which relevant interest(s), if any, might be prejudiced in the event the Tribunal were to order the production of the requested documents. The Claimant must provide such privilege logs no later than no later than **Tuesday, 10 September 2024**. Thereafter, if it so wishes, no later than **Tuesday, 17 September 2024** the Respondent may re-submit the requests identified in this sub-paragraph by filing with the Tribunal a copy of any privilege log provided by the Claimant, together with any comments it might have on such privilege log, including what measures should be taken, if any, to safeguard the interests, identified by the Claimant, that may be prejudiced. The Claimant may then provide a response by **Friday, 20 September 2024**.
- d. The Claimant objects to production in respect of several of the Respondent's requests for document production on the basis that he is not in the possession, custody or control of

any responsive documents (*see* Respondent's Requests Nos. 5, 6, and 7). The Tribunal has granted these requests to the extent that any responsive documents are in the Claimant's possession, custody or control. In this respect, the Tribunal recalls the Claimant's representation that he is the President of Baspetrol (CWS-1, para. 1). In the circumstances, no later than **Friday, 6 September 2024**, the Claimant is required provide an explanation as to whether these documents were ever in his possession, custody, or control; if not, why not; and if so, how the Claimant came to lose possession, custody or control of these documents. Thereafter, if it so wishes, the Respondent may re-submit those requests to the Tribunal for a final ruling no later than **Friday, 13 September 2024**.

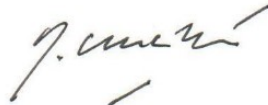
- e. Aside for the above requests, the Tribunal has granted in whole or in part several of the Parties' requests for document production (*see in particular* Claimant's Requests Nos. 8, 9, 10, 12, and 13 and Respondent's Request No. 1). The Claimant has also agreed partially to production in respect of several of the Respondent's requests (*see* Respondent's Requests Nos. 2, 4, 8, 9, 10, 11, and 12). The Parties are directed to produce the documents as ordered by the Tribunal in respect of the requests identified in this sub-paragraph – to the extent such documents have not already been produced – no later than **Friday, 6 September 2024**.

III. THE TRIBUNAL'S DECISION

10. After having carefully reviewed the Parties' submissions and considered each document production request taking into account all relevant circumstances, the Tribunal decides as follows:
- a. To grant, for the reasons and to the extent set out in the Tribunal's decisions as incorporated in the Parties' respective Redfern Schedules (enclosed as an **Annex** to this Procedural Order):
 - i. The Claimant's document production requests Nos. 8, 9, 10, 12, and 13; and
 - ii. The Respondent's document production request No. 1.
 - b. To direct the Parties produce all documents as ordered by the Tribunal in the preceding sub-paragraph no later than **Friday, 6 September 2024**.
 - c. To invite the Claimant to submit more focused requests for document production as described in sub-paragraph 9(a) above no later than **Friday, 6 September 2024**, after which the Respondent may provide a response no later than **Friday, 13 September 2024**.
 - d. To direct the Respondent to provide a privilege log as described in sub-paragraph 9(b) above no later than **Tuesday, 10 September 2024**, after which the Claimant may seek production of any documents identified in such log no later than **Tuesday, 17 September 2024**. Thereafter, the Respondent may provide a response no later than **Friday, 20 September 2024**.

- e. To direct the Claimant to provide a privilege log as described in sub-paragraph 9(c) above no later than **Tuesday, 10 September 2024**, after which the Respondent may seek production of any documents identified in such log no later than **Tuesday, 17 September 2024**. Thereafter, the Claimant may provide a response no later than **Friday, 20 September 2024**.
- f. To direct the Claimant to provide an explanation as to whether any documents responsive to Respondent's Requests Nos. 5, 6, and 7 were ever in his possession, custody, or control; if not, why not; and if so, how the Claimant came to lose possession, custody or control of these documents, as described in sub-paragraph 9(d) above, no later than **Friday, 6 September 2024**, after which the Respondent may re-submit those requests to the Tribunal for a final ruling no later than **Friday, 13 September 2024**.
- g. To direct the Claimant to produce all documents he has agreed to produce in respect of Respondent's Requests Nos. 2, 4, 8, 9, 10, 11, and 12, as described in sub-paragraph 9(e) above, no later than **Friday, 6 September 2024**.
- h. Pursuant to Section 5.3 of Procedural Order No. 1, documents produced in accordance with this procedure shall not be considered part of the evidentiary record unless and until a Party subsequently submits them to the Tribunal in accordance with the Procedural Calendar.

Place of Arbitration: New York, United States of America



Justice David Unterhalter
(Presiding Arbitrator)

On behalf of the Tribunal

**IN THE ARBITRATION UNDER THE 2013 RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW AND THE UNITED STATES – PERU
TRADE PROMOTION AGREEMENT**

PCA Case No. 2023-22

BACILIO AMORRORTU

CLAIMANT,

v.

THE REPUBLIC OF PERU

RESPONDENT.

**CLAIMANT'S REPLY IN SUPPORT OF HIS REDFERN REQUEST FOR PRODUCTION OF
DOCUMENTS**

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July 9, 2024

CLAIMANT’S REPLY IN SUPPORT OF HIS VERTICAL REDFERN REQUEST FOR DOCUMENTS

Request No. 1

Document Request No.	1
Documents or category of documents requested (requesting Party)	Full copies of all personal journals or agendas belonging to José Graña, Hernando Graña, and Nadine Heredia, in the possession, custody, or control of the <i>Lava Jato</i> Special Team, and which memorialize, or relate to, any meetings between Graña y Montero and Nadine Heredia (including, but not limited to, those held at the Government Palace) during the years 2014 and 2015.
Relevance and materiality, incl. references to submission (requesting Party)	<p>These documents are relevant to Mr. Amorrortu’s claim that his rights in Blocks III and IV were breached as a result of Graña y Montero’s corruption scheme to secure government contracts (including over Blocks III and IV) by paying bribes to, and engaging in backdoor dealings with, politically influential figures in Peru. SoC ¶¶ 114, 148–149, 265, 271–278. The agendas memorialize clandestine meetings between José Graña and Nadine Heredia which took place contemporaneously with the adjudication process of Blocks III and IV, and which expressly mention those Blocks. SoC ¶ 148; Vela Decl. ¶¶ 21–22. Indeed, Mr. Amorrortu contends that during these meetings, José Graña wielded his influence over the First Lady to interfere with Baspetrol’s Direct Negotiation and then manipulate the bidding process for Blocks III and IV in favor of Graña y Montero. SoC ¶¶ 148–149; Expert Report of Monica Yaya ¶¶ 144–159. The materiality of this evidence is underscored by the fact that prosecutors in Peru have asserted that these agendas are probative of corruption in the prosecution against Nadine Heredia for crimes related to Graña y Montero’s corruption scheme, and have introduced the journals/agendas as evidence in that case.¹</p> <p>Respondent cannot pretend to dispute Mr. Amorrortu’s view on the import of these meetings between José Graña and Nadine Heredia with a narrative purportedly based on its internal investigations, and yet withhold said agendas from disclosure in these proceedings. Vela Decl. ¶¶ 25–28; SoD ¶¶ 199–206.</p> <p>Further, to address potential confidentiality concerns with respect to these documents, Claimant agrees that the disclosure be subject to any protective measures the Tribunal deems necessary, including, but not limited to, a protective order restricting the use of, and designating, documents as “Attorneys’ Eyes Only;” the implementation of <i>in camera</i> review by the Tribunal; and/or the appointment of a privilege master.</p>
Reasoned objections to	<u>The Republic of Peru objects to this request because it is not tailored to issues that are relevant and material to the determination of the case as required by</u>

¹ See <https://elcomercio.pe/politica/actualidad/mientras-nadine-heredia-busca-excluir-sus-agendas-del-juicio-oral-alejandro-toledo-pide-ir-a-una-clinica-particular-cuales-fueron-sus-argumentos-ante-el-tc-informe-noticia/>, last accessed on May 20, 2024.

<p>document production request (objecting Party)</p>	<p><u>Articles 3(3)(b) and 9(2)(a) of the IBA Rules on the Taking of Evidence in International Arbitration (“IBA Rules”).</u>²</p> <p>The Republic of Peru objects to this request because it is irrelevant and immaterial to the outcome of the case insofar as it is seeking “copies of all personal journals or agendas belonging” to Nadine Heredia. This is the first time in these proceedings that Claimant refers to personal journals or agendas belonging to Nadine Heredia. Claimant’s corruption argument in the SoC is entirely based on the “revelations of the agenda of some executives of Graña y Montero” (SoC, ¶¶ 280, 148-149; <i>see also</i> C-34, which refers to the “digital diaries” of José Graña). Exhibit C-34, which is the only evidence of the alleged corruption scheme Claimant has presented in his SoC, refers to an agenda of José Graña in the custody of the <i>Lava Jato</i> Special Team.</p> <p>Moreover, in his request, Claimant cites to a newspaper report from <i>El Comercio</i> dated 27 March 2024. This report, which is not part of the record, refers to Nadine Heredia’s agendas obtained by other prosecutors in the context of a criminal investigation related to illicit funds Nadine Heredia and her husband, former President Humala, received between 2006 and 2011 for an electoral campaign. As indicated in the report cited by Claimant, not only is this criminal investigation being led by different prosecutors, but it is also unrelated to any investigations on Graña y Montero.</p> <p>Consequently, there is simply no evidence in the record to support any argument or assertion that Nadine Heredia had any agendas or personal journals recording meetings with Graña y Montero executives in connection with oil contracts in Peru — let alone that any such agendas or personal journals belonging to Nadine Heredia are in the possession or custody of the <i>Lava Jato</i> Special Team.</p> <p>To be sure, the present case concerns Blocks III and IV, not whether there has been corruption relating to any contract or sector. Consequently, documents requested because they “are probative of corruption in the prosecution against Nadine Heredia for crimes related to Graña y Montero’s corruption scheme,” bear no relevance to this case as they do not relate to “Mr. Amorrortu’s claim that his rights in Blocks III and IV were breached.”</p> <p>Indeed, as Peru demonstrated in its Statement of Defense, “[a]s of 2020 [and presently], it was confirmed by the Lava Jato Special Team and other authorities that there was no evidence of or investigation into allegations of corruption or illicit activities concerning the Blocks and Bidding Processes” (SoD, ¶ 208; Vela WS, ¶ 24). Meanwhile, Claimant has not provided any credible evidence to support his allegations of corruption with respect to Blocks III and IV.</p> <p>For all these reasons, Claimant’s request fails to satisfy the requirements of Articles 3(3)(b) and 9(2)(a) of the IBA Rules and should thus be rejected.</p> <p><u>The documents sought are subject to legal impediment or privilege pursuant to Article 9(2)(b) of the IBA Rules.</u></p>
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² Capitalized terms employ the definitions used herein or in Respondent’s Statement of Defense.

The Republic of Peru objects to Claimant’s request pursuant to Article 9(2)(b) of the IBA Rules, which states that an arbitral tribunal “shall, at the request of a Party or on its own motion, exclude from evidence or production any Document” if there is a “legal impediment or privilege under the legal or ethical rules determined by the arbitral Tribunal to be applicable”. The principle of secrecy of criminal investigations under Peruvian law, which is codified in Article 324 of the Code of Criminal Procedure titled “Privilege and secrecy of [criminal] investigations”, presents such a legal impediment for production. The provision establishes that “the investigation has a reserved character. Only the parties directly involved and their duly accredited lawyers can have access to its contents.”³ Thus, because the criminal investigations by the Lava Jato Special team are still ongoing, this legal impediment applies in full force under Peruvian law.⁴

It is well established that investment case law also recognizes the principle of secrecy of criminal investigations. *See, e.g., Elliott v. Korea*, PCA, Procedural Order No. 14 (24 June 2020) (Heiskanen, Garibaldi, Thomas), ¶ 72; *Merrill and Ring Forestry L.P. v. The Government of Canada*, NAFTA/UNCITRAL, Decision of the Tribunal on Production of Documents (18 July 2008) (Orrego Vicuña, Dam, Rowley), ¶¶ 17-18.

Accordingly, Claimant’s request should be rejected.

The documents sought are subject to special political or institutional sensitivity pursuant to Article 9(2)(f) of the IBA Rules.

The Tribunal should also reject Claimant’s request pursuant to Article 9(2)(f) of the IBA Rules, which provides in relevant part that “[t]he Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document [...] for any of the following reasons: [...] (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling.”

The confidentiality accorded to the requested documents by Article 324 of the Code of Criminal Procedure deems them “reserved”, and thus “sensitive information” within the meaning of Article 9(2)(f) of the IBA Rules. As such the documents cannot be produced. Indeed, as the tribunal in *Global Telecom v.*

³ *See*, Peru’s Code of Criminal Procedure, Article 324 (in the Spanish original: “Reserva y secreto de la investigación. 1. La investigación tiene carácter reservado. Sólo pueden enterarse de su contenido las partes de manera directa o a través de sus abogados debidamente acreditados en autos. [...]”) (available at: <https://lpderecho.pe/nuevo-codigo-procesal-penal-peruano-actualizado/>).

⁴ *See e.g.*, Government Press Release, *Fiscal Rafael Vela: Decisión de la justicia brasileña en el caso de Marcelo Odebrecht sigue firme y no invalida los actuados en el Perú* (22 May 2024) (available at: <https://www.gob.pe/institucion/mpfn/noticias/959588-fiscal-rafael-vela-decision-de-la-justicia-brasilena-en-el-caso-de-marcelo-odebrecht-sigue-firme-y-no-invalida-los-actuados-en-el-peru>). The article discusses the effect of a certain decision in Brazil and whether certain subsequent efforts will “affect the work of the prosecutors in the investigations that are at an advanced stage (in the Spanish original: Además, refirió que buscarán afectar la labor de la fiscalía por las investigaciones que se encuentran en etapas avanzadas”).

	<p><i>Canada</i> determined, “Article 9.2(f) of the IBA Rules is predicated to a certain extent on domestic law directing the classification of evidence as a secret by the government.”⁵</p> <p>Additionally, Claimant has not shown that the value of the documents requested outweighs the confidential nature of the documents given the ongoing nature of the Lava Jato investigations. Indeed, in the words of the tribunal in <i>Clayton v. Canada</i>, there is a requirement of “a balancing process, weighing, on the one hand, the compelling nature of the requested parties’ asserted sensitivities and, on the other, the extent to which disclosure would advance the requesting party’s case.”⁶</p> <p>Accordingly, Claimant’s request should be rejected.</p>
<p>Responses to objections to document production request (requesting Party)</p>	<p>The Tribunal should order the production of the requested documents because they are relevant and material to the outcome of this dispute, and Respondent’s objections fail to seriously dispute this.</p> <p>1. Mr. Amorrortu’s Request complies with Articles 3(3)(b) and 3(7) of the IBA Rules because it seeks documents that are both relevant to the case and material to its outcome; and Article 9(2)(a) of the IBA Rules is inapplicable here.</p> <p>The documents that Mr. Amorrortu seeks through this request are both relevant to the case and material to its outcome. <i>See</i> IBA Rules, Articles 3(3)(b) and 3(7). Any agendas of José Graña, Hernando Graña, and Nadine Heredia evidencing meetings between Graña y Montero and the First Lady between 2014 and 2015 are <i>crucial</i> to the allegations of corruption at the heart of this action. Contrary to Respondent’s self-serving and disingenuous attempts to minimize the scope of Mr. Amorrortu’s allegations, this action is not “entirely based” on the contents of one single news article. Rather, the allegations of corruption in this matter stem from a plethora of undisputable evidence showing that Graña y Montero—and its Brazilian partner Odebrecht—established a <i>scheme of systemic corruption in Peru, whereby Graña y Montero bribed public officials at the highest levels of Peruvian politics in exchange for favorable treatment in the adjudication of public contracts, including those for Blocks III and IV</i>. Tellingly, there is absolutely no legitimate reason for the First Lady of Peru to meet with executives of Graña y Montero to discuss two oil blocks in Talara. This inexplicable meeting can only be understood in the context of the confirmed evidence demonstrating that Graña y Montero paid bribes to the presidential couple (and the First Lady in particular) to obtain profitable government contracts. Peru cannot deny this. Indeed, Peru’s only defense seems to be that the contracts for Blocks III and IV were the only legitimate contracts procured by Graña y Montero during the Humala presidency.</p>

⁵ *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 - Decision on the Claimant Objections to the Respondent Claims of Privilege (3 November 2018), ¶ 39 (available at: <https://www.italaw.com/sites/default/files/case-documents/italaw10660.pdf>).

⁶ *William Ralph Clayton and others v. Government of Canada*, PCA Case No. 2009-04, Procedural Order No. 13 (11 July 2012), ¶ 22 (available at: <https://www.italaw.com/sites/default/files/case-documents/italaw1164.pdf>).

A defense that is belied by the extraordinary meetings with the First Lady to talk about these contracts.

In other words, at the heart of Mr. Amorrortu’s dispute lie allegations of corruption born from the routine practice and conduct of Graña y Montero, and Odebrecht, leading them to receive a leg up with regard to the operation, exploration, and exploitation of Blocks III and IV.

As the allegations in Mr. Amorrortu’s submissions note, the corruption scheme involved, among other things: (a) the issuance of illegitimate contributions and bribes by Graña y Montero/Odebrecht to President Ollanta Humala and the First Lady (SoC ¶¶ 113–114); (b) the carrying out of unofficial meetings at the Government Palace and elsewhere for the negotiation and consummation of corrupt concessions (SoC ¶ 133); and (c) the implementation of sham public tender processes to disguise Graña y Montero’s corrupt capture of government contracts (SoC ¶¶ 145–148).

Mr. Amorrortu alleges that he was harmed by this corruption scheme in all of its forms. Specifically, Mr. Amorrortu claims that his Direct Negotiation process with PeruPetro was aborted by direct order of Nadine Heredia, following clandestine discussions between the First Lady and Graña y Montero at the Government Palace in 2014 and 2015 (SoC ¶ 148). Mr. Amorrortu further alleges that the subsequent public bidding process was a facade designed to legitimize the corruption scheme (SoC ¶¶ 145–149, 157–168). Therefore, any evidence shedding light on the nature of meetings between Graña y Montero and the First Lady, and the subjects discussed therein, is not only relevant but also material to the outcome of Mr. Amorrortu’s corruption allegations. *See* IBA Rules, Articles 3(3)(b) and 3(7).

In sum, Respondent’s objections with regard to relevancy and materiality are unavailing. Whether Mr. Amorrortu had previously requested the agendas of Nadine Heredia has no bearing on the relevancy and materiality of this evidence. Further, Peru does not deny that it is in custody of this evidence, or that its prosecutors have deemed it probative of corruption in a domestic case. Instead, Respondent attempts to mislead the Tribunal by stating that such prosecution involves political contributions and thus is unrelated to the Graña y Montero corruption scheme. What Respondent scrupulously omits, is that some of the political contributions at issue in that case originated in Brazil and, thus, involve Graña y Montero and its corruption partner Odebrecht.

2. The application of the Legal Impediment or Privilege exception under Article 9(2)(b) of the IBA Rules is unwarranted here.

Respondent cites the principle of secrecy of criminal investigations under Peruvian law as a legal impediment to production. However, under the circumstances of this case, such principle should not bar production of the requested documents.

Here, Mr. Amorrortu has agreed to strictly adhere to any protective measures the Tribunal deems necessary to protect the secrecy and confidentiality of the

requested documents. This concession sufficiently mitigates Respondent’s concerns while also allowing the Tribunal to have access to what is otherwise relevant and material evidence. *See Angel Samuel Seda and others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Procedural Order No. 4 (13 August 2021), ¶¶ 27–29 (Colombian law precluding the disclosure of documents held by the Colombian government did **not** constitute a legal privilege applicable to the production of relevant documents in international arbitration, where “a confidentiality undertaking between the parties provide[d] appropriate safeguards against public disclosure of [the] information[.]”). Furthermore, Mr. Amorrortu would not oppose the appointment of an impartial expert to assist the Tribunal with making the appropriate determinations on Mr. Amorrortu’s RFP, should the Tribunal deem it helpful or necessary. *See IBA Rules*, Article 3.8.

In addition, while investment case law recognizes the principle of secrecy, it does not preclude the production of documents in all circumstances. In fact, tribunals have rejected the notion that the principle of secrecy operates as a *de facto* bar to production in international arbitration, justifying disclosure when the evidence at issue is material to the dispute. This has been the case even when the subject evidence forms part of an ongoing criminal investigation. *See, e.g., Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Decision on Claimant’s Request for Provisional Measures (30 April 2015), ¶¶ 224–225 (obviating the need for a provisional measure because “insofar as the criminal file contains documents that are relevant to this arbitration and are within the scope of any disclosure ordered, the Tribunal would expect that the Respondent would, of course, disclose those documents[.]”).

Indeed, even some of the authorities cited by Respondent have underscored the fact that domestic secrecy principles do not operate as an automatic bar to production in international arbitration. *See, e.g., Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 14 (24 June 2020), ¶ 73 (noting “the Claimant’s right to seek to demonstrate [] that Korean law does not in fact justify the Respondent’s refusal to produce the requested documents, and to request that the Tribunal draw adverse inference as a result of the Respondent’s refusal[.]”).⁷

3. The application of Political or Institutional Sensitivity considerations under Article 9(2)(f) of the IBA Rules is similarly unwarranted here.

Respondent argues that the documents are of special political or institutional sensitivity. However, Mr. Amorrortu’s agreement to protective measures adequately addresses these concerns. The confidentiality of the documents can be maintained without obstructing the arbitration process, thus ensuring that the sensitivity of the documents does not unduly impede the pursuit of justice.

In this case, the requested documents are essential to substantiate claims of corruption in the adjudication of Blocks III and IV and should be produced under

⁷ To the extent that this Tribunal, in making its disclosure determination, deems the ongoing nature of the *Lava Jato* investigations as relevant, Mr. Amorrortu reserves all rights to reassert all of the relevant requests in the event that the investigations are concluded during the pendency of this arbitration.

protective conditions to respect both the confidentiality and the integrity of the arbitration process. Moreover, the request is narrowly tailored to a relevant time period of two years, and agendas that relate to meetings between Graña y Montero and the First Lady.

In any event, blanket assertions of political sensitivity, alone, do not suffice to shield what are otherwise relevant and material documents from production. *See William Ralph Clayton and others v. Government of Canada*, PCA Case No. 2009-04, Procedural Order No. 13 (11 July 2012), ¶ 24 (“[F]or a party to assert privilege on grounds of political and institutional sensitivity . . . , it must first demonstrate that it carried out the requisite balancing exercise in the course of its review of requested documents, on a document-by-document basis, supervised by sufficiently senior legal or regulatory counsel, and that where such review is not carried out by legal counsel familiar with the arbitration, the balancing exercise must be guided by instructions from counsel familiar with the case. **Along with a description of the contents of the document and an explanation of grounds for claiming the privilege, a satisfactory account of whether and how the party claiming privilege carried out the appropriate balancing process may be necessary to present the privilege claim to the tribunal.**”) (emphasis added). Consequently, Peru’s objections are insufficient to comply with standards of international law in this regard.

4. Respondent opened the door to the assessment of this type of evidence.

Finally, Respondent’s introduction of Ernesto Vela’s Declaration (Senior Prosecutor coordinating the *Lava Jato* Special Team), which disputes the nature and content of meetings between Graña y Montero and the First Lady, (Vela Decl. ¶¶ 25–28; SoD ¶¶ 199–206), has opened the door to the assessment of evidence such as the agendas. Peru cannot use the testimony of the Prosecutor as a sword, and then shield the very same documents that are relevant to confirm the veracity of the Prosecutor’s testimony, particularly when this prosecutor himself has been the subject of a number of corruption allegations.⁸

As noted above, these agendas are directly relevant to Mr. Amorrortu’s claim that his rights were breached due to Graña y Montero’s corruption scheme. The agendas memorialize at least two specific, clandestine meetings between José Graña and Nadine Heredia, contemporaneous with the adjudication process of Blocks III and IV, and are probative of corruption, as asserted by Peru’s own prosecutors in other cases. Respondent’s contradictory stance—disputing the import of these meetings while withholding the agendas that memorialized them—undermines their objections and supports the necessity for full disclosure. The agendas must be produced to ensure a fair examination of the claims and defenses related to corruption and the adjudication process of Blocks III and IV.

⁸ See, e.g., Perú21 News Article, *Presentan denuncia penal por corrupción contra fiscales Rafael Vela y Jose Domingo Pérez, y periodista Gustavo Gorriti* (12 Feb. 2024) (available at: <https://peru21.pe/politica/presentan-denuncia-penal-por-corrupcion-contra-fiscales-rafael-vela-y-jose-domingo-perez-y-periodista-gustavo-gorriti-noticia/>) (discussing a criminal lawsuit against Mr. Vela alleging that he leaked confidential information about the *Lava Jato* investigation of former President Alan García, including the payment of bribes from Odebrecht, to journalist Gustavo Gorriti in exchange for media support, aimed at preventing President García’s removal from power).

	As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 1.
Decision of the Tribunal	<p>The Respondent does not question the relevance and materiality of the personal journals or agendas belonging to José Graña and Hernando Graña. In his witness statement, Mr. Vela discusses meetings between the Graña cousins and Ms. Heredia in 2014 and 2015 (RWS-3, para. 21). Therefore, the Tribunal considers that the requested documents are relevant to the case and material to its outcome. However, the Tribunal has taken note of the Respondent’s indication that any responsive documents are subject to legal impediment or privilege and special political or institutional sensitivity.</p> <p>Accordingly, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), Claimant’s RFP No. 1 is granted to the extent only that the Respondent is required to provide the Claimant with a privilege log for any responsive documents over which it claims privilege and/or confidentiality (Art. 9(2)(b) and (f) IBA Rules) identifying for each document (i) the author(s); (b) the recipient(s) (if any); (c) the subject matter of the document or portion thereof claimed to be privileged or confidential; (d) the date; (e) the basis for the claim of privilege, confidentiality or other grounds on which the responsive documents are withheld (whether under domestic or international law, or otherwise under an applicable legal or ethical standard and citations of the law or standard relied upon); and (f) an indication of which relevant interest(s), if any, might be prejudiced in the event the Tribunal were to order the production of the requested documents.</p>

Request No. 2

Document Request No.	2
Documents or category of documents requested (requesting Party)	Full copies of any sworn testimony given by Graña y Montero (including, but not limited to, José Graña and Hernando Graña) and Jorge Barata (Director of Odebrecht in Peru), that are in the possession, custody, or control of the <i>Lava Jato</i> Special Team and relate to the corruption scheme that Mr. Amorrortu argues affected the adjudication of Blocks III and IV in favor of Graña y Montero.
Relevance and materiality, incl. references to submission (requesting Party)	The parties dispute whether the patterns of admitted endemic corruption that influenced the award of government contracts to Graña y Montero during the relevant time period, Vela Decl. ¶ 23, likewise tainted the adjudication of Blocks III and IV. SoC ¶¶ 119–144; SoD ¶¶ 169–176. Respondent submits that its review of the requested testimony has yielded no indication of corruption as to Blocks III and IV. Vela Decl. ¶¶ 24–25; SoD ¶¶ 207–213. In doing so, Respondent puts forth a minimalist conception of corruption, wherein the absence of an isolated quid-pro-quo expressly tailored to Blocks III and IV negates any misconduct. Yet, as noted in Mr. Amorrortu’s filings, here the corruption scheme operated in systemic fashion, guaranteeing Graña y Montero’s access to a whole range of government contracts in exchange for its multimillion-dollar bribes. SoC ¶¶ 145–149; Expert Report of Monica Yaya ¶¶ 40, 85–88, 154.

	<p>Review of the requested testimony is necessary to dispute the Respondent’s own reading of such statements. Further, without review of this testimony it is impossible to fully ascertain whether the adjudication of Blocks III and IV—which shared many of the features used to hide misconduct in admittedly corrupted contracts—was truly an outlier to the proven patterns of corruption that marked much of Graña y Montero’s dealings with Peru during this time period.</p> <p>Further, to address potential confidentiality concerns with respect to these documents, Claimant agrees that the disclosure be subject to any protective measures the Tribunal deems necessary, including, but not limited to, a protective order restricting the use of, and designating, documents as “Attorneys’ Eyes Only;” the implementation of <i>in camera</i> review by the Tribunal; and/or the appointment of a privilege master.</p>
<p>Reasoned objections to document production request (objecting Party)</p>	<p><u>The documents requested do not exist (IBA Rules, Article 3(3)(a)(ii)).</u></p> <p>The Republic of Peru objects to this request because the documents sought do not exist. Article 3(3)(a)(ii) of the IBA Rules requires the Claimant to limit its document requests to documents “that are reasonably presumed to exist.” Notwithstanding this requirement, Claimant has requested the “sworn testimony given by Graña y Montero [...] relat[ing] to the corruption scheme that Mr. Amorrortu argues affected the adjudication of Blocks III and IV in favor of Graña y Montero.”</p> <p>But, as explained by the chief of the Lava Jato Special Team, “Neither Graña y Montero nor its former directors, nor the former directors of Odebrecht have admitted culpability for corruption relating to Perupetro or Blocks III and IV.”⁹ As a result, there is no sworn testimony by Graña y Montero relating to alleged corruption scheme related to Blocks III and IV (SoD, ¶ 208).</p> <p><u>The documents sought are subject to legal impediment or privilege pursuant to Article 9(2)(b) of the IBA Rules and subject to special political or institutional sensitivity pursuant to Article 9(2)(f) of the IBA Rules.</u></p> <p>Insofar as the request seeks <i>any</i> “sworn testimony given by Graña y Montero (including, but not limited to, José Graña and Hernando Graña) and Jorge Barata (Director of Odebrecht in Peru), that are in the possession, custody, or control of the <i>Lava Jato</i> Special Team”, the Republic of Peru objects pursuant to Article 9(2)(b) of the IBA Rules, which states that an arbitral tribunal “shall, at the request of a Party or on its own motion, exclude from evidence or production any Document” if there is a “legal impediment or privilege under the legal or ethical rules determined by the arbitral Tribunal to be applicable”. The principle of secrecy of criminal investigations under Peruvian law, which is codified in Article 324 of the Code of Criminal Procedure titled “Privilege and secrecy of [criminal] investigations”, presents such a legal impediment for production. The provision</p>

⁹ “Vela Witness Statement (RWS-03), ¶ 24 (in the original Spanish: “Ni Graña y Montero, ni sus exdirectivos, ni los ex directivos de Odebrecht han admitido culpabilidad alguna por hechos de corrupción relacionados con Perupetro o con los Lotes III y IV.” *See also*, SoD, ¶ 208.

	<p>establishes that “the investigation has a reserved character. Only the parties directly involved and their duly accredited lawyers can have access to its contents.”¹⁰ Thus, because the criminal investigations by the Lava Jato Special team are still ongoing, this legal impediment applies in full force under Peruvian law.¹¹</p> <p>It is well established that investment case law also recognizes the principle of secrecy of criminal investigations. <i>See, e.g., Elliott v. Korea</i>, PCA, Procedural Order No. 14 (24 June 2020) (Heiskanen, Garibaldi, Thomas), ¶ 72; <i>Merrill and Ring Forestry L.P. v. The Government of Canada</i>, NAFTA/UNCITRAL, Decision of the Tribunal on Production of Documents (18 July 2008) (Orrego Vicuña, Dam, Rowley), ¶¶ 17-18.</p> <p>Similarly, as indicated in the Republic’s objection to Request No. 1, the confidentiality accorded by Article 324 of the Code of Criminal Procedure deems the documents requested (to the extent they exist) “reserved”, and thus “sensitive information” within the meaning of Article 9(2)(f) of the IBA Rules. As such the documents cannot be produced. Indeed, as the tribunal in <i>Global Telecom v. Canada</i> determined, “Article 9.2(f) of the IBA Rules is predicated to a certain extent on domestic law directing the classification of evidence as a secret by the government.”¹²</p> <p>Accordingly, Claimant’s request should be rejected.</p> <p><u>The Republic of Peru objects to this request because it is not tailored to issues that are relevant and material to the determination of the case as required by Articles 3(3)(b) and 9(2)(a) of the IBA Rules</u></p> <p>Claimant’s request must be dismissed as the documents requested are neither relevant to the case nor material to its outcome.</p> <p>Claimant accuses Respondent of “put[ting] forth a minimalist conception of corruption” because “the absence of an isolated quid-pro-quo expressly tailored to Blocks III and IV [does not] negate[] any misconduct.” This position is unsustainable, and it is not what Claimant has argued in its Statement of Claim,</p>
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¹⁰ *See*, Peru’s Code of Criminal Procedure, Article 324 (in the Spanish original: “Reserva y secreto de la investigación. 1. La investigación tiene carácter reservado. Sólo pueden enterarse de su contenido las partes de manera directa o a través de sus abogados debidamente acreditados en autos. [...]”) (available at: <https://lpderecho.pe/nuevo-codigo-procesal-penal-peruano-actualizado/>).

¹¹ *See e.g.*, Government Press Release, *Fiscal Rafael Vela: Decisión de la justicia brasileña en el caso de Marcelo Odebrecht sigue firme y no invalida los actuados en el Perú* (22 May 2024) (available at: <https://www.gob.pe/institucion/mpfn/noticias/959588-fiscal-rafael-vela-decision-de-la-justicia-brasilena-en-el-caso-de-marcelo-odebrecht-sigue-firme-y-no-invalida-los-actuados-en-el-peru>). The article discusses the effect of a certain decision in Brazil and whether certain subsequent efforts will “affect the work of the prosecutors in the investigations that are at an advanced stage (in the Spanish original: Además, refirió que buscarán afectar la labor de la fiscalía por las investigaciones que se encuentran en etapas avanzadas”).

¹² *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 - Decision on the Claimant Objections to the Respondent Claims of Privilege (3 November 2018), ¶ 39 (available at: <https://www.italaw.com/sites/default/files/case-documents/italaw10660.pdf>).

	<p>where instead he alleged that “[t]he license contracts to operate Blocks III and IV were awarded as part of the Corruption Scheme” (SoC, ¶ 266).</p> <p>On Claimant’s own case, documents are relevant and material <i>only</i> if they relate to the “quid-pro-quo”, which allegedly secured these contracts. Since the documents requested are not relevant to proving the “quid-pro-quo” but an alleged overarching corruption scheme in other sectors, which is unrelated to Mr. Amorrortu’s claim, they are neither relevant nor material to the outcome of the case.</p>
<p>Responses to objections to document production request (requesting Party)</p>	<p>1. The likelihood of existence of documents under Article 3(3)(a)(ii) of the IBA Rules.</p> <p>Respondent’s claim of non-existence rings hollow. First, Peru’s objection self-servingly misconstrues—again—the breadth and scope of Mr. Amorrortu’s allegations, artificially equating the request to “admi[ssions] [of] culpability for corruption relating to Perupetro or Blocks III and IV.” Yet, Mr. Amorrortu’s Statement of Claim, and the vast evidentiary record of corruption, makes clear that the corruption scheme at play here did not consist of isolated quid-pro-quos merely tailored to Blocks III and IV, but operated in systemic fashion, guaranteeing Graña y Montero’s access to a whole range of government contracts in exchange for its multimillion-dollar bribes (SoC ¶¶ 145–149). Indeed, the corruption scheme has been marked by a clear lack of forthrightness in the part of Graña y Montero, who throughout the years repeatedly lied and withheld information about its involvement in the corruption scheme (SoC ¶¶ 13–14, 94–97). Thus, limiting the request to admissions of culpability specifically involving Blocks III and IV is a disingenuous effort by Peru to avoid its disclosure obligations in these proceedings.</p> <p>Mr. Amorrortu is entitled to the documents evidencing the referenced sworn testimony and make the determination as to whether this testimony confirms the corruption scheme at issue. The limitation proposed by Peru has no legal support.</p> <p>The requested documents do exist. Peru cannot limit the request and then argue that the documents as limited do not exist.</p> <p>Second, the existence of the requested testimony is reasonably presumed given the extensive investigations and prosecutions related to the <i>Lava Jato</i> operation, which have implicated both Graña y Montero and Odebrecht. The testimonies of key figures like José Graña, Hernando Graña, and Jorge Barata are likely to contain relevant information even if they do not explicitly admit culpability.</p> <p>Finally, as noted in Mr. Amorrortu’s Request for Production, this request is grounded in the necessity to fully understand the extent and nature of the corruption scheme that allegedly influenced the adjudication of Blocks III and IV, and impacted Mr. Amorrortu’s legitimate expectations with regard to his investment, Baspetro. The testimonies sought are critical to dispute Peru’s narrative and to challenge its minimalist conception of corruption, which ignores the systemic nature of the alleged misconduct that affected the adjudication of Blocks III and IV, as well as evidence on record that explicitly shows that Graña y Montero met with corrupt Peruvian politicians to discuss “Blocks III and IV” (SoC ¶¶ 147–149).</p>

2. The application of the Legal Impediment or Privilege exception under Article 9(2)(b) of the IBA Rules is unwarranted here.

As above, Peru’s invocation of the principle of secrecy as a legal impediment to disclosure is unavailing under the circumstances. First, Mr. Amorrortu will agree to any protective measures this Tribunal deems necessary to mitigate any confidentiality concerns. These measures will ensure that the confidentiality of the ongoing investigations is preserved while allowing the Tribunal to access crucial evidence that goes to the heart of this case. *See Angel Samuel Seda and others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Procedural Order No. 4 (13 August 2021), ¶¶ 27–29 (rejecting Colombian’s secrecy and privacy objections to production because “a confidentiality undertaking between the parties provide[d] appropriate safeguards against public disclosure of [the] information[.]”). Furthermore, Mr. Amorrortu would not oppose the appointment of an impartial expert to assist the Tribunal with making the appropriate determinations on Mr. Amorrortu’s RFP, should the Tribunal deem it helpful or necessary. *See* IBA Rules, Article 3.8.

In addition, while investment case law recognizes the principle of secrecy, it does not preclude the production of documents in all circumstances. In fact, tribunals have rejected the notion that the principle of investigatory secrecy operates as a *de facto* bar to production in international arbitration, justifying disclosure when the evidence at issue is material to the dispute. This has been the case, even when the subject evidence forms part of an ongoing criminal investigation. *See, e.g., Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Decision on Claimant’s Request for Provisional Measures (30 April 2015), ¶¶ 224–225 (obviating the need for a provisional measure because “insofar as the criminal file contains documents that are relevant to this arbitration and are within the scope of any disclosure ordered, the Tribunal would expect that the Respondent would, of course, disclose those documents[.]”).

Indeed, even some of the authorities cited by Peru have underscored the fact that domestic secrecy principles do **not** operate as an automatic bar to production. *See, e.g., Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 14 (24 June 2020), ¶ 73 (noting “the Claimant’s right to seek to demonstrate [] that Korean law does not in fact justify the Respondent’s refusal to produce the requested documents, and to request that the Tribunal draw adverse inference as a result of the Respondent’s refusal[.]”).

Mr. Amorrortu’s narrowly requested testimonies are vital for substantiating the corruption claims and should be produced under protective conditions to respect both the confidentiality of the investigations and the integrity of the arbitration process.

3. The application of Political or Institutional Sensitivity under Article 9(2)(f) of the IBA Rules is similarly unwarranted here.

Peru argues that the requested documents are of special political or institutional sensitivity. Nevertheless, the confidentiality and sensitivity of the documents can

be adequately maintained through protective measures that this Tribunal is well-equipped to order and enforce.

As stated in Mr. Amorrortu’s request, these testimonies are essential to demonstrate the systemic nature of the corruption that affected the adjudication of Blocks III and IV. Indeed, based on the record at hand, there is sufficient indicia suggesting that the patterns of admitted endemic corruption that influenced the award of government contracts to Graña y Montero during the relevant time period, likewise tainted the adjudication of Blocks III and IV. SoC ¶¶ 119–144; SoD ¶¶ 169–176. As such, only through review of the requested testimony will Mr. Amorrortu, and this Tribunal, be able to ascertain if the handling of Blocks III and IV—both exhibiting features used to conceal misconduct in other known corrupt contracts—was genuinely an exception to the widespread corruption characterizing Graña y Montero’s activities in Peru during this time. Thus, the value of these documents in advancing the Claimant’s case outweighs the asserted confidentiality concerns, especially when protective measures can ensure that they remain outside the public domain.

4. Mr. Amorrortu’s Request complies with both Articles 3.3(b) and 3 (7) of the IBA Rules because it seeks documents that are both relevant to the case and material to its outcome; and Article 9(2)(a) of the IBA Rules is inapplicable here.

Peru asserts that the requested documents are not relevant or material to the outcome of the case. For the reasons stated above, this assertion is incorrect. As noted *supra*, these testimonies are directly relevant to understanding whether the adjudication of Blocks III and IV was influenced by the corruption scheme that pervaded Graña y Montero’s dealings with the Peruvian government during the relevant time period, and Peru’s reliance on the absence of direct evidence of corruption specific to Blocks III and IV is insufficient to negate the relevance to the case of the requested testimonies, and the material impact of the same to the outcome of the case.

5. Respondent opened the door to the assessment of this type of evidence.

Finally, Respondent’s introduction of Ernesto Vela’s Declaration (Senior Prosecutor coordinating the *Lava Jato* Special Team), which purports to portray the findings of Peru’s investigation into the corruption scheme, including its interpretation of sworn testimony by those involved, (Vela Decl. ¶¶ 21–25; SoD ¶¶ 199–213), has opened the door to the assessment of evidence such as the requested sworn testimony.

Respondent submits that its review of the requested testimony has yielded no indication of corruption as to Blocks III and IV. To this end, Respondent not only puts forth a minimalist conception of corruption, wherein the absence of an isolated quid-pro-quo expressly tailored to Blocks III and IV negates any misconduct, but it also appears to conflate evidence of corruption with “admi[ssions] [of] culpability”. As such, review of the requested testimony is necessary to dispute Respondent’s reading, and fully ascertain whether the adjudication of Blocks III and IV—which shared many of the features used to hide

	<p>misconduct in admittedly corrupted contracts—was truly an outlier to the proven patterns of corruption that marked much of Graña y Montero’s dealings with Peru during the relevant time period.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 2.</p>
Decision of the Tribunal	Certain members of the Tribunal are concerned that Claimant’s RFP No. 2 is overbroad. The Claimant is therefore invited to reframe RFP No. 2 in accordance with the Tribunal’s directions set out in Sections II and III of Procedural Order No. 4 (Document Production). In particular, the Claimant should direct any reframed request to the purported relationship between Graña y Montero’s alleged corruption scheme, as relied upon by the Claimant, and the disposition of Blocks III and IV.

Request No. 3

Document Request No.	3
Documents or category of documents requested (requesting Party)	Full copies of all the Efficient Collaboration Prosecutorial Files (“Carpetas Fiscales de Colaboración Eficaz”) in the custody of the Public Ministry of Peru, including, but not limited to, investigation reports, evidentiary documents, and other proofs, that relate to acts of corruption in the award of government contracts involving former President Ollanta Humala, Nadine Heredia, Luis Ortigas (both as Vice-Minister of Energy and then President of PeruPetro), Graña y Montero (including, but not limited to, José Graña and Hernando Graña), Jorge Barata (Director of Odebrecht in Peru), and Odebrecht since the beginning of 2011.
Relevance and materiality, incl. references to submission (requesting Party)	<p>These documents are relevant to Mr. Amorrortu’s claim that the adjudication of Blocks III and IV in favor of Graña y Montero was the result of an overarching corruption scheme that involved the highest levels of Peruvian government, including the Former President and his wife, who in 2011 received a three-million-dollar bribe from Graña y Montero and its collaborator, Odebrecht. SoC ¶¶ 113–114, 271–280; Expert Report of Monica Yaya ¶¶ 40, 86. This evidence is material because it will enable Mr. Amorrortu to demonstrate that the corrupt adjudication of a government contract in favor of Graña y Montero did not depend on isolated payments specifically tailored to a given contract, but was rather tied to a broader understanding of quid-pro-quo between the members of the scheme (<i>i.e.</i>, in exchange for the payment of bribes by Graña y Montero to President Ollanta Humala and/or his wife Nadine Heredia, Graña y Montero secured access to <i>any</i> government contract the company desired). SoC ¶¶ 145–149.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p> <p>Further, to address potential confidentiality concerns with respect to these documents, Claimant agrees that the disclosure be subject to any protective measures the Tribunal deems necessary, including, but not limited to, a protective order restricting the use of, and designating, documents as “Attorneys’ Eyes Only;” the implementation of <i>in camera</i> review by the Tribunal; and/or the appointment of a privilege master.</p>
Reasoned objections to document production request (objecting Party)	<p><u>The documents sought are subject to legal impediment or privilege pursuant to Article 9(2)(b) of the IBA Rules and subject to special political or institutional sensitivity pursuant to Article 9(2)(f) of the IBA Rules.</u></p> <p>Insofar as the request seeks <i>any</i> “Full copies of all the Efficient Collaboration Prosecutorial Files (“Carpetas Fiscales de Colaboración Eficaz”) in the custody of the Public Ministry of Peru”, the Republic of Peru objects pursuant to Article 9(2)(b) of the IBA Rules, which states that an arbitral tribunal “shall, at the request of a Party or on its own motion, exclude from evidence or production any Document” if there is a “legal impediment or privilege under the legal or ethical rules determined by the arbitral Tribunal to be applicable”. The principle of secrecy of criminal investigations under Peruvian law, which is codified in Article</p>

	<p>324 of the Code of Criminal Procedure titled “Privilege and secrecy of [criminal] investigations,” indeed presents such legal impediment for production. The provision establishes that “the investigation has a reserved character. Only the parties directly involved and their duly accredited lawyers can have access to its contents.”¹³ Thus, because the criminal investigations by the <i>Lava Jato</i> Special team are still ongoing, this legal impediment applies in full force under Peruvian law.¹⁴</p> <p>It is well established that investment case law also recognizes the principle of secrecy of criminal investigations. <i>See, e.g., Elliott v. Korea</i>, PCA, Procedural Order No. 14 (24 June 2020) (Heiskanen, Garibaldi, Thomas), ¶ 72; <i>Merrill and Ring Forestry L.P. v. The Government of Canada</i>, NAFTA/UNCITRAL, Decision of the Tribunal on Production of Documents (18 July 2008) (Orrego Vicuña, Dam, Rowley), ¶¶ 17-18.</p> <p>Similarly, as indicated in the Republic’s objection to Request No. 1, the confidentiality accorded by Article 324 of the Code of Criminal Procedure deems the documents requested “reserved”, and thus “sensitive information” within the meaning of Article 9(2)(f) of the IBA Rules. As such the documents cannot be produced. Indeed, as the tribunal in <i>Global Telecom v. Canada</i> determined, “Article 9.2(f) of the IBA Rules is predicated to a certain extent on domestic law directing the classification of evidence as a secret by the government.”¹⁵</p> <p>Accordingly, Claimant’s request should be rejected.</p> <p><u>The request is overbroad and imposes upon the Republic of Peru an unreasonable burden (IBA Rules, Articles 3(3)(a); 9(2)(c)).</u></p> <p>Notwithstanding the objection above, the Republic of Peru objects to this request because it fails to identify a narrow and specified category of documents. This request’s formulation is so broad and sweeping that it is an egregious example of a prohibited “fishing expedition.”</p> <p>The request formulated by Claimant essentially calls for the search and retrieval of every single document in the custody, possession, and control of the Public</p>
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¹³ *See*, Peru’s Code of Criminal Procedure, Article 324 (in the Spanish original: “Reserva y secreto de la investigación. 1. La investigación tiene carácter reservado. Sólo pueden enterarse de su contenido las partes de manera directa o a través de sus abogados debidamente acreditados en autos. [...]”) (available at: <https://lpderecho.pe/nuevo-codigo-procesal-penal-peruano-actualizado/>).

¹⁴ *See e.g.*, Government Press Release, *Fiscal Rafael Vela: Decisión de la justicia brasileña en el caso de Marcelo Odebrecht sigue firme y no invalida los actuados en el Perú* (22 May 2024) (available at: <https://www.gob.pe/institucion/mpfn/noticias/959588-fiscal-rafael-vela-decision-de-la-justicia-brasilena-en-el-caso-de-marcelo-odebrecht-sigue-firme-y-no-invalida-los-actuados-en-el-peru>). The article discusses the effect of a certain decision in Brazil and whether certain subsequent efforts will “affect the work of the prosecutors in the investigations that are at an advanced stage (in the Spanish original: Además, refirió que buscarán afectar la labor de la fiscalía por las investigaciones que se encuentran en etapas avanzadas”).

¹⁵ *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 - Decision on the Claimant Objections to the Respondent Claims of Privilege (3 November 2018), ¶ 39 (available at: <https://www.italaw.com/sites/default/files/case-documents/italaw10660.pdf>).

	<p>Ministry of Peru “that relate to acts of corruption in the award of government contracts involving former President Ollanta Humala, Nadine Heredia, Luis Ortigas (both as Vice-Minister of Energy and then President of PeruPetro), Graña y Montero (including, but not limited to, José Graña and Hernando Graña), Jorge Barata (Director of Odebrecht in Peru), and Odebrecht since the beginning of 2011.” The request includes any conceivable criminal investigation related to several individuals and companies from 2011 as of this date. As such, the request would impose an unreasonable burden for Respondent to search for, collect, and produce the responsive documents contrary to Article 9(2)(c) of the IBA Rules.</p> <p><u>The Republic of Peru objects to this request because it is not tailored to issues that are relevant and material to the determination of the case as required by Articles 3(3)(b) and 9(2)(a) of the IBA Rules.</u></p> <p>Claimant’s request must be dismissed as the documents requested are neither relevant to the case nor material to its outcome. Claimant’s case concerns the adjudication of Blocks III and IV. This request illustrates the flimsiness of Claimant’s corruption allegations. The adjudication of <i>any</i> other government contracts to Odebrecht that benefited Graña y Montero will not prove the existence of a corruption scheme that precluded Mr. Amorrortu from operating Blocks III and IV. Furthermore, as demonstrated in Peru’s Statement of Defense, “[a]s of 2020 [and presently], it was confirmed by the Lava Jato Special Team and other authorities that there was no evidence of or investigation into allegations of corruption or illicit activities concerning the Blocks and Bidding Processes” (SoD, ¶ 208; Vela WS, ¶ 24). Thus, any documents related to criminal investigations that have nothing to do with Blocks III and IV are utterly irrelevant and immaterial to this case.</p>
<p>Responses to objections to document production request (requesting Party)</p>	<p>1. The application of the Legal Impediment or Privilege exception under Article 9(2)(b) of the IBA Rules is unwarranted here.</p> <p>Respondent’s invocation of the principle of secrecy as a legal impediment to disclosure of the requested materials is unavailing. First, Mr. Amorrortu will agree to any protective measures this Tribunal deems necessary to mitigate any confidentiality concerns. These measures will ensure that the confidentiality of the ongoing investigations is preserved while allowing the Tribunal to access crucial evidence that goes to the heart of this case. <i>See Angel Samuel Seda and others v. Republic of Colombia</i>, ICSID Case No. ARB/19/6, Procedural Order No. 4 (13 August 2021), ¶¶ 27–29 (rejecting Colombian’s secrecy and privacy objections to production because “a confidentiality undertaking between the parties provide[d] appropriate safeguards against public disclosure of [the] information[.]”). Furthermore, Mr. Amorrortu would not oppose the appointment of an impartial expert to assist the Tribunal with making the appropriate determinations on Mr. Amorrortu’s RFP, should the Tribunal deem it helpful or necessary. <i>See</i> IBA Rules, Article 3.8.</p> <p>In addition, while investment case law recognizes the principle of secrecy, it also emphasizes the importance of balancing confidentiality with the need for evidence in arbitral proceedings. This is so, even when the requested information forms part of an ongoing criminal investigation. <i>See Gavrilović and Gavrilović d.o.o. v. Republic of Croatia</i>, ICSID Case No. ARB/12/39, Decision on Claimant’s</p>

Request for Provisional Measures (30 April 2015), ¶¶ 224–225 (“[I]nsofar as the criminal file contains documents that are relevant to this arbitration and are within the scope of any disclosure ordered, the Tribunal would expect that the Respondent would, of course, disclose those documents[.]”).

Indeed, even some of the authorities cited by Respondent have underscored that domestic secrecy principles do not operate as an automatic bar to production in arbitration. *See, e.g., Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 14 (24 June 2020), ¶ 73 (noting “the Claimant’s right to seek to demonstrate [] that Korean law does not in fact justify the Respondent’s refusal to produce the requested documents, and to request that the Tribunal draw adverse inference as a result of the Respondent’s refusal[.]”).

The requested documents are essential for demonstrating the systemic corruption that influenced the adjudication of Blocks III and IV, and should be produced under protective conditions to respect both the confidentiality of the investigations and the integrity of the arbitration process.

2. The application of Political or Institutional Sensitivity considerations under Article 9(2)(f) of the IBA Rules is unwarranted here.

Respondent also argues that the requested documents are politically or institutionally sensitive. However, the confidentiality and sensitivity of the documents can be adequately maintained through protective measures that this Tribunal is well-equipped to order and enforce.

Further, the requested Effective Collaboration agreements are essential to demonstrate the systemic nature of the corruption that affected the adjudication of Blocks III and IV. Based on the record, there is more than sufficient indication that the patterns of endemic corruption that influenced the award of corrupt government contracts to Graña y Montero likewise tainted the adjudication of Blocks III and IV. Thus, only through review of this evidence can the Tribunal fully ascertain whether the handling of Blocks III and IV was an exception to the widespread corruption characterizing Graña y Montero’s activities in Peru during the relevant time period.

3. Mr. Amorrortu’s RFP is narrowly tailored and not overbroad; and, therefore not capable of unreasonably burdening Peru under Articles 3(3)(a) and 9(2)(c) of the IBA Rules.

Respondent contends that the Request is overly broad and constitutes a “fishing expedition.” However, the request is specifically tailored to documents related to corruption involving key figures and entities, whose involvement in the corruption scheme has been proven. Indeed, Mr. Amorrortu’s submissions expressly show that each and every one of the subjects of this request were directly involved in the corruptions scheme, including in the issuance and receipt of multimillion dollar bribes, and in the carrying out of clandestine meetings to negotiate the award of corrupt government contracts (SoC ¶¶ 113–118, 133, 145–149, 271–280). The scope of the Request, thus, is necessary to capture the full extent of the systemic corruption that influenced the adjudication of Blocks III and IV. To the

extent Peru deems this narrow and tailored request to be overbroad, such objection is more an indication of Peru’s own endemic practice of corruption than anything else.

Moreover, the request does not impose an unreasonable burden on Respondent. Mr. Amorrortu seeks documents that are likely to exist in readily accessible form given the extensive investigations and prosecutions related to the *Lava Jato* investigations, which have implicated both Graña y Montero/Odebrecht and the Ollanta Humala administration.

Additionally, the proportionality principle under the IBA Rules supports the production of these documents, especially when considering their relevance and materiality to Mr. Amorrortu’s case in chief. The evidentiary files of the relevant key figures regarding corruption in the award of government contracts by Peru is likely to contain not just relevant, but material information to this case’s outcome.

4. Mr. Amorrortu’s Request complies with Articles 3(3)(b) and 9(2)(a) of the IBA Rules because it seeks documents that are both relevant to the case and material to its outcome.

Respondent’s objections for lack of relevancy or materiality are misguided. As noted earlier, the corruption scheme alleged by Mr. Amorrortu involves systemic misconduct, and not just isolated incidents of quid-pro-quo specifically tailored to any given public contract (SoC ¶¶ 145–149). The requested documents, thus, will help demonstrate the nature and extent of the overarching arrangements that benefited Graña y Montero in the award of public contracts, including those related the operation of Blocks III and IV.

While Respondent claims there is no evidence of corruption specifically related to Blocks III and IV, the systemic nature of the alleged corruption scheme—and its participants’ proven track record at concealing material information—makes it necessary to examine broader patterns and relationships. The requested documents, thus, are vital to establishing this context and challenging Respondent’s assertions that the adjudication of Blocks III and IV was an outlier to the proven patterns of corruption that marked much of Graña y Montero’s dealings with Peru during this time period. Thus, the requested evidence is both relevant and material to the outcome of this case.

5. Respondent opened the door to the assessment of this type of evidence.

Finally, Respondent’s introduction of Ernesto Vela’s Declaration (Senior Prosecutor coordinating the *Lava Jato* Special Team), which purports to portray the findings of Peru’s investigation into the corruption scheme, including its interpretation of relevant evidence in its custody, (Vela Decl. ¶¶ 21–25; SoD ¶¶ 199–213), has opened the door to the assessment of the requested prosecutorial files.

Respondent submits that its review of the requested evidence has yielded no indication of corruption as to Blocks III and IV. To this end, Respondent not only puts forth a minimalist conception of corruption, wherein the absence of an

	<p>isolated quid-pro-quo expressly tailored to Blocks III and IV negates any misconduct, but it also appears to conflate evidence of corruption with “admi[ssions] [of] culpability.” As such, review of the requested files is necessary to establish that did the corruption scheme did not consist of isolated payments specifically tailored to a given contract, but was rather tied to a broader understanding of quid-pro-quo between the members of the scheme, which entitled Graña y Montero to a package of government contracts.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 3.</p>
Decision of the Tribunal	Certain members of the Tribunal are concerned that Claimant’s RFP No. 3 is overbroad. The Claimant is therefore invited to reframe RFP No. 3 in accordance with the Tribunal’s directions set out in Sections II and III of Procedural Order No. 4 (Document Production). In particular, the Claimant should direct any reframed request to the purported relationship between Graña y Montero’s alleged corruption scheme, as relied upon by the Claimant, and the disposition of Blocks III and IV.

Request No. 4

Document Request No.	4
Documents or category of documents requested (requesting Party)	Full copies of the Effective Collaboration agreements (“acuerdos de Colaboración Eficaz”) entered into by Graña y Montero (including, but not limited to, José Graña and Hernando Graña) and Jorge Barata (Director of Odebrecht in Peru) as part of the <i>Lava Jato</i> and/or any other corruption-related investigations, and any declarations provided pursuant to such agreements.
Relevance and materiality, incl. references to submission (requesting Party)	<p>These documents are relevant to Mr. Amorrortu’s case in chief because the requested agreements, and the factual proffers therein, bear directly on his central claims; namely, that his rights in Blocks III and IV were arbitrarily violated by the Respondent as a result of a corruption scheme aimed at granting government contracts to Graña y Montero in exchange for multimillion-dollar bribes. SoC ¶¶ 14, 145–149. Thus, the specific details as to how Graña y Montero’s executives actually carried out the scheme, to whom they made payments, and their understanding of what they were to receive in return, are instrumental in establishing that Blocks III and IV fell within the orbit of the corruption scheme.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p> <p>Further, to address potential confidentiality concerns with respect to these documents, Claimant agrees that the disclosure be subject to any protective measures the Tribunal deems necessary, including, but not limited to, a protective order restricting the use of, and designating, documents as “Attorneys’ Eyes Only;” the implementation of <i>in camera</i> review by the Tribunal; and/or the appointment of a privilege master.</p>
Reasoned objections to document production request (objecting Party)	<p><u>The documents sought are subject to legal impediment or privilege pursuant to Article 9(2)(b) of the IBA Rules and subject to special political or institutional sensitivity pursuant to Article 9(2)(f) of the IBA Rules.</u></p> <p>The Republic of Peru objects to Claimant’s request pursuant to Article 9(2)(b) of the IBA Rules, which states that an arbitral tribunal “shall, at the request of a Party or on its own motion, exclude from evidence or production any Document” if there is a “legal impediment or privilege under the legal or ethical rules determined by the arbitral Tribunal to be applicable”. The principle of secrecy of criminal investigations under Peruvian law, which is codified in Article 324 of the Code of Criminal Procedure titled “Privilege and secrecy of [criminal] investigations”, presents such legal impediment for production. The provision establishes that “the investigation has a reserved character. Only the parties directly involved and their duly accredited lawyers can have access to its contents.”¹⁶ Thus, because the</p>

¹⁶ See, Peru’s Code of Criminal Procedure, Article 324 (in the Spanish original: “Reserva y secreto de la investigación. 1. La investigación tiene carácter reservado. Sólo pueden enterarse de su contenido las partes de manera directa o a través de sus abogados debidamente acreditados en autos. [...]”) (available at: <https://lpderecho.pe/nuevo-codigo-procesal-penal-peruano-actualizado/>).

criminal investigations by the Lava Jato Special team are still ongoing, this legal impediment applies in full force under Peruvian law.¹⁷

It is well established that investment case law also recognizes the principle of secrecy of criminal investigations. *See, e.g., Elliott v. Korea*, PCA, Procedural Order No. 14 (24 June 2020) (Heiskanen, Garibaldi, Thomas), ¶ 72; *Merrill and Ring Forestry L.P. v. The Government of Canada*, NAFTA/UNCITRAL, Decision of the Tribunal on Production of Documents (18 July 2008) (Orrego Vicuña, Dam, Rowley), ¶¶ 17-18.

Similarly, as indicated in the Republic’s objection to Request No. 1, the confidentiality accorded by Article 324 of the Code of Criminal Procedure deems the documents requested “reserved”, and thus “sensitive information” within the meaning of Article 9(2)(f) of the IBA Rules. As such the documents cannot be produced. Indeed, as the tribunal in *Global Telecom v. Canada* determined, “Article 9.2(f) of the IBA Rules is predicated to a certain extent on domestic law directing the classification of evidence as a secret by the government.”¹⁸

Accordingly, Claimant’s request should be rejected.

The Republic of Peru objects to this request because it is not tailored to issues that are relevant and material to the determination of the case as required by Articles 3(3)(b) and 9(2)(a) of the IBA Rules.

Claimant’s request must be dismissed as the documents requested are neither relevant to the case nor material to its outcome. Claimant’s case concerns the adjudication of Blocks III and IV. This request illustrates the flimsiness of Claimant’s corruption allegations. The collaboration agreements in any other criminal investigations led by the Lava Jato Special Team will not prove the existence of a corruption scheme that precluded Mr. Amorrortu from operating Blocks III and IV. Furthermore, as demonstrated in Peru’s Statement of Defense, “[a]s of 2020 [and presently], it was confirmed by the Lava Jato Special Team and other authorities that there was no evidence of or investigation into allegations of corruption or illicit activities concerning the Blocks and Bidding Processes” (SoD, ¶ 208; Vela WS, ¶ 24). Thus, any documents related to criminal investigations that have nothing to do with Blocks III and IV are utterly irrelevant and immaterial to this case. In this respect, this request amounts to a prohibited fishing expedition.

¹⁷ *See e.g.*, Government Press Release, *Fiscal Rafael Vela: Decisión de la justicia brasileña en el caso de Marcelo Odebrecht sigue firme y no invalida los actuados en el Perú* (22 May 2024) (available at: <https://www.gob.pe/institucion/mpfn/noticias/959588-fiscal-rafael-vela-decision-de-la-justicia-brasilena-en-el-caso-de-marcelo-odebrecht-sigue-firme-y-no-invalida-los-actuados-en-el-peru>). The article discusses the effect of a certain decision in Brazil and whether certain subsequent efforts will “affect the work of the prosecutors in the investigations that are at an advanced stage (in the Spanish original: Además, refirió que buscarán afectar la labor de la fiscalía por las investigaciones que se encuentran en etapas avanzadas”).

¹⁸ *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 - Decision on the Claimant Objections to the Respondent Claims of Privilege (3 November 2018), ¶ 39 (available at: <https://www.italaw.com/sites/default/files/case-documents/italaw10660.pdf>).

<p>Responses to objections to document production request (requesting Party)</p>	<p>1. The application of the Legal Impediment or Privilege exception under Article 9(2)(b) of the IBA Rules is unwarranted here.</p> <p>As noted above, Respondent’s invocation of the principle of secrecy under Article 324 of the Peruvian Code of Criminal Procedure as a legal impediment is insufficient to bar the production of the requested documents.</p> <p>Here, Mr. Amorrortu has agreed to strictly adhere to any protective measures the Tribunal deems necessary to protect the secrecy and confidentiality of the requested documents. This concession sufficiently mitigates Respondent’s concerns while also allowing the Tribunal to have access to what is otherwise relevant and material evidence. <i>See Angel Samuel Seda and others v. Republic of Colombia</i>, ICSID Case No. ARB/19/6, Procedural Order No. 4 (13 August 2021), ¶¶ 27–29 (Colombian law precluding the disclosure of documents held by the Colombian government did not constitute a legal privilege applicable to the production of relevant documents in international arbitration, where “a confidentiality undertaking between the parties provide[d] appropriate safeguards against public disclosure of [the] information[.]”). Furthermore, Mr. Amorrortu would not oppose the appointment of an impartial expert to assist the Tribunal with making the appropriate determinations on Mr. Amorrortu’s RFP, should the Tribunal deem it helpful or necessary. <i>See IBA Rules</i>, Article 3.8.</p> <p>In addition, while investment case law recognizes the principle of secrecy, it does not preclude the production of documents in all circumstances. In fact, tribunals have rejected the notion that the principle of secrecy operates as a <i>de facto</i> bar to production in international arbitration, justifying disclosure when the evidence at issue is material to the dispute. This has been the case, even when the subject evidence forms part of an ongoing criminal investigation. <i>See, e.g., Gavrilović and Gavrilović d.o.o. v. Republic of Croatia</i>, ICSID Case No. ARB/12/39, Decision on Claimant’s Request for Provisional Measures (30 April 2015), ¶¶ 224–225 (obviating the need for a provisional measure because “insofar as the criminal file contains documents that are relevant to this arbitration and are within the scope of any disclosure ordered, the Tribunal would expect that the Respondent would, of course, disclose those documents[.]”).</p> <p>Indeed, even some of the authorities cited by Respondent have underscored the fact that domestic secrecy principles do not operate as an automatic bar to production in international arbitration. <i>See, e.g., Elliott Associates L.P. v. Republic of Korea</i>, PCA Case No. 2018-51, Procedural Order No. 14 (24 June 2020), ¶ 73 (noting “the Claimant’s right to seek to demonstrate [] that Korean law does not in fact justify the Respondent’s refusal to produce the requested documents, and to request that the Tribunal draw adverse inference as a result of the Respondent’s refusal[.]”).</p> <p>2. The application of Political or Institutional Sensitivity considerations under Article 9(2)(f) of the IBA Rules is Unwarranted here.</p> <p>Here, again, Respondent argues that the requested documents are politically or institutionally sensitive. However, the confidentiality and sensitivity of the</p>
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documents can be adequately maintained through protective measures that this Tribunal is well-equipped to order and enforce.

Further, the requested Effective Collaboration agreements are essential to demonstrate the systemic nature of the corruption that affected the adjudication of Blocks III and IV. Based on the record, there is sufficient indication that the patterns of endemic corruption that influenced the award of corrupt government contracts to Graña y Montero likewise tainted the adjudication of Blocks III and IV. Thus, only through review of this evidence can the Tribunal fully ascertain whether the handling of Blocks III and IV was an exception to the widespread corruption characterizing Graña y Montero’s activities in Peru during the relevant time period.

3. Mr. Amorrortu’s Request complies with Article 3(3)(b) of the IBA Rules because it seeks documents that are relevant to the case and material to its outcome; and Article 9(2)(a) of the IBA Rules is inapplicable here.

Again, Respondent’s objections for lack of relevancy or materiality are misguided. As noted earlier, the corruption scheme alleged by Mr. Amorrortu involves systemic misconduct, and not just isolated incidents of quid-pro-quo specifically tailored to any given public contract (SoC ¶¶ 145–149). The requested documents—which specifically target Graña y Montero and Jorge Barata (Odebrecht)—thus, will help demonstrate the nature and extent of the overarching arrangements that benefited Graña y Montero in the award of public contracts, including those related the operation of Blocks III and IV.

While Respondent claims there is no evidence of corruption specifically related to Blocks III and IV, the systemic nature of the alleged corruption scheme—and its participants’ proven track record at concealing material information—makes it necessary to examine certain key patterns and relationships. The requested documents, thus, are vital to establishing this context and challenging Respondent’s assertions that the adjudication of Blocks III and IV was an outlier to the proven and ubiquitous patterns of corruption that marked much of Graña y Montero’s dealings with Peru during this time period.

As noted in the request, the Effective Collaboration agreements will provide unique insight as to how Graña y Montero/Odebrecht actually carried out the scheme, to whom they made payments, and their understanding of what they were to receive in return for those payments. These facts would be instrumental in establishing that Blocks III and IV fell within the orbit of the corruption scheme. Thus, the requested evidence is both relevant and material to the outcome of this case.

4. Respondent opened the door to the assessment of this type of evidence.

Finally, Respondent’s introduction of Ernesto Vela’s Declaration (Senior Prosecutor coordinating the Lava Jato Special Team), which purports to portray the findings of Peru’s investigation into the corruption scheme, including its view on the implications of the Effective Collaboration agreements, (Vela Decl. ¶¶ 21–

	<p>25; SoD ¶¶ 199–213), has opened the door to the assessment of the requested evidence.</p> <p>Respondent submits that its review of the relevant evidence, including testimony pursuant to the Effective Collaboration agreements, has revealed no indication of corruption related to Blocks III and IV. In doing so, Respondent directly disputes Mr. Amorrortu’s claim that Graña y Montero’s lack of transparency and repeated lies about its involvement in the corruption scheme undermine the credibility of its statements. Indeed, according to Respondent, the very terms of the Effective Collaboration agreements make it highly unlikely that a cooperating witness will withhold material information from prosecutors (Vela Decl. ¶¶ 19–20). Thus, without a review of the actual terms provided in the requested Effective Collaboration agreements, it is impossible for Mr. Amorrortu to confirm the accuracy of Respondent’s representations.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 4.</p>
Decision of the Tribunal	<p>Certain members of the Tribunal are concerned that Claimant’s RFP No. 4 is overbroad. The Claimant is therefore invited to reframe RFP No. 4 in accordance with the Tribunal’s directions set out in Sections II and III of Procedural Order No. 4 (Document Production). In particular, the Claimant should direct any reframed request to the purported relationship between Graña y Montero’s alleged corruption scheme, as relied upon by the Claimant, and the disposition of Blocks III and IV.</p>

Request No. 5

Document Request No.	5
Documents or category of documents requested (requesting Party)	All complaints, whether formal or informal, submitted to Peruvian authorities alleging acts of corruption involving former President Ollanta Humala, Nadine Heredia, or Graña y Montero in connection with any government contract awarded to Graña y Montero from 2011 to the present.
Relevance and materiality, incl. references to submission (requesting Party)	<p>These documents are relevant to Mr. Amorrortu’s claim that the adjudication of Blocks III and IV in favor of Graña y Montero was the result of an overarching corruption scheme that involved the highest levels of Peruvian government, including the Former President and his wife, who in 2011 received a three-million-dollar bribe from Graña y Montero and its collaborator, Odebrecht. SoC ¶¶ 113–114, 271–280; Expert Report of Monica Yaya ¶¶ 40, 86.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p> <p>Further, to address potential confidentiality concerns with respect to these documents, Claimant agrees that the disclosure be subject to any protective measures the Tribunal deems necessary, including, but not limited to, a protective order restricting the use of, and designating, documents as “Attorneys’ Eyes Only;” the implementation of <i>in camera</i> review by the Tribunal; and/or the appointment of a privilege master.</p>
Reasoned objections to document production request (objecting Party)	<p><u>The request is overbroad and imposes upon the Republic of Peru an unreasonable burden (IBA Rules, Articles 3(3)(a); 9(2)(c)).</u></p> <p>Claimant’s request must be rejected since it fails to meet the requirement of Article 3(3)(a)(ii) of the IBA Rules by which only a “narrow and specific requested category of Documents” can be requested. Claimant’s request amounts to a prohibited fishing expedition. Indeed, Claimant does not even tie the alleged “acts of corruption” of the requested complaints to the subject matter of this dispute, i.e., Blocks III and IV.</p> <p>Additionally, the request is overbroad and unspecific for the following reasons:</p> <ul style="list-style-type: none"> • <i>First</i>, Claimant fails to limit the “complaints” to a reasonable period. Indeed, it is requesting all complaints for a period which spans more than 10 years. It would thus be unduly burdensome for Respondent to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules. • <i>Second</i>, Claimant fails to identify the subject of this request. It simply requests “complaints” “alleging acts of corruption involving former President Ollanta Humala, Nadine Heredia, or Graña y Montero in connection with any government contract awarded to Graña y Montero.”

	<p>The request would likely yield a voluminous number of results due to Claimant’s failure to narrow down the alleged acts of corruption to a specific situation and, in particular, to the to the subject matter of this dispute, <i>i.e.</i>, Blocks III and IV. Consequently, this request imposes an undue burden on Respondent to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules.</p> <ul style="list-style-type: none"> • <i>Third</i>, Claimant fails to identify which “Peruvian authorities”. Indeed, this request could be directed at <i>any</i> of Respondent’s organs, ministries, agencies etc. This would impose an undue burden on Respondent to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules. <p><u>The Republic of Peru objects to this request because it is not tailored to issues that are relevant and material to the determination of the case as required by Articles 3(3)(b) and 9(2)(a) of the IBA Rules.</u></p> <p>Claimant’s request must be dismissed as the documents requested are neither relevant to the case nor material to its outcome. Claimant’s case concerns the adjudication of Blocks III and IV. This request illustrates the flimsiness of Claimant’s corruption allegations. <i>All</i> complaints “submitted to Peruvian authorities alleging acts of corruption involving former President Ollanta Humala, Nadine Heredia, or Graña y Montero in connection with any government contract awarded to Graña y Montero from 2011 to the present” would not prove the existence of a corruption scheme that precluded Mr. Amorrortu from operating Blocks III and IV. Furthermore, as demonstrated in Peru’s Statement of Defense, “[a]s of 2020 [and presently], it was confirmed by the Lava Jato Special Team and other authorities that there was no evidence of or investigation into allegations of corruption or illicit activities concerning the Blocks and Bidding Processes” (SoD, ¶ 208; Vela WS, ¶ 24). Thus, the documents requested are irrelevant and immaterial to the outcome of this case because they have nothing to do with the adjudication of Blocks III and IV in 2014.</p>
<p>Responses to objections to document production request (requesting Party)</p>	<p>1. Mr. Amorrortu’s RFP is narrowly tailored and not Overbroad; and, therefore, the RFP is not capable of unreasonably burdening Peru under Articles 3(3)(a) and 9(2)(c) of the IBA Rules.</p> <p>Respondent’s claim that the Request is overbroad and amounts to a “fishing expedition” is unfounded. The requested documents are narrowly tailored to corruption complaints involving specific individuals (President Ollanta Humala and Nadine Heredia) and a defined entity (Graña y Montero) in connection with government contracts awarded during a specific period (2011 to present). While extensive, this period of time is necessary to capture the full extent of the alleged corruption scheme. As Mr. Amorrortu argues, the corruption scheme has been a long-lasting and systemic affair (SoC ¶¶ 106–118). Furthermore, the relevance of these documents is directly tied to the adjudication of Blocks III and IV, as establishing a pattern of corrupt behavior by Graña y Montero and involved public officials is critical to substantiating Mr. Amorrortu’s claims.</p>

Moreover, Respondent’s claim of undue burden is overstated. While the Request spans more than 10 years, this period is necessary to adequately cover the duration of the alleged corruption scheme. Further, Mr. Amorrortu has proposed reasonable measures to mitigate any confidentiality-related burdens, including a protective order restricting the use of documents to “Attorneys’ Eyes Only,” *in camera* review by the Tribunal, or the appointment of a privilege master. *See, e.g.*, IBA Rule, Article 3.8. These measures ensure that Respondent’s burden is minimized while allowing the Tribunal to access crucial evidence in this case.

Finally, contrary to Respondent’s objections, the Request’s reference to “Peruvian authorities” is sufficiently clear and can be reasonably interpreted to include the main investigative bodies and agencies tasked with investigating corruption in the award of public contracts. If further specificity is needed, Mr. Amorrortu is willing to work with the Tribunal and Respondent to identify key authorities likely to hold the requested documents. The goal is not to impose an unreasonable burden but to obtain documents critical to the fair adjudication of this case.

Mr. Amorrortu maintains that, to the extent Peru deems this narrow and tailored request to be overbroad, such objection is more an indication of Peru’s own endemic practice of corruption than anything else.

2. Mr. Amorrortu’s Request complies with Article 3(3)(b) of the IBA Rules because it seeks documents that are both relevant to the case and material to its outcome; and Article 9(2)(a) of the IBA Rules is inapplicable here.

Once more, Respondent’s assertion that the requested documents are irrelevant and immaterial to the outcome of the case mischaracterizes the scope and substance of Mr. Amorrortu’s claims. The requested documents are directly relevant and material to demonstrating the pervasive corruption scheme involving Graña y Montero and high-ranking Peruvian officials, which influenced the adjudication of Blocks III and IV and therefore improperly influenced Mr. Amorrortu’s legitimate expectation of his investment, Baspetro. Evidence of complaints alleging corruption involving former President Ollanta Humala, Nadine Heredia, and Graña y Montero in connection with any government contract is crucial to establishing the broader context of corruption that underpinned the awarding of contracts to Graña y Montero, including those for the operation of Blocks III and IV. As noted in Mr. Amorrortu’s filings, the corruption scheme was systemic and involved multiple contacts between Graña y Montero and Peruvian public officials throughout the years (SoC ¶¶ 113–118, 133, 145–149, 271–280).

3. Respondent opened the door to the assessment of this type of evidence.

Finally, Respondent’s introduction of Ernesto Vela’s Declaration (Senior Prosecutor coordinating the Lava Jato Special Team), which purports to portray the findings of Peru’s investigation into the corruption scheme has opened the door to the assessment of the requested evidence. *See generally* Vela Decl.

As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 5.

Decision of the Tribunal	Claimant’s RFP No. 5 is rejected as overbroad, speculative as to the documents requested, and insufficiently relevant.
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Request No. 6

Document Request No.	6
Documents or category of documents requested (requesting Party)	All documents discussing, or relating to, the process by which the construction contract for the Talara Refinery was awarded to Técnicas Reunidas—project in which Graña y Montero was a major subcontractor. This refinery contract was approved by President Ollanta Humala and was signed on May 29, 2014, in Talara for an investment that is now valued at more than eight billion dollars.
Relevance and materiality, incl. references to submission (requesting Party)	<p>This request is relevant to Mr. Amorrortu’s claim that the Graña y Montero corruption scheme was not limited to isolated acts of quid-pro-quo but was rather a systemic enterprise embarking all areas of public contracting. SoC ¶¶ 145–149; Expert Report of Monica Yaya ¶¶ 40, 85–88, 144–153. This is also material evidence for it will establish that the adjudication of corrupt contracts for the benefit of Graña y Montero followed similar patterns of corruption aimed at concealing misconduct. This request is also relevant to Mr. Amorrortu’s allegation that Blocks III and IV, in conjunction with this refinery, have been the most profitable business ventures for Graña y Montero in the gas and oil sector.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p>
Reasoned objections to document production request (objecting Party)	<p><u>The Republic of Peru objects to this request because it is not tailored to issues that are relevant and material to the determination of the case as required by Articles 3(3)(b) and 9(2)(a) of the IBA Rules.</u></p> <p>Claimant’s request completely fails the relevance and materiality test established by the IBA Rules.</p> <p>A document is relevant if it “will assist the requesting party, either to establish the truth of the allegations of fact relied on to support its legal case, or because it is inconsistent with the facts relied on by its opponent(s)”.¹⁹ Claimant did not make any claims related to this contract in his Statement of Claim. This is the first time in these proceedings that Mr. Amorrortu makes any allegations concerning the construction contract for the Talara Refinery awarded to Técnicas Reunidas, and Claimant cites to no evidence in the record in support of these allegations. This is therefore a new alleged fact that has no connection to Claimant’s claim. In short, there is simply no showing of why Graña & Montero’s</p>

¹⁹ Roman Khodykin and Carol Mulcahy, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), ¶ 6.102 (available at: <https://olrl.ouplaw.com/display/10.1093/law/9780198818342.001.0001/law-9780198818342>).

	<p>alleged status as subcontractor in a construction contract for a refinery has any material relevance to Claimant’s allegations concerning Blocks III and IV.</p> <p><u>The Republic of Peru objects to this request because it is overbroad.</u></p> <p>The request must be rejected because it does not meet the requirement in Article 3(3)(a)(ii) of the IBA Rules because it fails to identify a “narrow and specific requested category of Documents” for two main reasons:</p> <ul style="list-style-type: none"> • <i>First</i>, the request fails to limit the “files” and “all documents” sought to those held by a specific agent of the Respondent. On its terms, the request would cover all files and documents held by <i>any</i> of Respondent’s organs, ministries, agents, employees, etc. It would thus be unduly burdensome for Respondent to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules. • <i>Second</i>, the request fails to limit the requested “all documents” to any specific time period, thereby necessitating an unduly burdensome search and production effort. <p>Claimant’s request is nothing more than a fishing expedition seeking support for new factual allegations never before asserted in this arbitration. Claimant’s request should be rejected.</p>
<p>Responses to objections to document production request (requesting Party)</p>	<p>1. Mr. Amorrortu’s Request complies with Article 3(3)(b) of the IBA Rules because it seeks documents that are both relevant to the case and material to its outcome; and Article 9(2)(a) of the IBA Rules is inapplicable here.</p> <p>Respondent’s claim that the requested documents are irrelevant and immaterial to the case misinterprets the scope of Mr. Amorrortu’s claims. The Request for documents related to the Talara Refinery contract is highly relevant to the case and material its outcome because it has the power to establish the systemic nature of the corruption scheme devised by Graña y Montero. As Mr. Amorrortu’s submissions make clear, the same patterns of admitted corruption that influenced the award of government contracts in other public domains during the relevant time period, also tainted the adjudication of Blocks III and IV. As such, documents related to the adjudication process of the Talara Refinery contract—a project from which Graña y Montero made significant profits—are relevant to establishing that this concession, too, was driven by corruption, and that the corruption scheme goes well beyond the “handful of construction projects” the Respondent concedes (SoD ¶170).</p> <p>2. Mr. Amorrortu’s RFP is narrowly tailored and not overbroad; and, therefore, the RFP is not capable of unreasonably burdening Peru under Articles 3(3)(a) and 9(2)(c) of the IBA Rules.</p> <p>Respondent contends that the Request is overly broad because it “fails to identify a ‘narrow and specific requested category of Documents.’” However, the Request</p>

	<p>is specifically tailored to documents related to the adjudication and award of the Talara Refinery project and, as such, it can be reasonably interpreted as being directed to responsive documents in the custody, possession, or control of the main government bodies and agencies tasked with the adjudication of such contracts.</p> <p>This Request seeks a well-defined contract (the Talara Refinery project) awarded during a specific time period (the contract signed on May 29, 2014). The focus on this specific contract (identified by region and date), and its approval by President Ollanta Humala, ensures that the request is narrow and targeted, rather than broad and undefined.</p> <p>Similarly, the request specifically indicates that the Talara Refinery contract was signed on or about May 29, 2014. Therefore, this date can be reasonably interpreted as a chronological guiding point for responsiveness.</p> <p>Moreover, Respondent’s argument that the request imposes an undue burden is hyperbolic. Mr. Amorrortu has specified the contract in question and the relevant timeframe, which should allow for a focused and efficient search for responsive documents. Furthermore, if additional specificity is needed, Mr. Amorrortu is willing to work with the Tribunal and Respondent to identify key authorities likely to hold the responsive documents.</p> <p>Finally, contrary to Respondent’s assertion, the inclusion of the Talara Refinery contract in the document request is not an introduction of new allegations but rather a narrowed-down focus on the established claim of systemic corruption involving Graña y Montero. The corruption scheme’s breadth and impact across various contracts are directly relevant to Mr. Amorrortu’s case. Thus, the requested document should be disclosed.</p> <p>3. Respondent opened the door to the assessment of this type of evidence.</p> <p>Finally, Respondent’s introduction of Ernesto Vela’s Declaration (Senior Prosecutor coordinating the Lava Jato Special Team), which purports to portray the findings of Peru’s investigation into the corruption scheme has opened the door to the assessment of the requested evidence. <i>See generally</i> Vela Decl.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 6.</p>
<p>Decision of the Tribunal</p>	<p>Certain members of the Tribunal are concerned that Claimant’s RFP No. 6 is overbroad. The Claimant is therefore invited to reframe RFP No. 6 in accordance with the Tribunal’s directions set out in Sections II and III of Procedural Order No. 4 (Document Production). In particular, the Claimant should direct any reframed request to the purported relationship between Graña y Montero’s alleged corruption scheme, as relied upon by the Claimant, and the disposition of Blocks III and IV.</p>

Request No. 7

Document Request No.	7
Documents or category of documents requested (requesting Party)	Documents that reflect all the Direct Negotiation processes conducted by PeruPetro from 2000 through the present, ²⁰ and that: (i) for each of these processes, indicate the type of project involved (<i>e.g.</i> , exploration and/or exploitation); (ii) the length of time that each Direct Negotiation took; (iii) indicate whether the Direct Negotiation led to the execution of a contract with the company that initiated the Direct Negotiation; and (iv) for each of the Direct Negotiation processes that led to execution of a contract, provide a copy of the Letter of Interest that gave rise to the Direct Negotiation, as well as (a) the royalties terms agreed to in each contract, (b) the number of exploration and development wells drilled during the performance of each contract, and (c) the amount of funds allocated for social purposes and/or development in each contract.
Relevance and materiality, incl. references to submission (requesting Party)	<p>This request is relevant to Mr. Amorrortu’s contention that his Direct Negotiation with PeruPetro was aborted because Graña y Montero had secured the rights to operate Blocks III and IV by corrupt means. SoC ¶¶ 113–114, 145–149. Indeed, these documents will allow Mr. Amorrortu to establish that the terms of Baspetro’s Direct Negotiation proposal were of equal quality, if not superior, to those presented to PeruPetro by other companies. SoC ¶¶ 75–81. Review of these documents is also necessary to rebut Respondent’s claims that a Direct Negotiation is not commenced unless the Letter of Intent strictly adheres to PeruPetro’s Procedures, and that a Direct Negotiation process cannot create reasonable expectations that a contract will be executed. Expert Report of Carlos Vizquerra ¶¶ 6–8; SoD ¶¶ 39–47.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p>
Reasoned objections to document production request (objecting Party)	<p>The Republic of Peru objects to this request for three reasons.</p> <p><u>The request does not meet the requirements of Article 3(3)(a)(ii) of the IBA Rules because it fails to identify a “narrow and specific requested category of Documents.”</u></p> <p>The potential universe of documents that “reflect all the Direct Negotiations processes” must be more narrowly defined to allow the Republic of Peru to conduct a reasonable search for any responsive documents (emphasis added).</p> <p><u>The request lacks “sufficient relevance to the case” and “materiality to its outcome” under Article 9(2)(a) of the IBA Rules.</u></p> <p>Mr. Amorrortu claims that the documents requested are relevant to his “contention that his Direct Negotiation with PeruPetro was aborted because Graña y Montero had secured the rights to operate Blocks III and IV by corrupt means.” However, the requested documents (<i>i.e.</i>, Documents that reflect all the Direct Negotiation</p>

²⁰ Claimant notes that the overwhelming majority of Direct Negotiation processes lead to contracts with durations spanning decades; therefore, a request covering 24 years is not disproportionate. *See* Guzmán Decl. ¶ 8.

	<p>processes by PeruPetro) are not relevant or material to this issue because they bear no relationship to or shed light on the purported corruption scheme alleged by Claimant. Whether Amorrortu’s Alleged Proposal was “of equal quality” than the proposals “presented to PeruPetro by other companies” does not prove that the Blocks were adjudicated as the result of a corrupt agreement. In addition, Peru has established that before Mr. Amorrortu even submitted the Alleged Proposal, the Blocks were not available for direct negotiation. This is based on both Perupetro’s general practice at the time and the information supplied directly to Mr. Amorrortu (<i>see</i> SoD, Section II(B)(2), ¶ 63; C-6). It is therefore immaterial to the outcome of the case whether “the terms of Baspetro’s Direct Negotiation proposal were of equal quality, if not superior, to those presented to PeruPetro by other companies” because the Blocks could not have been adjudicated through direct negotiation to begin with. In this respect, Mr. Amorrortu’s continued focus on the purported comparative quality of the Alleged Proposal is irrelevant and immaterial.</p> <p><u>The request imposes an “unreasonable burden” on the Republic of Peru contrary to Article 9(2)(c) of the IBA Rules.</u></p> <ul style="list-style-type: none"> • <i>First</i>, the request imposes an “unreasonable burden” on the Republic of Peru contrary to 9(2)(c) of the IBA Rules. The search for an undefined type of documents spanning eight categories over a 24-year period will be unnecessarily burdensome. Mr. Amorrortu maintains that the extensive period is justified by the duration of <i>the contracts</i> resulting from direct negotiations, but this fails to justify his purported need for documents relating to Direct Negotiations <i>processes</i> which took place over 24 years. In particular, Mr. Amorrortu has failed to justify the request as it relates to the period between 2014 and the present given that Mr. Amorrortu’s due diligence leading up to the submission of the Alleged Proposal would have presumably been carried out on the basis of information available up to 2014. If anything, this request confirms that Mr. Amorrortu did not conduct any due diligence before expressing any interest in Blocks III and IV. • <i>Second</i>, and to make matters worse, the request directs the Republic of Peru to create new documents (<i>i.e.</i>, to indicate “the type of project involved”; “the length of time that each Direct Negotiation took”; “whether the Direct Negotiation led to the execution of a contract with the company that initiated the Direct Negotiation”; “the royalties terms agreed to in each contract”; “the number of exploration and development wells drilled during the performance of each contract”; “the amount of funds allocated for social purposes and/or development in each contract”) rather than produce existing documents. The IBA Rules do not require the Parties to create new documents, and thus the request must be rejected.
<p>Responses to objections to document production request (requesting Party)</p>	<p>1. Mr. Amorrortu’s RFP complies with Article 3(3)(a) of the IBA Rules because it is narrowly tailored.</p> <p>Contrary to Respondent’s assertion, Mr. Amorrortu’s Request is both narrow and specific, and identifies a category of documents. Specifically, the Request pertains exclusively to documents related to Direct Negotiation processes conducted by PeruPetro from 2000 through the present, and focuses on very specific</p>

benchmarks, such as project type, duration of the negotiations, and outcomes. This level of specificity allows for a targeted search and does not require a broad or undefined category of documents. The Request is clearly defined by the parameters of Direct Negotiation processes and is limited to relevant details that are critical to understanding the nature and fairness of these processes, which as noted further below, is a question directly at issue in this case.

2. Mr. Amorrortu’s Request complies with the IBA Rules because, *inter alia*, it seeks documents that are relevant to the case and material to its outcome, rendering Article 9(2)(a) of the IBA Rules inapplicable here.

Respondent takes issue with this Request on the basis of relevance. The objection is clearly disingenuous. As it is clear from Respondent’s own submissions, one of its central arguments is that no treaty violations took place because (i) Mr. Amorrortu allegedly never engaged in a Direct Negotiation process with PeruPetro due to his failure to adhere to the strictly enforced legal requirements of Peruvian law; and (ii) assuming there was a Direct Negotiation, Mr. Amorrortu allegedly did not have treaty-protected legitimate expectations because a Direct Negotiation process does not provide legal entitlements or protected interests of any sort. SoD ¶¶ 418–439; Expert Report of Carlos Vizquerra ¶ 53; SoC ¶¶ 364–373.

The requested materials directly relate to the mechanics of how Direct Negotiation processes are carried out by PeruPetro in its normal course of business, including how strictly the cited requirements are enforced, and how often Direct Negotiations lead to the execution of a government contract. As such, this evidence will allow Mr. Amorrortu to do a comparative analysis of PeruPetro’s Direct Negotiation engagements with other proposals and rebut Respondent’s assertions regarding the legitimacy of the process. Specifically, these documents will help establish that Mr. Amorrortu’s Proposal was, at the very least, on par with other proposals, thereby underscoring the influence of corruption in the adjudication process of Blocks III and IV. Therefore, the Request seeks evidence that is relevant to the case and material to the outcome of this dispute.

3. Under the circumstances, Mr. Amorrortu’s RFP cannot be found to cause an “unreasonable burden” upon Peru under Article 9(2)(c) of the IBA Rules.

Likewise, Respondent’s claim of undue burden is overstated. The documents requested are specific to Direct Negotiation processes and should be readily available within the records of PeruPetro. The assertion that the Request requires creating new documents is incorrect; the Request is for existing documents that already contain the specified details. The burden of producing these documents is reasonable and proportional to the significance of the issues at stake in this arbitration, and the materiality of understanding how PeruPetro carries out Direct Negotiations with other companies. It is up to Peru to claim the inexistence of sought after documents, which, notably, it has not done here.

Second, the time period from 2000 to the present is justified by the need to establish a comprehensive understanding of the Direct Negotiation processes over time. First, as noted in the request, once a Direct Negotiation is concluded and a contract executed, that contract will span many years, and often decades. As such,

	<p>the number of Direct Negotiations processes carried out by PeruPetro in 24 years is not as large or expansive as Respondent alleges and is merely an industry-specific reflection that pays credence to these types of contracts and their natural life. In fact, Respondent fails to give any indication of what this “unreasonably burdensome” number of responsive Direct Negotiations would be.</p> <p>Finally, limiting the Request to documents up to 2014 would clearly ignore potentially critical evidence of corruption in Direct Negotiations carried out between 2014 and 2019, the year in which Graña y Montero finally admitted liability for its involvement in the corruption scheme.</p> <p>4. Respondent opened the door to the assessment of this type of evidence.</p> <p>Finally, Respondent’s introduction of Ernesto Vela’s Declaration (Senior Prosecutor coordinating the Lava Jato Special Team), which purports to portray the findings of Peru’s investigation into the corruption scheme has opened the door to the assessment of the requested evidence, especially because Mr. Vela addresses Graña y Montero and Odebrecht, and their ex-executives and ex-directors, within the context of corruption culpability related to PeruPetro in his Declaration. <i>See, e.g.</i>, Vela Decl. ¶ 24.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 7.</p>
<p>Decision of the Tribunal</p>	<p>Claimant’s RFP No. 7 is rejected by a majority of the Tribunal as overbroad, speculative as to the documents requested, and insufficiently relevant.</p> <p>Dissenting Opinion With Respect to Claimant Request No 7 (Prof. Schwartz):</p> <p>Claimant’s RFP No. 7 concerns materials that are, as a group, in the context of this stage concerning production and in light of the Parties’ pleadings and expert reports, relevant and material. To any extent that Claimant’s RFP No. 7 is considered overly broad, the Claimant should at least be given the same opportunity to submit a narrowed request as per Procedural Order No. 4, paragraph 9(a) in respect of Claimant’s RFP Nos. 2,3, 4 and 6.</p>

Request No. 8

Document Request No.	8
Documents or category of documents requested (requesting Party)	Full copies of the bidding files generated, utilized, and/or received by PeruPetro in connection with the international public bidding processes for Blocks III and IV of 2014 and 2015, as well as all documents related to PeruPetro’s evaluation of each of the companies that participated in the bidding processes; namely: (i) Graña y Montero S.A.A., (ii) Perenco S.A., (iii) Olympic Perú Inc., (iv) Sucursal del Perú, (v) Omega Energy International S.A., (vi) Pacifica Rubiales Energy Corp., (vii) Baspetro SAC, (viii) Upland Oil & Gas LLC, Sucursal del Perú, (ix) Petronas Carigali SDN BHD, BPZ Exploración & Producción SRL, (x) Staatsolie Maatschappij Suriname NV.
Relevance and materiality, incl. references to submission (requesting Party)	<p>This request is relevant to Mr. Amorrortu’s contention that his Direct Negotiation with PeruPetro was aborted because Graña y Montero had secured the rights to operate Blocks III and IV by corrupt means. SoC ¶¶ 113–114, 145–149. Indeed, these documents will allow Mr. Amorrortu to establish that the terms of Baspetro’s Direct Negotiation proposal were of equal quality, if not superior, to those presented to PeruPetro by other companies. SoC ¶¶ 75–81. Review of these documents is also necessary to rebut Respondent’s claims that a Direct Negotiation is not commenced unless the Letter of Intent strictly adheres to PeruPetro’s Procedures, that a Direct Negotiation process cannot create reasonable expectations that a contract will be executed, and that the bidding processes for Blocks III and IV were carried out without any irregularities. Expert Report of Carlos Vizquerra ¶¶ 6–8; SoD ¶¶ 39–47; Guzmán Decl. ¶¶ 32–37.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p>
Reasoned objections to document production request (objecting Party)	<p>The Republic of Peru objects to this request for two reasons.</p> <p><u>The request does not meet the requirements of Article 3(3)(a)(ii) of the IBA Rules because it fails to identify a “narrow and specific requested category of Documents.”</u></p> <p>The request fails to identify the types of documents sought, merely requesting “bidding files” and “all documents.” If the request is unable even to identify the type of document it is seeking, it is not seeking a “narrow” or “specific” category of documents as required by 3(3)(a)(ii) of the IBA Rules. On its terms, the request would likely yield a voluminous number of results due to Claimant’s failure to identify the type(s) of document(s) requested. It would thus be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules.</p> <p><u>The request lacks “sufficient relevance to the case” and “materiality to its outcome” under Article 9(2)(a) of the IBA Rules.</u></p> <ul style="list-style-type: none"> • <i>First</i>, Mr. Amorrortu maintains that the files and documents requested are “necessary to rebut Respondent’s claims that a Direct Negotiation is not commenced unless the Letter of Intent strictly adheres to PeruPetro’s Procedures [and] that a Direct Negotiation process cannot create

	<p>reasonable expectations that a contract will be executed.” However, the documents requested are immaterial to the outcome of the case because they concern the Bidding Processes and, therefore, bear no relationship to the legal requirements underlying a direct negotiation.</p> <ul style="list-style-type: none"> • <i>Second</i>, Mr. Amorrortu maintains that the documents requested are relevant to his “contention that his Direct Negotiation with PeruPetro was aborted because Graña y Montero had secured the rights to operate Blocks III and IV by corrupt means.” However, none of the requested documents are relevant or material to this issue because they bear no relationship to the purported corruption scheme alleged by Claimant. Whether the Alleged Proposal was “of equal quality” than the proposals “presented to PeruPetro by other companies” does not prove that the Blocks were adjudicated as the result of a corrupt agreement. • <i>Third</i>, Peru has established that, before Mr. Amorrortu even submitted the Alleged Proposal, the Blocks were not available for direct negotiation. This is based on both Perupetro’s general practice at the time and the information supplied directly to Mr. Amorrortu (<i>see</i> SoD, Section II(B)(2), ¶ 63; C-6). It is therefore immaterial to the outcome of the case whether “the terms of Baspetro’s Direct Negotiation proposal were of equal quality, if not superior, to those presented to PeruPetro by other companies” because the Blocks could not have been adjudicated through direct negotiation to begin with. In this respect, Mr. Amorrortu’s continued focus on the purported comparative quality of the Alleged Proposal is irrelevant and immaterial. • <i>Fourth</i>, Mr. Amorrortu fails to articulate, let alone establish, the relevance and materiality of the documents pertaining to “(ii) Perenco S.A., (iii) Olympic Perú Inc., (iv) (sic) Sucursal del Perú, (v) Omega Energy International S.A., (vi) Pacifica Rubiales Energy Corp., [...] (viii) Upland Oil & Gas LLC, Sucursal del Perú, (ix) Petronas Carigali SDN BHD, BPZ Exploración & Producción SRL, (x) Staatsolie Maatschappij Suriname NV.” Mr. Amorrortu has made no allegations or premised any claim on Perupetro’s evaluation of the aforementioned companies such that they could be deemed relevant and material to the outcome of this case. This further confirms that the request is a prohibited fishing expedition. <p>Accordingly, Claimant’s request should be rejected.</p>
<p>Responses to objections to document production request (requesting Party)</p>	<p>1. Mr. Amorrortu’s RFP complies with Article 3(3)(a) of the IBA Rules because it is narrowly tailored.</p> <p>Respondent’s objection should be rejected because not only is the Request both narrow and specific, but the sought-after category of the Request is clear: “bidding files.” More specifically, the Request seeks “full copies of the bidding files” pertaining to ten specific companies, in connection with two specific tender processes (<i>i.e.</i>, Blocks III and IV), and which were generated during a short and specific timeframe (<i>i.e.</i>, 2014 through 2015). Based on Respondent’s own submissions, both of these tender processes were carried out in highly structured and organized fashion, with each of the steps involved clearly documented in records that contain, among other things, the proposals from each participant, as well as the assessments regarding compliance with the required criteria for participation</p>

	<p>(SoC ¶¶ 132–160; Expert Report of Carlos Vizquerra ¶¶ 103–105). As such, the Request can be reasonably interpreted to include these records (<i>i.e.</i>, known and identifiable set of documents typically generated in the course of public bidding processes, such as bid proposals, evaluation reports, and related correspondence), which appear to be readily available and accessible to Respondent. Therefore, the Request does not require an unduly broad search but targets specific documents central to the bidding processes for the specified blocks.</p> <p>2. Mr. Amorrortu’s Request complies with the IBA Rules because it seeks documents that are relevant to the case and material to its outcome; therefore, Article 9(2)(a) of the IBA Rules is inapplicable here.</p> <p>Respondent’s objection on this score is unavailing because the documents requested are highly relevant and material to Mr. Amorrortu’s claims. As already noted above, Mr. Amorrortu alleges—and the records shows—that the corruption scheme was characterized by patterns of deceit aimed at concealing the corruption driving the award of government contracts in favor of Graña y Montero. Among other things, this included the deployment of sham public bidding processes that were rigged in favor of Graña y Montero.</p> <p>Accordingly, the requested bidding files and evaluation documents are relevant to the case in that they are crucial to establishing that Graña y Montero’s bid for Blocks III and IV was favored due to corruption. By comparing the terms of Baspetro’s Direct Negotiation proposal with those of the winning and other competing bids, Mr. Amorrortu will demonstrate that the rejection of his Proposal and the award to Graña y Montero were influenced by factors other than merit, including procedural irregularities meant to disfavor qualified competitors and favor Graña y Montero. This comparison is directly relevant to proving one of Mr. Amorrortu’s central claims in this case: that the bidding processes for Blocks III and IV were nothing more than a front to project an appearance of legality to conceal the corrupt nature of the adjudication in favor of Graña y Montero (SoC ¶¶ 113–114, 145–149).</p> <p>3. Respondent opened the door to the assessment of this type of evidence.</p> <p>Finally, Respondent’s introduction of Ernesto Vela’s Declaration (Senior Prosecutor coordinating the Lava Jato Special Team), which purports to portray the findings of Peru’s investigation into the corruption scheme has opened the door to the assessment of the requested evidence, especially because Mr. Vela addresses PeruPetro and related corruption findings, as well as public biddings (at least as related to Graña y Montero), in his Declaration. <i>See, e.g.</i>, Vela Decl. ¶¶ 23, 24.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 8.</p>
Decision of the Tribunal	Claimant’s RFP No. 8 is granted.

Request No. 9

Document Request No.	9
Documents or category of documents requested (requesting Party)	All documents related to PetroPeru’s initial decision in January 2015 to participate in the operation of Blocks III and IV, as well as to its subsequent decision not to participate in the operations of the Blocks and to cede the entirety of its participation interest in Blocks III and IV to Graña y Montero.
Relevance and materiality, incl. references to submission (requesting Party)	<p>This request is relevant to Mr. Amorrortu’s contention that his Direct Negotiation with PetroPeru was aborted because Graña y Montero had secured the rights to operate Blocks III and IV by corrupt means. SoC ¶¶ 113–114, 145–149. Indeed, these documents will allow Mr. Amorrortu to show that the adjudication of Blocks III and IV in favor of Graña y Montero was plagued by irregularities, one of which was PetroPeru’s decision to cede its operational interests in Blocks III and IV against its own interests. SoD ¶¶ 178–190; SoC ¶ 148.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p>
Reasoned objections to document production request (objecting Party)	<p>The Republic of Peru objects to this request for three reasons.</p> <p><u>The request does not meet the requirements of Article 3(3)(a)(ii) of the IBA Rules because it fails to identify a “narrow and specific requested category of Documents.”</u></p> <ul style="list-style-type: none"> • <i>First</i>, the request fails to identify the types of documents sought, merely requesting “all documents.” If the request is unable even to identify the type of document it is seeking, it is not seeking a “narrow” or “specific” category of documents. On its terms, the request would likely yield a voluminous number of results due to Claimant’s failure to identify the type(s) of document(s) requested. It would thus be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules. • <i>Second</i>, the request fails to limit “all documents” sought to a reasonable period. On its terms, the request would require the Republic of Peru to search for and produce “all documents” from no less than a decade-long period (<i>i.e.</i>, 2014 to the present). It would thus be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules. • <i>Third</i>, the request fails to limit “all documents” sought to those held by a specific agent of the Republic of Peru. On its terms, the request would cover all documents held by the government of Peru, including <i>any</i> of “its political subdivisions, entities, departments, agencies, organs, and

	<p>ministries” given Claimant’s overly broad definition of “Respondent.”²¹ It would thus be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules.</p> <p>All of the above demonstrates that Claimant’s request seeks an impermissible fishing expedition. The request should be rejected.</p> <p><u>The request lacks “sufficient relevance to the case” and “materiality to its outcome” under Article 9(2)(a) of the IBA Rules.</u></p> <ul style="list-style-type: none">• <i>First</i>, Mr. Amorrortu maintains that the documents requested are relevant to his “contention that his Direct Negotiation with PetroPeru was aborted because Graña y Montero had secured the rights to operate Blocks III and IV by corrupt means.” However, none of the requested documents are relevant or material to this issue because they bear no relationship to or shed light on the purported corruption scheme alleged by Claimant. Rather, the documents relate to a fact (PETROPERU’s decision not to participate in the Blocks) which took place <i>after</i> the Blocks had been adjudicated through the Bidding Processes (<i>see</i> SoD, ¶ 180).• <i>Second</i>, Mr. Amorrortu maintains that the documents requested “will allow Mr. Amorrortu to show that the adjudication of Blocks III and IV in favor of Graña y Montero was plagued by irregularities, one of which was PetroPeru’s decision to cede its operational interests in Blocks III and IV against its own interests.” However, none of the requested documents are relevant or material to this issue because they bear no relationship to or shed light on the purported “irregularities” alleged by Claimant. Rather, the documents relate to a fact (PETROPERU’s decision not to participate in the Blocks) which took place <i>after</i> the GyM had been chosen as the winner of the Bidding Processes.• <i>Third</i>, Mr. Amorrortu has failed to show—either in this Schedule or the SoC—that PETROPERU’s decision not to participate in the Blocks in 2015 is relevant or material to his claim that the Alleged Proposal was ignored in order to favor GyM in the Bidding Processes in 2014 (<i>see</i> SoD, ¶¶ 181-191). <p><u>The request imposes an “unreasonable burden” on the Republic of Peru contrary to Article 9(2)(c) of the IBA Rules.</u></p> <ul style="list-style-type: none">• <i>First</i>, as noted above, the request seeks an undefined type of documents, thereby necessitating an unduly burdensome search and production effort.• <i>Second</i>, as noted above, the request fails to limit “all documents” requested to any specific time period, thereby necessitating an unduly burdensome search and production effort.
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²¹ Claimant defines “Respondent” as “the government of Peru, including its political subdivisions, entities, departments, agencies, organs, and ministries.” Claimant’s Redfern Request for Production (20 May 2024), p. 2.

	<ul style="list-style-type: none"> • <i>Third</i>, as noted above, the request is not limited to documents held by a specific agent of the Republic of Peru, thereby necessitating an unduly burdensome search and production effort. <p>Accordingly, Claimant’s request should be rejected.</p>
<p>Responses to objections to document production request (requesting Party)</p>	<p>1. Mr. Amorrortu’s RFP complies with Article 3(3)(a) of the IBA Rules because it is narrowly tailored.</p> <p>First, Respondent’s objection fails because the Request is narrow and specific. As the Request makes clear, its scope is limited to documents directly related to PetroPeru’s decision regarding its non-participation in the operations of Blocks III and IV, after such concessions had been awarded to Graña y Montero (SoC ¶ 148).</p> <p>Second, while the Request uses the term “all documents,” it is clear from the context that the documents sought include specific categories such as internal communications, evaluations, and reports that related to PeruPetro’s official decision to abstain from participation in the operation of Blocks III and IV. Therefore, the Request does <i>not</i> require an unduly broad search but targets specific document related to PetroPeru’s decision-making processes regarding these blocks.</p> <p>Third, the Request is focused on a clearly defined time period (<i>i.e.</i>, February 2014 through March 2015), timeframe in which PetroPeru made its initial decision to participate in the operations of the Blocks and its subsequent determination to cede the entirety of the project to Graña y Montero. Further, the Request can be reasonably interpreted to target responsive document in the custody of PetroPeru and any agency directly involved in PetroPeru’s decision-making process. A search limited to these parameters is not unduly burdensome. Indeed, Respondent’s claims of confusion as to the scope and timeframe of the Request is clearly belied by its submissions, wherein it clearly outlines the relevant timeline, procedural steps, and decision-makers behind PetroPeru’s determination to cede the operations of the Blocks to Graña y Montero (SoD ¶¶ 178–191)</p> <p>2. Mr. Amorrortu’s RFP complies with the IBA Rules because it seeks documents that are relevant to the case and material to its outcome; and therefore, render Article 9(2)(a) of the IBA Rules inapplicable here.</p> <p>The documents requested are highly relevant and material to Mr. Amorrortu’s claims that the adjudication of Blocks II and IV to Graña y Montero was driven by corruption and not by Graña y Montero’s merits or the best interests of Peru. As such, these documents will provide critical evidence regarding the internal deliberations and reasons behind PetroPeru’s decision to cede its interests to Graña y Montero. Understanding why PetroPeru decided to cede its interest in the operation of the Blocks is crucial for establishing that, similar to the admittedly corrupt public concessions, the adjudication of Blocks III and IV was fraught with procedural irregularities. Thus, these documents will help Mr. Amorrortu establish that the decision was not made in PetroPeru’s best interest, but was influenced by</p>

	<p>the corruption scheme (SoD ¶¶ 178–190; SoC ¶ 145–149), facts that are both central and relevant to the case, and material to its outcome.</p> <p>3. Mr. Amorrortu’s RFP cannot be found to be unreasonable burden under Article 9(2)(c) of the IBA Rules.</p> <p>Likewise, the burden of producing these documents is reasonable and not excessive. As noted above, the documents requested are specific to PetroPeru’s decisions to participate in the operation of Blocks III and IV from 2014 through 2015. And the search for these documents should be focused on PetroPeru’s records—and those of entities directly involved in PetroPeru’s determination—and does not require an extensive search across all government entities. Limiting the search to these reasonable parameters will reduce Respondent’s burden and ensures that the request is manageable.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 9.</p>
Decision of the Tribunal	<p>Claimant’s RFP No. 9 is granted only to the extent it refers to documents that provide reasons and justification for PetroPeru’s initial decision in January 2015 to participate in the operation of Blocks III and IV, as well as to its subsequent decision not to participate in the operations of the Blocks and to cede the entirety of its participation interest in Blocks III and IV to Graña y Montero.</p>

Request No. 10

Document Request No.	10
Documents or category of documents requested (requesting Party)	A complete copy of, and all documents related to, the Complaint filed by the National Coalition of PetroPeru’s Unions (the “CNSP”) regarding the bidding process for Block III, wherein the CNSP alleged procedural irregularities with the adjudication of Block III to Graña y Montero.
Relevance and materiality, incl. references to submission (requesting Party)	<p>This request is relevant to Mr. Amorrortu’s contention that his Direct Negotiation with PetroPeru was aborted because Graña y Montero had secured the rights to operate Blocks III and IV by corrupt means. SoC ¶¶ 113–114, 145–149. Indeed, these documents will allow Mr. Amorrortu to show that the adjudication of Blocks III and IV in favor of Graña y Montero was plagued by irregularities, one of which was Graña y Montero’s failure to satisfy all the requirements of the public bidding process. SoD ¶¶ 192–198; SoC ¶ 147–148.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p>
Reasoned objections to document production request (objecting Party)	<p>The Republic of Peru objects to this request for three reasons.</p> <p><u>The request does not meet the requirements of Article 3(3)(a)(ii) of the IBA Rules because it fails to identify a “narrow and specific requested category of Documents.”</u></p> <ul style="list-style-type: none"> • <i>First</i>, Claimant’s request for “all documents related to the Complaint” fails to identify any specific information or topic(s) concerning the CNSP to which such documents should relate. The request’s formulation is so broad and sweeping that it is an egregious example of a prohibited “fishing expedition.” • <i>Second</i>, Claimant’s request for “all documents related to the Complaint” fails to identify the types of documents sought. If the request is unable even to identify the type of document it is seeking, it is not seeking a “narrow” or “specific” category of documents. On its terms, the request could yield a voluminous number of results due to Claimant’s failure to identify the type(s) of document(s) requested. It would thus be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules. • <i>Third</i>, the request fails to limit “all documents” sought to a reasonable period. On its terms, the request would require the Republic of Peru to search for and produce “all documents” from no less than a nine-year period (<i>i.e.</i>, 2015 to the present). It would thus be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules. • <i>Fourth</i>, the request fails to limit “all documents” sought to those held by a specific agent of the Republic of Peru. On its terms, the request would cover all documents held by the government of Peru, including <i>any</i> of

	<p>“its political subdivisions, entities, departments, agencies, organs, and ministries” given Claimant’s overly broad definition of “Respondent.”²² It would thus be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules.</p> <p><u>The request lacks “sufficient relevance to the case” and “materiality to its outcome” under Article 9(2)(a) of the IBA Rules.</u></p> <ul style="list-style-type: none"> • <i>First</i>, Mr. Amorrortu maintains that the documents requested are relevant to his “contention that his Direct Negotiation with PetroPeru was aborted because Graña y Montero had secured the rights to operate Blocks III and IV by corrupt means.” However, Mr. Amorrortu has made no claims in this arbitration of having initiated a direct negotiation with PETROPERU (as opposed to Perupetro) such that the documents requested could be relevant and material to the outcome of this case. • <i>Second</i>, and assuming that Mr. Amorrortu meant to indicate that the documents requested are relevant to his contention that Baspetro’s direct negotiation with <i>Perupetro</i> was aborted because Graña y Montero had secured Blocks’ operation through corruption, none of the requested documents are relevant or material to this issue because they bear no relationship to or shed light on the purported corruption scheme alleged by Claimant. Rather, the documents relate to a fact (CNSP’s complaint) which took place <i>after</i> the Blocks had been adjudicated through the Bidding Processes (<i>see</i> SoD, ¶ 196). Moreover, as Peru has established, the CNSP complaint was investigated and ultimately deemed unsubstantiated (<i>see</i> SoC, ¶¶ 195-198; R-49). <p><u>The request imposes an “unreasonable burden” on the Republic of Peru contrary to Article 9(2)(c) of the IBA Rules.</u></p> <ul style="list-style-type: none"> • <i>First</i>, as noted above, the request seeks an undefined type of documents, thereby necessitating an unduly burdensome search and production effort. • <i>Second</i>, as noted above, the request fails to limit “all documents” sought to any specific information or topic(s), thereby necessitating an unduly burdensome search and production effort. • <i>Third</i>, as noted above, the request fails to limit “all documents” sought to any specific time period, thereby necessitating an unduly burdensome search and production effort. • <i>Fourth</i>, as noted above, the request is not limited to documents held by a specific agent of the Republic of Peru, thereby necessitating an unduly burdensome search and production effort. <p>Accordingly, Claimant’s request should be rejected.</p>
Responses to objections to document	<p>1. Mr. Amorrortu’s RFP complies with Article 3(3)(a) of the IBA Rules because it is narrowly tailored.</p>

²² Claimant defines “Respondent” as “the government of Peru, including its political subdivisions, entities, departments, agencies, organs, and ministries.” Claimant’s Redfern Request for Production (20 May 2024), p. 2.

<p>production request (requesting Party)</p>	<p>Here, too, Respondent’s objection misses the mark because Mr. Amorrortu’s Request is narrow and specific. In fact, the Request targets documents related to a well-defined event and category of documents: the Complaint filed by the National Coalition of PetroPeru’s Unions (CNSP) regarding the bidding process for Block III (SoD ¶¶ 195–198). Accordingly, the Request can be reasonably interpreted to include internal communications, meeting minutes, reports, and official decisions related to the CNSP complaint, and to target responsive documents in the custody of PetroPeru, and entities directly involved in the bidding process for Block III.</p> <p>2. Mr. Amorrortu’s Request complies with the IBA Rules because it seeks documents that are relevant to the case and material to its outcome; therefore, Article 9(2)(a) of the IBA Rules is inapplicable here.</p> <p>The documents requested are highly relevant and material to Mr. Amorrortu’s claims because the CNSP Complaint directly addressed procedural irregularities in the bidding process for Block III. The CNSP’s allegations mirror those that Mr. Amorrortu has asserted in this arbitration and, to the extent that they reflect similar patterns or indicators of corruption, they will support Mr. Amorrortu’s claims that the adjudication of Blocks III and IV was part of an overarching corruption scheme between Graña y Montero and Peru.</p> <p>Further, Respondent’s argument that Mr. Amorrortu’s Direct Negotiation process was carried out with PeruPetro, as opposed to PetroPeru, does not make the Request any less relevant. As Mr. Amorrortu alleges—and the record reflects—the corruption scheme in this case involved the highest levels of Peruvian government, including the Former President, the First Lady, Ministers, Vice-Ministers, and various government entities, including both PeruPetro and PetroPeru (SoC ¶¶ 113–114, 271–280; Expert Report of Monica Yaya ¶¶ 40, 86).</p> <p>Finally, Respondent’s allegation that the documents are irrelevant because they relate to events after the bidding process is flawed. As noted above, the CNSP Complaint is closely related to the allegations that Mr. Amorrortu is asserting in these proceedings and, as such, documents related to the CNSP Complaint will support Mr. Amorrortu’s theory that the adjudication of Blocks III and IV was part of an overarching corruption scheme.</p> <p>3. Mr. Amorrortu’s RFP cannot be found to cause Peru an unreasonable burden Under Article 9(2)(c) of the IBA Rules.</p> <p>The burden of producing these documents is reasonable and not excessive. Mr. Amorrortu’s Request is specific to documents related to the CNSP Complaint regarding the bidding process for Block III, limiting the scope and ensuring a manageable search effort. As such, the search for these documents is focused on PetroPeru and entities directly involved in addressing and/or investigating the CNSP Complaint.</p> <p>Likewise, the Request can be reasonably interpreted to limit Respondent’s search to a timeline that spans from the inception of the CNSP Complaint all throughout its final disposition or adjudication (SoD ¶¶ 195–197). This focus limits the scope</p>
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	<p>and ensures that the search is not unduly broad, minimizing the burden on Respondent.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu's RFP No. 10.</p>
Decision of the Tribunal	Claimant's RFP No. 10 is granted.

Request No. 11

Document Request No.	11
Documents or category of documents requested (requesting Party)	All documents and communications between current or former PeruPetro employees, directors, managers, or agents (including, but not limited to, Luis Ortigas and Isabel Tafur), and documents and communications between current or former PeruPetro employees, directors, managers, or agents and any Peruvian government officials (including, but not limited to, Nadine Heredia) discussing, or relating to, the operation of Blocks III and IV.
Relevance and materiality, incl. references to submission (requesting Party)	<p>This request is relevant to Mr. Amorrortu’s allegations that he submitted the Baspetro Proposal to PeruPetro pursuant to the instructions of PeruPetro’s then President, Luis Ortigas, and that despite meeting all the requirements needed to give rise to a Direct Negotiation process, his Direct Negotiation process was arbitrarily aborted by PeruPetro in favor of Graña y Montero. SoC ¶¶ 67–81.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p>
Reasoned objections to document production request (objecting Party)	<p>The Republic of Peru objects to this request for three reasons.</p> <p><u>The request does not meet the requirements of Article 3(3)(a)(ii) of the IBA Rules because it fails to identify a “narrow and specific requested category of Documents.”</u></p> <ul style="list-style-type: none"> • <i>First</i>, the request fails to identify the types of documents sought, merely requesting “all documents and communications.” If the request is unable even to identify the type of document it is seeking, it is not seeking a “narrow” or “specific” category of documents. Given Claimant’s failure to identify the type(s) of document(s) requested, it would be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules. • <i>Second</i>, the request fails to identify any specific information or topic(s) concerning the “operation of Blocks III and IV” that “all documents and communications” requested should relate to. The request’s formulation is so broad and sweeping that it is an egregious example of a prohibited “fishing expedition.” • <i>Third</i>, the request fails to limit “all documents and communications” sought to a reasonable period. On its terms, the request would require the Republic of Peru to search for and produce “all documents” from no less than a 124-year period (<i>i.e.</i>, since 1900, when activities in the Blocks commenced to the present). It would thus be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules. • <i>Fourth</i>, the request fails to limit “all documents and communications” sought to those held by a specific agent of the Republic of Peru. On its terms, the request would cover all documents held by the government of Peru, including <i>any</i> of “its political subdivisions, entities, departments, agencies, organs, and ministries” given Claimant’s overly broad

	<p>definition of “Respondent.”²³ Indeed, the request seeks documents and communications “between current or former PeruPetro employees, directors, managers, or agents [...] and documents and communications between current or former PeruPetro employees, directors, managers, or agents and any Peruvian government officials.” In this respect, the request could not be articulated more broadly. It would thus be unduly burdensome for the Republic of Peru to search for, collect, and produce the responsive documents under Article 9(2)(c) of the IBA Rules.</p> <p><u>The request lacks “sufficient relevance to the case” and “materiality to its outcome” under Article 9(2)(a) of the IBA Rules.</u></p> <p>Mr. Amorrortu maintains that the documents requested are relevant to his “allegations that he submitted the Baspetro Proposal to PeruPetro pursuant to the instructions of PeruPetro’s then President, Luis Ortigas, and that despite meeting all the requirements needed to give rise to a Direct Negotiation process, his Direct Negotiation process was arbitrarily aborted by PeruPetro in favor of Graña y Montero.” However, the requested documents are not relevant or material to this issue because they bear no relationship to or shed light on Perupetro’s treatment and processing of the Alleged Proposal. Rather, the documents requested relate to <i>the Blocks’ general operation</i>, an issue which plainly bears no connection to whether or not Mr. Amorrortu, through Baspetro, initiated a direct negotiation. The lack of relevance and materiality of the documents and communications requested is further compounded by Claimant’s failure to limit the request to a reasonable period. Indeed, by failing to provide any period, the request seeks documents concerning the Blocks’ operation well before and after the Alleged Proposal without any explanation as to how they could be relevant and material to whether Mr. Amorrortu’s alleged direct negotiation with Perupetro was “arbitrarily aborted.”</p> <p><u>The request imposes an “unreasonable burden” on the Republic of Peru contrary to Article 9(2)(c) of the IBA Rules.</u></p> <ul style="list-style-type: none"> • <i>First</i>, as noted above, the request seeks an undefined type of documents, thereby necessitating an unduly burdensome search and production effort. • <i>Second</i>, as noted above, the request fails to limit “all documents and communications” sought to any specific information or topic(s), thereby necessitating an unduly burdensome search and production effort. • <i>Third</i>, as noted above, the request fails to limit “all documents and communications” sought to any specific time period, thereby necessitating an unduly burdensome search and production effort. • <i>Fourth</i>, as noted above, the request is not limited to documents held by a specific agent of the Republic of Peru, thereby necessitating an unduly burdensome search and production effort. <p>Accordingly, Claimant’s request should be rejected.</p>
Responses to objections to	

²³ Claimant defines “Respondent” as “the government of Peru, including its political subdivisions, entities, departments, agencies, organs, and ministries.” Claimant’s Redfern Request for Production (20 May 2024), p. 2.

<p>document production request (requesting Party)</p>	<p>1. Mr. Amorrortu’s Request is narrowly tailored and complies with Article 3(3)(a) of the IBA Rules.</p> <p>Respondent’s objection is unavailing because, when properly read, Mr. Amorrortu’s Request is narrow and specific. First, contrary to Respondent’s claims, the Request is expressly limited to documents and communications discussing or relating to the operation of Blocks III and IV. Moreover, the Request is targeted at documents and communications involving specific PeruPetro employees, directors, managers, or agents, and specific Peruvian government officials, and the applicable timeline is implicitly limited to the period relevant to the operation of Blocks III and IV and the events surrounding Mr. Amorrortu’s allegations.</p> <p>2. Mr. Amorrortu’s RFP complies with the IBA Rules because it seeks documents that are relevant to the case and material to its outcome; therefore, application of Article 9(2)(a) of the IBA Rules is unwarranted here.</p> <p>The documents requested are highly relevant and material to Mr. Amorrortu’s claims because, among other things, they are essential to understanding the decisions that led to the arbitrary termination of Mr. Amorrortu’s Direct Negotiation process, and the ultimate award of the contracts to Graña y Montero.</p> <p>As noted above, the Request targets documents and communications involving key individuals who played a role in the decision-making process related to the operation of Blocks III and IV. In fact, some of these individuals were in direct communications with Mr. Amorrortu since the inception of his Direct Negotiation process with Peru and, as such, were aware that such a process was underway (SoC ¶¶ 67–74). Accordingly, these documents are crucial for establishing the context and the reasons behind the termination Baspetro’s Direct Negotiation process and the award of the contracts to Graña y Montero, facts that are relevant to the case and material to its outcome.</p> <p>3. Mr. Amorrortu’s RFP cannot be found to create an unreasonable burden upon Peru Under Article 9(2)(c) of the IBA Rules.</p> <p>Finally, the burden of producing these documents is reasonable and not excessive. The Request is specific to documents and communications involving key individuals and entities related to the operation of Blocks III and IV during the relevant time period. As such, the search for these documents will be focused on specific individuals and entities directly involved in the decision-making process relating to the termination of Baspetro’s Direct Negotiation process.</p> <p>Further, the relevance and materiality of these documents to the case justifies the effort required to produce them. They are essential for establishing the context and reasons behind the decisions to terminate Mr. Amorrortu’s Direct Negotiation process and to award the operation of Blocks III and IV to Graña y Montero.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 11.</p>
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Decision of the Tribunal	Claimant’s RFP No. 11 is rejected (overly broad and speculative as to its relevance).

Request No. 12

Document Request No.	12
Documents or category of documents requested (requesting Party)	All documents and communications between Nadine Heredia and Luis Ortigas between 2011 and 2013 (when Mr. Ortigas was the Vice-Minister of Energy), and 2013 and 2015 (when Mr. Ortigas was the President of PeruPetro), discussing, or relating to, any of the allegations the SoC.
Relevance and materiality, incl. references to submission (requesting Party)	<p>This request is relevant to Mr. Amorrortu’s allegations that he submitted the Baspetro Proposal to PeruPetro pursuant to the instructions of PeruPetro’s then President, Luis Ortigas, and that despite meeting all the requirements needed to give rise to a Direct Negotiation process, his Direct Negotiation process was arbitrarily aborted by PeruPetro in favor of Graña y Montero. SoC ¶¶ 67–81.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p>
Reasoned objections to document production request (objecting Party)	<p>The Republic of Peru objects to this request for two reasons.</p> <p><u>The request does not meet the requirements of Article 3(3)(a)(ii) of the IBA Rules because it fails to identify a “narrow and specific requested category of Documents.”</u></p> <ul style="list-style-type: none"> • <i>First</i>, the request fails to identify the types of documents sought, merely requesting “all documents and communications.” If the request is unable even to identify the type of document it is seeking, it is not seeking a “narrow” or “specific” category of documents. • <i>Second</i>, the request fails to identify any specific information or topic(s) that “all documents and communications” requested should relate to. Rather, the request seeks all documents and communications “discussing, or relating to, any of the allegations the SoC” (emphasis added), passing the burden onto the Republic of Peru to identify every single allegation made in the SoC and formulate a search accordingly. In this respect, the request’s formulation is so broad and sweeping that it is an egregious example of a prohibited “fishing expedition” through which Mr. Amorrortu hopes to build his claims. <p><u>The request imposes an “unreasonable burden” on the Republic of Peru contrary to Article 9(2)(c) of the IBA Rules.</u></p>

	<ul style="list-style-type: none"> • <i>First</i>, the request seeks an undefined type of “documents and communications”, thereby necessitating an unduly burdensome search and production effort. • <i>Second</i>, the request fails to limit “all documents and communications” sought to any specific information or topic(s), thereby necessitating an unduly burdensome search and production effort. <p>Accordingly, Claimant’s request should be rejected.</p>
<p>Responses to objections to document production request (requesting Party)</p>	<p>1. Mr. Amorrortu’s Request is narrowly tailored and complies with Article 3(3)(a) of the IBA Rules.</p> <p>Respondent’s objection lacks merit because the Request, when properly read, is narrow and specific. First, the Request targets two individuals (<i>i.e.</i>, Nadine Heredia and Luis Ortigas), during a specific time period (<i>i.e.</i>, 2011 through 2015). Further, when read in the context of this case, the Request can be reasonably interpreted as seeking documents and communications that pertain to the First Lady’s influence over Mr. Ortigas and other government officials, her influence over Peru’s energy sector decisions, the Baspetro Direct Negotiation process, the Baspetro Proposal, and the decision to award the operation of Blocks III and IV to Graña y Montero.</p> <p>2. Mr. Amorrortu’s RFP cannot be found to create an unreasonable burden upon Peru under Article 9(2)(c) of the IBA Rules.</p> <p>Here, too, Respondent’s boilerplate objection misses the mark. The burden of producing these documents is reasonable and justified given their importance to the case. The request is specific to documents and communications between two key individuals during specifically defined periods of time. And the types of documents sought can be reasonably interpreted as including all communications, and any type of document, exchanged between the First Lady and Mr. Ortigas that is relevant to the subtopics outlined in the paragraph above.</p> <p>In other words, the search for responsive documents will be focused on communications between Nadine Heredia and Luis Ortigas during the specified periods. This targeted approach will limit the scope and ensures that the search is not unduly broad or burdensome for Respondent.</p> <p>3. Respondent opened the door to the assessment of this type of evidence.</p> <p>Finally, Respondent’s introduction of Ernesto Vela’s Declaration (Senior Prosecutor coordinating the Lava Jato Special Team), which purports to portray the findings of Peru’s investigation into the corruption scheme has opened the door to the assessment of the requested evidence, especially because Mr. Vela addresses First Lady Nadine Heredia multiple times in his Declaration within the context of his familiarity with investigations into the First Lady regarding corruption. <i>See, e.g.</i>, Vela Decl. ¶¶ 21, 22, 25-28.</p> <p>As such, the Tribunal should order Peru to comply with production to Mr. Amorrortu’s RFP No. 12.</p>

Decision of the Tribunal	Claimant's RFP No. 12 is granted only to the extent it refers to documents and communications between Nadine Heredia and Luis Ortigas between 2011 and 2015 discussing, or relating to, the Baspetro Direct Negotiation process, the Baspetro Proposal, and the decision to award the operation of Blocks III and IV to Graña y Montero.
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Request No. 13

Document Request No.	13
Documents or category of documents requested (requesting Party)	A full copy of the license that Respondent awarded to Graña y Montero for the operation of Blocks III and IV, including all documents attached, annexed, or adjoined to the operational license.
Relevance and materiality, incl. references to submission (requesting Party)	<p>These documents are relevant to Mr. Amorrortu’s claim that his rights in Blocks III and IV were breached as a result of Graña y Montero’s corruption scheme to secure government contracts (including over Blocks III and IV) in exchange for the payment of bribes. SoC ¶¶ 114, 148–149, 265, 271–278. Specifically, these documents will show that the adjudication process for Blocks III and IV was plagued by irregularities and was manipulated in favor of Graña y Montero. SoC ¶¶ 158–167; Expert Report of Monica Yaya ¶¶ 144–159.</p> <p>Mr. Amorrortu repeats and incorporates the reasons provided in Nos. 1 and 2 above as if set forth fully herein.</p>
Reasoned objections to document production request (objecting Party)	<p>This request must be rejected because Claimant has failed to indicate “why it would be unreasonably burdensome for” him to produce the requested documents as required by Article 3(3)(c) of the IBA Rules. Given that the information requested is publicly available on Perupetro’s website, there is no reason why Claimant could not have produced the documents requested himself.</p> <p>The contract for Block III is available at: https://www.perupetro.com.pe/wps/wcm/connect/corporativo/fba0256e-3ed8-4de4-a8fc-c5682bb11610/L+III+-+n.pdf?MOD=AJPERES.</p> <p>The contract for Block IV is available at: https://www.perupetro.com.pe/wps/wcm/connect/corporativo/7f1369f2-f1a4-456c-a0ab-f33a5f649a23/L+IV+-+n.pdf?MOD=AJPERES.</p>
Responses to objections to document production request (requesting Party)	<p>Respondent objects on the basis that the requested information is publicly available on the provided links. This representations is incorrect and misleading.</p> <p>As noted in the Request, Mr. Amorrortu seeks not only the copies of the contracts for the operation of Blocks III and IV but also all additional documents that are attached, annexed, or adjoined to the operational license. This includes any agreements, supplementary contracts, or related documents that are typically executed concurrently or in parallel with the main operational license between the oil companies and the country.</p> <p>As such, Respondent’s response is insufficient and full compliance with Mr. Amorrortu’s RFP No. 13 should be ordered.</p>
Decision of the Tribunal	Claimant’s RFP No. 13 is granted only to the extent it refers to the documents attached, annexed, or adjoined to the license that Respondent awarded to Graña y Montero for the operation of Blocks III and IV.

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Respectfully submitted on July 9, 2024

/s/ Francisco A. Rodriguez

ReedSmith LLP

Francisco A. Rodriguez
Gilberto A. Guerrero-Rocca
Ana R. Ulseth

Counsel for Claimant

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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 REQUESTS FOR THE
PRODUCTION OF DOCUMENTS

9 July 2024

Vanessa Rivas Plata Saldarriaga
Jhans Panihuara Aragón

La Comisión Especial que Representa el Estado en
Controversias Internacionales de Inversión

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**THE REPUBLIC OF PERU’S
REQUEST FOR THE PRODUCTION OF DOCUMENTS**

1. In accordance with Procedural Order No. 1 and the modified Procedural Calendar, Respondent, the Republic of Peru (“**Respondent**”, “**Peru**”, or the “**Republic**”) hereby submits this request for the production of documents by Claimant, Mr. Bacilio Amorrortu (“**Claimant**” or “**Amorrortu**”).
2. In **Section I** below, the Republic provides definitions and interpretations to inform and clarify its document production requests. **Section II** sets forth additional terms applicable to this request. Peru’s specific requests for the production of documents are then set out in the Redfern Schedule attached hereto and forming a part hereof.
3. By this request, Peru seeks voluntary production of each category of documents identified in the Redfern Schedule below, failing which Peru requests that the Tribunal Order Claimant to produce such documents.

I. Definitions and Interpretations

4. Defined terms in this request and in the Redfern Schedule have the meaning given to them in Peru’s Statement of Defense and Objections to Jurisdiction of 29 April 2024. Additionally, the following definitions are applicable to this request for documents:

“Alleged Proposal” means the alleged proposal from Baspetro S.A.C to Perupetro to operate Blocks III and IV of the Peruvian North-West, dated 27 May 2014 (**C-11**);

“and” and “or” shall be construed conjunctively and disjunctively as necessary to make the requests inclusive rather than exclusive;

“any” and “all” mean “all”;

“Document(s)” and “document(s)” means any writing, communication (including letters, memoranda, e-mails, and facsimiles), report, notes, meeting minutes, transcripts, talking points, speech, agreement (and annexes thereto), contract, financial statement, accounting record, proposal, picture, diagram, drawing, chart, program, or data of any kind, whether recorded or maintained on paper or other hard copy or by any electronic, audio, visual, mechanical, or any other means of storing or recording information. A draft or non-identical copy (including one with notations) is a separate document;

“include” and “including” means “including but not limited to”;

“Blocks” means Blocks III and IV in the Talara Region;

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“Baspetro” means “BASPETROL S.A.C”;

“SoC” means Mr. Amorrortu’s Statement of Claim of 21 August 2023;

“SoD” means Peru’s Statement of Defense and Objections to Jurisdiction of 29 April 2024;

“USPTPA” or the “Treaty” means the United States and Peru Trade and Promotion Agreement Investment Chapter (12 April 2006);

Any reference to one or more of the words “address,” “refer to,” “reflect,” “concern,” “constitute,” “discuss,” “evidence,” “demonstrate,” “comprise,” “contain,” or any like word shall be deemed to incorporate all such words and, accordingly, be construed inclusively;

5. Use of the singular includes the plural, and vice versa;
6. Reference to any company shall be considered to also include its employees, directors, officers and agents.

II. Additional Terms

7. In accordance with Article 3(3) of the 2020 Rules on the Taking of Evidence in International Commercial Arbitration issued by the International Bar Association (“**IBA Rules**”), which the Tribunal may deem of use in connection with this request as provided in Section 6.1 of Procedural Order No. 1, all of Peru’s requests herein are for documents that are:
 - (a) relevant to the case and material to its outcome (as explained in more detail in the attached Redfern Schedule, including by reference where applicable to the Parties’ written submissions and witness, expert and documentary evidence);
 - (b) not, or no longer, in the possession, custody or control of the Republic, and reasonably believed to exist and to be in the possession, custody or control of Claimant; and
 - (c) not unreasonably burdensome to produce since they are either particularized or belong to narrow and specific categories of documents.
8. For the avoidance of doubt but subject to the definition of “Document(s)” and “document(s)” in Section I above, particularly its final sentence regarding drafts and non-identical copies, the Republic is not requesting Claimant to re-produce documents to the extent that such responsive documents are already part of the record in this case.
9. Each document request seeks production of documents in their entirety, without abbreviation, expurgation or redaction, and together with any attachments, enclosures and annexes.

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10. These document requests are continuing, such that Claimant should produce any additional responsive documents that come to its attention or come into its possession, custody or control after the date of the initial production.
11. In accordance with Section 5.4 of Procedural Order No. 1, Peru invites Claimant to submit the requested documents:
 - (a) in electronic copy, either (i) where the document was originally in hard copy, in PDF format (with one PDF file per document); or (ii) where the document was originally in electronic format, in the original format of the document, without removing or altering the document’s metadata;
 - (b) organized in such a way as to distinguish the documents that are responsive to the different requests enumerated in the Redfern Schedule;
 - (c) accompanied by an index indicating the document request number or numbers to which each document is responsive; and
 - (d) in text searchable (*i.e.*, OCR) format.
12. To the extent that documents responsive to any request are located and withheld by Claimant on account of any alleged privilege or for any other reason, Claimant is asked to provide, together with its response, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production. Similarly, to the extent Claimant redacts any document, it is requested to provide full reasons for doing so. Peru reserves its rights in connection with both eventualities.
13. If the documents requested by Peru exist or once existed but are no longer in Claimant’s possession, custody, or control, Peru requests Claimant to identify such documents and the circumstances under which they were lost and/or destroyed and/or left their possession, custody, or control.
14. This document production request is without prejudice to any request that the Republic may make in the future that the Tribunal order the production of documents or other evidence at any time during the arbitral proceedings pursuant to Article 27(3) of the applicable UNCITRAL Arbitration Rules.

Respectfully submitted,



Kenneth J. Figueroa

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Document Request No.	1
Documents or category of documents requested (requesting Party)	Letter dated 6 February 2015 from Bacilio Amorrortu and/or Baspetro to the United States Department of State complaining about irregularities in the bidding process for Blocks III and IV, including any documents attached thereto.
Relevance and materiality, incl. references to submission (requesting Party)	<p>Mr. Amorrortu alleges that on 6 February 2015, “[c]onsidering the glaring irregularities in the [bidding] process,” he sent a letter to the United States State Department including a compilation of letters submitted to Perupetro (SoC, ¶ 88; Amorrortu WS, ¶ 97).</p> <p>The documents requested are relevant and material to the assessment of the date Mr. Amorrortu first acquired or should have first acquired knowledge of the alleged breach for purposes of Peru’s time bar objection under Article 10.18.1 of the Treaty (SoD, ¶¶ 226-234).</p>
Reasoned objections to document production request (objecting Party)	<p>Mr. Amorrortu objects to this Request on the grounds that the subject letter was in fact sent to PeruPetro, and therefore, the requested letter is in the possession, custody, or control of Peru. <i>See</i> IBA Guidelines on the Taking of Evidence, ¶¶ 3.3(c).</p> <p>Mr. Amorrortu has not alleged that “[c]onsidering the glaring irregularities in the [bidding] process,’ he sent a letter to the United States State Department.” Rather, as the Statement of Claims expressly provides, the letters that were induced by these irregularities were all sent directly to PeruPetro. SoC ¶ 88. A copy of the requested letter was transmitted by Mr. Amorrortu to the U.S. Department of State in his capacity as a private U.S. citizen.</p>
Response to objections to document production request (requesting Party)	<p><u>The document requested is relevant and material and Mr. Amorrortu’s objections are without merit.</u></p> <p>The Republic of Peru maintains its request for production of the 6 February 2015 Letter from Bacilio Amorrortu and/or Baspetro to the United States Department of State.</p> <p><i>First</i>, Mr. Amorrortu’s argument that he just sent the U.S. Department of State a compilation of letters already in the possession of Perupetro is unconvincing. Because Mr. Amorrortu addressed this compilation of letters to the U.S. Department of State and not to Perupetro, this compilation would have necessarily been accompanied by a new cover letter, separate and distinct from any cover letter addressed to Perupetro, explaining why he decided to engage the U.S. Department of State and requesting specific action from the U.S. Government. This cover letter</p>

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	<p>is not in the possession and/or control of Peru as explained below. Instead, the compilation of letters and the cover letter remain in Mr. Amorrortu’s possession and/or control and Mr. Amorrortu has not denied this.</p> <p><i>Second</i>, Claimant’s objection that this compilation of letters is in the possession and control of Peru because they were sent to Perupetro is misplaced. As Peru demonstrated in its Statement of Defense, Perupetro is a separate and distinct entity from Peru’s central Government (SoD, § III.D). Consequently, even if (<i>quod non</i>) this compilation of letters was ever sent to Perupetro, this does not mean they are in Peru’s possession and/or control. Claimant instead remains in control of the documents sent to the U.S. Department of State and he has not denied it.</p> <p><i>Third</i>, it is undisputed that Mr. Amorrortu sent a compilation of letters to the State Department, “[c]onsidering the glaring irregularities in the [bidding] process” (SoC, ¶ 88; Amorrortu WS, ¶ 97). Amorrortu’s admission that the “letters [...] were induced by these irregularities” makes it clearer than ever that the documents requested will help assess the date Mr. Amorrortu first acquired or should have first acquired knowledge of the alleged breach for purposes of Peru’s time bar objection under Article 10.18.1 of the Treaty (SoD, ¶¶ 226-234).</p>
Decision of the Tribunal	Respondent’s RFP No. 1 is granted.

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Document Request No.	2
Documents or category of documents requested (requesting Party)	<p>Documents evidencing Mr. Amorrortu’s residence in Beaulieu-Sur-Mer, France from 2013 to 2023, including but not limited to:</p> <ul style="list-style-type: none">(i) Residence Card or visas issued to Mr. Amorrortu by the French government.(ii) Deed or lease agreement of property located at Res Belle Etoile Bat A, 7 Chemin Des Myrtes, 06310, Beaulieu-Sur-Mer.(iii) Immigration records of entries and departures to and from France.
Relevance and materiality, incl. references to submission (requesting Party)	<p>Mr. Amorrortu claims that “the United States is his dominant and exclusive nationality” (SoC, ¶ 89). However, at the time of the alleged Treaty breach Mr. Amorrortu held both Peruvian and US nationalities. Nonetheless, Mr. Amorrortu did not provide any evidence that his effective nationality was that of the United States at that time.</p> <p>On the contrary, Mr. Amorrortu’s own evidence shows that he was living at the following address in France at the time of the alleged breach: Res Belle Etoile Bat A, 7 Chemin Des Myrtes, 06310, Beaulieu-Sur-Mer. In fact, he sent several letters to Perupetro and to the Peruvian Government from this location (<i>see</i>, R-16, R-17, R-58).</p> <p>The documents requested are thus relevant and material to the assessment of Mr. Amorrortu’s dominant and effective nationality (<i>see</i> SoD, ¶¶ 240-248).</p>
Reasoned objections to document production request (objecting Party)	<p>Mr. Amorrortu objects to this Request on the grounds that it seeks information that is not relevant or material to the outcome of this arbitration. Specifically, Mr. Amorrortu was never a citizen of France. Mr. Amorrortu resided in France for a brief period of time, but his brief residency in France has no bearing on the question of which of his two nationalities at the time (the United States and Peru) is his dominant nationality.</p> <p>Subject to and without waiving this objection, Mr. Amorrortu will produce responsive, nonprivileged documents in his possession, custody, or control. More specifically, Mr. Amorrortu will produce: (i) copies of his U.S. passport reflecting all of his entries and departures to and from France from 2013 to 2023; (ii) immigration document issued by the government of France reflecting that Mr. Amorrortu briefly resided in France as a U.S. citizen between August 2014 and June 2018; (iii) a French electricity utilities bill; and (iv) French bank account and residency tax invoices.</p>

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Response to objections to document production request (requesting Party)	<p>The Republic of Peru takes note of the documents Mr. Amorrortu has agreed to produce.</p> <p>Nonetheless, in addition to the documents Mr. Amorrortu has agreed to produce, Peru notes that its request to receive the deed or lease agreement of property located at Res Belle Etoile Bat A, 7 Chemin Des Myrtes, 06310, Beaulieu-Sur-Mer is <u>relevant and material and Mr. Amorrortu’s objections are without merit.</u></p> <p>Contrary to Claimant’s contention, the document requested is relevant and material to assessing Mr. Amorrortu’s dominant and effective nationality. Indeed, as mentioned in the Statement of Defense (SoD, ¶ 240), residence is a relevant factor when assessing relevant nationality. Consequently, the document requested, which would further evidence how Mr. Amorrortu did not reside in the United States at the relevant time, but in France, is relevant and material to the assessment of Mr. Amorrortu’s dominant and effective nationality (<i>see</i> SoD, ¶¶ 240-248).</p>
Decision of the Tribunal	<p>The Tribunal takes note of the Claimant’s agreement to produce certain documents in response to Respondent’s RFP No. 2.</p> <p>Respondent’s RFP No. 2 is otherwise denied. The Respondent has not sufficiently established how the other requested documents would be relevant to Mr. Amorrortu’s U.S. or Peruvian nationalities and, therefore, material to the outcome of the arbitration.</p>

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Document Request No.	3
Documents or category of documents requested (requesting Party)	<p>Documents evidencing the ties of Mr. Amorrortu’s three children (namely, Fiorella Amorrortu Montenegro, Sebastian Amorrortu Montenegro, and Bacilio Cesar Amorrortu Montenegro) to Peru, including but not limited to:</p> <ul style="list-style-type: none"> (i) Employment contracts evidencing their employment history in Peru between 2012 and today; (ii) Diplomas and/or degrees granted by Peruvian educational institutions; (iii) Deed or lease agreement of property located in Avenida La Floresta 369, Dpto. 302, Surco, Lima; (iv) Deed or lease agreement of property located in Avenida Guardia Civil No. 617 Dpto. 301, San Borja District, Lima, Peru, and / or in Talara, Pariñas District, Province of Talara, Department of Piura.
Relevance and materiality, incl. references to submission (requesting Party)	<p>Peru argues that the center of a person’s economic, social, and family life is a key factor when determining whether an individual’s nationality is dominant and effective (SoD, ¶ 240).</p> <p>As Peru demonstrated in its SoD, Amorrortu’s children have strong ties to Peru. For example, Ms. Fiorella Amorrortu Montenegro is a Peruvian national who appears to have lived and worked in Peru for extended periods of time (<i>see</i> SoD, ¶ 241(j) and R-54, pp. 8-9). Her residence was located in Av. Guardia Civil N° 617 Dpto. 301, San Borja District, Lima, Peru when Mr. Amorrortu renounced his nationality (<i>see</i> R-54, p. 8; SoD, ¶ 249). Mr. Bacilio Cesar Amorrortu Montenegro, Claimant’s son, is also a Peruvian national and had been the General Manager of a Peruvian company called “COMPAÑIA PESQUERA PUNTA RESTIN S.A.” since February 2013 (<i>see</i> SoD, ¶ 241(j), C-24, p. 3, and R-65). He was also domiciled in Peru at Avenida La Floresta 369, Dpto. 302, Surco, Lima, when Baspترول was incorporated on 17 October 2012.</p> <p>The documents requested are relevant and material to the assessment of Mr. Amorrortu’s dominant and effective nationality.</p>
Reasoned objections to document production request (objecting Party)	<p>Mr. Amorrortu objects to this Request on the grounds that it seeks information that is not relevant or material to the outcome of this arbitration. Further, the Request is unduly burdensome and vague in that it does not define the term “ties” and fails to provide a specific timeframe limiting the chronological scope of the request.</p> <p>The Request is further objectionable, as it seeks documents that are not within the possession, custody, or control of Mr. Amorrortu. Employment contracts, educational degrees, and property deeds or leases that pertain to nonparties Ms. Fiorella Amorrortu Montenegro, or to Mr. Amorrortu’s other children, are plainly</p>

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	<p>outside the scope of this case. Ms. Fiorella Amorrortu is not a shareholder of Baspetrol, and is not otherwise involved in any way in these proceedings. Further, the requested documents are the personal and private property of Mr. Amorrortu’s children (non-parties to this dispute) and are not in the custody of Mr. Amorrortu.</p> <p>Respondent argues that Mr. Amorrortu’s social, economic, and family life are relevant to jurisdictional issues in dispute. However, Respondent fails to show how this rationale entitles it to go <i>beyond Mr. Amorrortu’s</i> personal links and into the private and personal lives of non-parties to this dispute. None of the cases that Respondent purports to rely on lend support to such a sweeping request, <i>see</i> SoD ¶ 240 n.404, nor do these authorities suggest that the personal contacts of third parties with a country ought to be imputed upon a claimant for jurisdictional purposes. As such, Mr. Amorrortu objects to this request in its entirety as overly broad, irrelevant, and disproportionate to the needs of this case.</p> <p>Mr. Amorrortu further objects to this request because it misrepresents the facts by overstating the limited contacts that his sons have had with Peru. Both Sebastian Amorrortu Montenegro and Basilio Cesar Amorrortu Montenegro left Peru for the U.S. in 1999, obtaining political asylum in the U.S. in 2000. They have resided in the U.S. ever since. Both Sebastian and Basilio Cesar Amorrortu are also U.S. citizens.</p>
<p>Response to objections to document production request (requesting Party)</p>	<p>Peru maintains its request.</p> <p><u>The documents requested are relevant and material and Mr. Amorrortu’s objections are without merit.</u></p> <p>Contrary to Claimant’s contention, the ties of Mr. Amorrortu’s immediate family have been considered relevant in assessing the dominant and effective nationality of the claimant even when the immediate family was not involved in the dispute. For example, in <i>Michael and Lisa Ballantine v. Dominican Republic</i>, where the children of Michael and Lisa Ballantine did not participate as parties, the tribunal recognized that “[a]s to the criteria developed by other tribunals to assess dual nationality cases, the ICJ recognized that ‘[d]ifferent factors are taken into consideration, [including] <u>attachment shown by him for a given country and inculcated in his children.</u>’” (RLA-169, ¶ 548). When assessing the claimants’ “personal and professional relationships” the tribunal analyzed the attachment of the Ballantine’s children to the Dominican Republic (RLA-169, ¶¶ 567-568).</p> <p>Additionally, Peru rejects Mr. Amorrortu’s assertion that it has “overstated the limited contacts that [Mr. Amorrortu’s] sons have had with Peru”. Indeed, nowhere in Mr. Amorrortu’s objection did he deny that his children resided and/or domiciled in Peru at the relevant time.</p> <p>Consequently, Peru reiterates its request to receive documents evidencing the ties of Mr. Amorrortu’s three children (namely, Fiorella Amorrortu Montenegro, Sebastian Amorrortu Montenegro, and Bacilio Cesar Amorrortu Montenegro) to</p>

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	<p>Peru, since the documents requested are relevant and material to the assessment of Mr. Amorrortu’s dominant and effective nationality.</p> <p><u>The request for these documents is neither overbroad nor unduly burdensome or vague.</u></p> <p>Contrary to Claimant’s contention, Peru has provided specific examples of the documents it is requesting, <i>i.e.</i>, employment contracts, school diplomas, and lease agreements and/or deeds to specific properties located in Peru. Additionally, as a parent, Mr. Amorrortu is uniquely positioned to have easy access to these documents. Finally, the request is also not overbroad as it is tied to a specific time period (2012 to the present). In view of the types of documents requested, such as school diplomas, employment contracts, and lease agreements, the number of documents to be produced should be quite limited, thus neither overbroad nor burdensome.</p>
Decision of the Tribunal	Respondent’s RFP No. 3 is declined as overbroad, speculative as to the documents requested, and insufficiently relevant. The Claimant also avers that the specific documents identified are not within his possession, custody or control.

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Document Request No.	4
Documents or category of documents requested (requesting Party)	All documents including but not limited to correspondence, notes, minutes of meetings, reports prepared by or on behalf of Mr. Amorrortu and/or Baspetro between 2011 and 2014 in preparation of and in relation to Mr. Amorrortu’s alleged investment in Peru through Baspetro, including, but not limited to documents evidencing the commitment of “various international companies” (SoC, ¶ 59) to Mr. Amorrortu’s project and the preparatory works for the “[alleged] negotiations with PeruPetro” (SoC, ¶ 56).
Relevance and materiality, incl. references to submission (requesting Party)	<p>Mr. Amorrortu claims that “[i]n preparation for the negotiations with PeruPetro [...] [he] scheduled meetings with all former technical employees of his former company, including those who continued to work for Interoil in Blocks III and IV; and [...] coordinated meetings with lawyers and colleagues in the oil industry, both in Houston and Peru to develop the investment” (SoC, ¶ 56).</p> <p>Mr. Amorrortu also claims that he “also made contacts with various international companies [...]” and that “[h]e was also able to enlist the support of international companies such as Flour Corporation for these projects” (SoC, ¶ 59). However, Claimant does not provide any evidence supporting this assertion.</p> <p>As Peru explained in its SoD, Mr. Amorrortu and Baspetro were not prepared to operate Blocks III and IV of the Talara Basin. Indeed, not only is there no evidence that Mr. Amorrortu was supported by any other company (Peruvian or international), but there is no evidence supporting Mr. Amorrortu’s claim that he had conducted any preparation in order to be awarded and operate the Blocks (<i>see</i> SoD, ¶¶ 32-55). The documents requested are relevant and material to determining the level of due diligence and preparation conducted by Mr. Amorrortu in connection with his alleged proposal to Perupetro for direct negotiations, as well as his participation in the bidding process for Block III.</p>
Reasoned objections to document production request (objecting Party)	Mr. Amorrortu objects to this Request to the extent that it seeks confidential and commercially sensitive information, the disclosure of which can subject Mr. Amorrortu to liability vis-à-vis third parties. In addition, Mr. Amorrortu has already produced: (i) the letter from Andrés Beran, of Fluor Enterprises, to Mr. Amorrortu, dated January 2, 2013 (<i>see</i> C-41); and (ii) the May 2014 Baspetro Proposal (C-11). Subject to the aforementioned objection, Mr. Amorrortu will produce responsive, nonprivileged documents in his possession, custody, or control.
Response to objections to document production request	<p>The Republic of Peru takes note of Claimant’s agreement to produce responsive, nonprivileged documents in his possession, custody, or control.</p> <p><u>Documents protected from disclosure by commercial privilege (IBA Rules, Article 9(2)(e)).</u></p>

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(requesting Party)	<p>To the extent that Mr. Amorrortu is invoking commercial confidentiality, it is important to recall that “[i]t is up to the party invoking confidentiality as a ground for exclusion to prove its existence.”¹ Mr. Amorrortu has done no such thing. Moreover, Mr. Amorrortu has made a blanket allegation of commercial confidentiality without providing any details about the categories of documents that would be protected. Additionally, to the extent the documents requested by Respondent are withheld on grounds of commercial privilege, Respondent reiterates its request made in paragraph 12 <i>supra</i>, and requests the Tribunal to direct Claimant to produce a privilege log identifying, in each case, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production and otherwise identifying sufficient information so that Respondent (and the Tribunal) may assess the applicability of the privilege invoked.²</p>
Decision of the Tribunal	<p>The Tribunal takes note of the Claimant’s agreement to produce certain documents in response to Respondent’s RFP No. 4.</p> <p>To the extent the Claimant has not agreed to production, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), he is required to provide the Respondent with a privilege log for any responsive documents over which he claims privilege and/or confidentiality (Art. 9(2)(e) of the IBA Rules) identifying for each document (i) the author(s); (b) the recipient(s) (if any); (c) the subject matter of the document or portion thereof claimed to be privileged or confidential; (d) the date; (e) the basis for the claim of privilege, confidentiality or other grounds on which the responsive documents are withheld (whether under domestic or international law, or otherwise under an applicable legal or ethical standard and citations of the law or standard relied upon); and (f) an indication of which relevant interest(s), if any, might be prejudiced in the event the Tribunal were to order the production of the requested documents.</p>

¹ R. Mikhailovich Khodykin Khodykin, C. Mulcahy, N. Fletcher, A Guide to the IBA Rules on the Taking of Evidence in International Arbitration (OUP, 2019), ¶ 12.275.

² *See supra*, Definitions and Interpretations, ¶ 12 (“To the extent that documents responsive to any request are located and withheld by Claimant on account of any alleged privilege or for any other reason, Claimant is asked to provide, together with its response, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production. Similarly, to the extent Claimant redacts any document, it is requested to provide full reasons for doing so. Peru reserves its rights in connection with both eventualities.”).

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Document Request No.	5
Documents or category of documents requested (requesting Party)	<p>Baspetrol’s financial documents or reports from 2014, including but not limited to:</p> <ul style="list-style-type: none"> (i) Baspetrol’s quarterly financial reports from 2014; (ii) Baspetrol’s annual financial statements (including profit and losses statements, balance sheet recording revenues, turnover, and profits of the company) from 2014; and (iii) Baspetrol’s audited annual financial statements (including profit and losses statements, balance sheet recording revenues, turnover, and profits of the company) from 2014.
Relevance and materiality, incl. references to submission (requesting Party)	<p>Amorrortu argues that, in 2014, Baspetrol “easily satisfied” the requirement, set forth in the Regulation on the Qualification of Petroleum Companies (CLA-3, Arts. 5-6), to “ha[ve] the financial capacity to complete the [operation of the Blocks]” (SoC, ¶ 201).</p> <p>As Peru has explained, this requirement required companies seeking to obtain a certification of Qualified Oil Company (which is a prerequisite for commencing a direct negotiation with Perupetro (SoD, ¶¶ 487-488)) to demonstrate that their financial capacity (measured in terms of net worth, assets, or cash flow) exceeded the minimum contracting capacity for the Blocks (SoD, ¶¶ 490.a, 505). In 2014, this minimum contracting capacity had been set in US\$ 202.50 million for Block III, and US\$ 63.75 million for Block IV (SoD, ¶¶ 505-506). Whether Baspetrol’s financial capacity met the required threshold would be reflected in Baspetrol’s quarterly and annual financial statements.</p> <p>Amorrortu has failed to provide any evidence that Baspetrol’s net worth, assets, or cash flows exceeded the minimum contracting capacity for the Blocks required under Peruvian law. In fact, all the evidence that Amorrortu has produced in this regard is that Baspetrol’s share capital in 2014 was 200,000 Peruvian soles (barely US\$ 80,000) (R-35, p. 5; SoD, ¶ 506).</p> <p>The documents requested are relevant and material to the assessment of Baspetrol’s financial capacity, and whether in 2014 (when Baspetrol submitted its Alleged Proposal), that capacity “easily satisfied” the requirements imposed by Peruvian law for the operation of the Blocks.</p>
Reasoned objections to document production	<p>Mr. Amorrortu is not in the possession, custody, or control of any document responsive to this Request.</p>

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request (objecting Party)	
Response to objections to document production request (requesting Party)	<p><u>Respondent maintains this request.</u></p> <p><i>First</i>, Mr. Amorrortu should be in the possession of the documents requested. Mr. Amorrortu’s objection on grounds that he is not in possession, custody or control of the documents requested is simply not credible. Under Peruvian corporate law, Baspetro was required to create these documents. And if they were ever created (Peru believes they were not), Peruvian law provides that Mr. Amorrortu should have received them, both as Chairman of Baspetro’s Board of Directors and as one of Baspetro’s shareholders.</p> <p>Article 221 of Peru’s General Law of Corporations required Baspetro’s board of directors to prepare, at the end of each fiscal year, the company’s annual report and financial statements.³ Because Mr. Amorrortu was a member of the board,⁴ he should have been involved in the preparation of the documents sought. Mr. Amorrortu should have also been provided with a copy of these documents in his capacity as a shareholder of Baspetro because article 221 of the General Law of Corporations also required Baspetro’s board of directors to make the company’s annual report and financial statements available to its shareholders⁵.</p> <p><i>Second</i>, Mr. Amorrortu’s objection must be rejected because it does not meet the requirements of section 5.2 of Procedural Order No. 1. That section requires him to “state the reasons for each objection.” In his objection to Peru’s Request No. 5, however, Mr. Amorrortu merely asserts that he is not in the possession, custody, or control of the requested documents, without giving any reasons. Amorrortu’s failure to produce these documents further confirms that his claims against Peru in this arbitration are unfounded. If Mr. Amorrortu is not in possession or control of these documents, it means that they were never created. Without these documents, Baspetro could have never obtained a certification that it was a Qualified Oil Company, and thus could have never entered into License Contracts with Perupetro (SoD, ¶¶ 487-490).</p>

³ General Law of Corporations (Law No. 26887 of 1997) (**RLA-74**), art. 221 (“At the end of the fiscal year, the Board of Directors must prepare the annual report, the financial statements and the proposal for the distribution of profits, if any.”) (translation provided by Counsel. In the original Spanish: “Finalizado el ejercicio el directorio debe formular la memoria, los estados financieros y la propuesta de aplicación de las utilidades en caso de haberlas.”)

⁴ Certificate of Incorporation of Baspetro S.A.C. (17 October 2012) (**C-24**), pp. 4-5.

⁵ General Law of Corporations (Law No. 26887 of 1997) (**RLA-74**), art. 221 (“The financial statements must be made available to the shareholders in time to be submitted, in accordance with the law, for consideration at the annual mandatory [shareholders] meeting.”) (translation provided by Counsel. In the original Spanish: “Los estados financieros deben ser puestos a disposición de los accionistas con la antelación necesaria para ser sometidos, conforme a ley, a consideración de la junta [de accionistas] obligatoria anual.”)

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	If Amorrortu fails to provide any satisfactory explanation for his failure to produce the documents requested, Respondent reserves the right to invite the Tribunal to draw appropriate inferences (<i>see</i> IBA Rules, Article 9.6). ⁶
Decision of the Tribunal	Respondent’s RFP No. 5 is granted to the extent that any responsive documents are in the Claimant’s possession, custody or control. The Tribunal recalls the Claimant’s representation that he is the President of Baspetro (CWS-1, para. 1). In the circumstances, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), the Claimant is required provide an explanation as to whether any responsive documents were ever in his possession, custody, or control; if not, why not; and if so, how the Claimant came to lose possession, custody or control of these documents.

⁶ IBA Rules, Art. 9.6 (“If a Party fails without satisfactory explanation to produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.”).

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Document Request No.	6
Documents or category of documents requested (requesting Party)	<p>Baspetrol’s financial documents or reports from 2015 to 2024, including but not limited to:</p> <ul style="list-style-type: none"> (i) Baspetrol’s quarterly financial reports from 2015 to 2024; (ii) Baspetrol’s financial statements (including profit and losses statements, balance sheet recording revenues, turnover, and profits of the company) from 2015 to 2024; and (iii) Baspetrol’s audited financial statements (including profit and losses statements, balance sheet recording revenues, turnover, and profits of the company) from 2015 to 2024.
Relevance and materiality, incl. references to submission (requesting Party)	<p>Amorrortu alleges that, had Baspetrol been awarded license contracts for Blocks III and IV, Baspetrol “would have had a profitable operation of [those] Blocks[.]” (SoC, ¶ 374; <i>see also id.</i>, ¶¶ 377-378). To that effect, Amorrortu stated in his Alleged Proposal that Baspetrol would have invested at least US\$ 130 million for the operation of the Blocks in a period of no more than 10 years (C-11, p. 15 [PDF]). The extent to which Baspetrol had the financial capacity and means to invest such an amount would be reflected in Baspetrol’s quarterly and annual financial statements from 2014 to 2024.</p> <p>Amorrortu has not provided any evidence that Baspetrol had the financial resources to operate the Blocks, let alone that it had the capacity to invest at least US\$ 130 million in such operation in 10 years (i.e., from May 2015, when Amorrortu says Baspetrol would have started operations in the Blocks, to 2025) (C-11, p.10 [PDF]).</p> <p>Thus, the documents requested are relevant and material to the assessment of Claimant’s damages claim, and in particular whether Baspetrol would profitably have operated the Blocks.</p>
Reasoned objections to document production request (objecting Party)	<p>Mr. Amorrortu is not in the possession, custody, or control of any document responsive to this Request.</p>
Response to objections to document production request	<p><u>Respondent maintains this request.</u></p> <p>Mr. Amorrortu’s objection is without merit, and should thus be rejected, for the same two reasons set forth in the Republic of Peru’s response to Mr. Amorrortu’s objection to Request No. 5. If Amorrortu fails to provide any satisfactory explanation for his failure to produce the documents requested, Respondent</p>

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(requesting Party)	reserves the right to invite the Tribunal to draw appropriate inferences (see IBA Rules, Article 9.6). ⁷
Decision of the Tribunal	Respondent’s RFP No. 6 is granted to the extent that any responsive documents are in the Claimant’s possession, custody or control. The Tribunal recalls the Claimant’s representation that he is the President of Baspetro (CWS-1, para. 1). In the circumstances, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), the Claimant is required provide an explanation as to whether any responsive documents were ever in his possession, custody, or control; if not, why not; and if so, how the Claimant came to lose possession, custody or control of these documents.

⁷ IBA Rules, Art. 9.6 (“If a Party fails without satisfactory explanation to produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.”).

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Document Request No.	7
Documents or category of documents requested (requesting Party)	<p>The following documents relating to Amorrortu and/or Baspetrol:</p> <ul style="list-style-type: none"> (i) Loan or debt actually granted to Amorrortu and/or Baspetrol, from 2012 to 2014, with respect to Baspetrol’s planned operation of the Blocks or otherwise; (ii) Loan or debt offers provided to Amorrortu and/or Baspetrol, from 2012 to 2014, with respect to Baspetrol’s planned operation of the Blocks or otherwise; and/or (iii) Loan term sheets provided to Amorrortu and/or Baspetrol, from 2012 to 2014, with respect to Baspetrol’s planned operation of the Blocks or otherwise.
Relevance and materiality, incl. references to submission (requesting Party)	<p>Amorrortu alleges that, had Baspetrol been awarded license contracts for Blocks III and IV, Baspetrol “would have had a profitable operation of [those] Blocks[.]” (SoC, ¶ 374; <i>see also id.</i>, ¶¶ 377-378). To that effect, Amorrortu asserted in his Alleged Proposal that Baspetrol would have invested at least US\$ 130 million for the operation of the Blocks in a period of 10 years (C-11, p. 15 [PDF]).</p> <p>However, Amorrortu has not provided any evidence that Baspetrol had the financial resources to do so, nor that he or Baspetrol would have been successful in raising the funds necessary to operate the Blocks.</p> <p>Thus, the documents requested are relevant and material to assess whether Baspetrol would profitably have operated Blocks III and IV.</p>
Reasoned objections to document production request (objecting Party)	<p>Mr. Amorrortu is not in the possession, custody, or control of any document responsive to this Request.</p>
Response to objections to document production request	<p><u>Respondent maintains this request.</u></p> <p><i>First</i>, Mr. Amorrortu, in his capacity as chairman of Baspetrol’s board of directors and manager of the company,⁸ should be in the possession of the requested documents. Indeed, article 152 of Peru’s General Law of Corporations dictates that corporations such as Baspetrol are managed by their board of directors and</p>

⁸ Certificate of Incorporation of Baspetrol S.A.C. (17 October 2012) (C-24), pp. 4-5.

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(requesting Party)	<p>managers.⁹ This, of course, includes the raising of funds and/or entering into loans agreements such as those sought by Peru pursuant to its Request No. 7.</p> <p><i>Second</i>, Mr. Amorrortu’s objection must be rejected because it does not meet the requirements of section 5.2 of Procedural Order No. 1. Indeed, that section requires him to “state the reasons for each objection.” In his objection to Peru’s Request No. 7, however, Mr. Amorrortu merely asserts that he is not in the possession, custody, or control of the requested documents, without giving any reasons. If Amorrortu fails to provide any satisfactory explanation for his failure to produce the documents requested, Respondent reserves the right to invite the Tribunal to draw appropriate inferences (see IBA Rules, Article 9.6).¹⁰</p>
Decision of the Tribunal	<p>Respondent’s RFP No. 7 is granted to the extent that any responsive documents are in the Claimant’s possession, custody or control. The Tribunal recalls the Claimant’s representation that he is the President of Bassetrol (CWS-1, para. 1). In the circumstances, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), the Claimant is required provide an explanation as to whether any responsive documents were ever in his possession, custody, or control; if not, why not; and if so, how the Claimant came to lose possession, custody or control of these documents.</p>

⁹ General Law of Corporations (Law No. 26887 of 1997) (**RLA-74**), art. 152 (“The company is managed by the board of directors and one or more managers.”) (translation provided by Counsel. In the original Spanish: “La administración de la sociedad está a cargo del directorio y de uno o más gerentes[.]”).

¹⁰ IBA Rules, Art. 9.6 (“If a Party fails without satisfactory explanation to produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.”).

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Document Request No.	8
Documents or category of documents requested (requesting Party)	<p>Reports, studies, business plans, financial models, financial forecasts, or analyses on, or related to:</p> <ul style="list-style-type: none"> (i) The investment opportunity in the Blocks; and/or (ii) Baspetrol’s expected operation of the Blocks, <p>prepared between 2012 and 2014 by either Amorrortu, any of Amorrortu’s employees, any consultant or advisor (external or otherwise) of Amorrortu, Baspetrol, any of Baspetrol’s employees, and/or any consultant or advisor (external of otherwise) of Baspetrol.</p>
Relevance and materiality, incl. references to submission (requesting Party)	<p>Amorrortu alleges that, prior to the submission of his Alleged Proposal in 2014 – and so as “[t]o achieve a successful investment” in Blocks III and IV – he “lead the development of an action plan” that involved, among other things, the “[r]esearch and analysis of available public information related to the technical and operational situation of [Blocks] III and IV” (CWS-1, ¶ 62). He also asserts that he “understood the peculiarities of” the Blocks, that their “daily production volumes could be increased”, and that, as a result, “an operation and optimization plan based on studies with advanced geology, modeling, seismic science, and specific expertise was needed.” (SoC, ¶ 54).</p> <p>However, Amorrortu has failed to provide evidence that such a plan was ever carried out, or of the results that it produced. In fact, as Peru has explained, there is no evidence that, when Amorrortu submitted his Alleged Proposal in 2014, Amorrortu had an operational and business plan in place for his planned operation of the Blocks (SoD, ¶¶ 262, 545.b).</p> <p>Thus, the documents requested are relevant and material to assess whether Amorrortu developed any plan for the operation of Blocks III and IV, whether he “understood” the peculiarities of the Blocks, and whether he “understood” how to make Baspetrol achieve a successful operation of those Blocks.</p>
Reasoned objections to document production request (objecting Party)	<p>Respondent’s allegation that “Amorrortu has failed to provide evidence that such [an operation] plan was ever carried out, or of the results that it produced” is illogical. PeruPetro’s illegal actions prevented Baspetrol from executing its Proposal for the operation of Blocks III and IV, making it impossible to provide evidence of actions or results that never occurred due to this interference. SoC ¶¶ 82–88, 150–156.</p> <p>As Mr. Amorrortu’s filings make clear, Baspetrol’s Proposal of May 28, 2014, was the culmination of an extensive preparation process that included logistical, technical, and operational planning. <i>See</i> (C-11); SoC ¶¶ 66–81. Indeed, the substance of Baspetrol’s Proposal reflected terms that were much more favorable</p>

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	<p>to Peru and the local populations in Talara when compared to the result delivered by Graña y Montero during the previous ten years of its operation of Blocks III and IV.</p> <p>Subject to and without waiving these objections, Mr. Amorrortu will produce responsive, nonprivileged documents in his possession, custody, or control.</p>
<p>Response to objections to document production request (requesting Party)</p>	<p>The Republic of Peru takes note of Claimant’s agreement to produce responsive, nonprivileged documents in his possession, custody, or control.</p> <p><u>Documents protected from disclosure by commercial privilege (IBA Rules, Article 9(2)(e)).</u></p> <p>To the extent that Mr. Amorrortu is invoking commercial privilege, it is important to recall that “[i]t is up to the party invoking confidentiality as a ground for exclusion to prove its existence.”¹¹ Mr. Amorrortu has done no such thing. Additionally, to the extent Claimant withholds disclosure of the documents requested on grounds of commercial privilege, Respondent reiterates its request made in paragraph 12 <i>supra</i>,¹² and requests the Tribunal to direct Claimant to produce a privilege log identifying, in each case, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production and otherwise identifying sufficient information so that Respondent may assess the applicability of the privilege invoked.</p> <p><u>Mr. Amorrortu’s objection is without merit.</u></p> <p>Mr. Amorrortu mischaracterizes Peru’s Request No. 8. Respondent (i) made reference to the “action plan” (CWS-1, ¶ 62) that Mr. Amorrortu allegedly developed “[i]n preparation for the negotiations with PeruPetro” (SoC, ¶ 56, citing to CWS-1, ¶ 62), and to the “operation and optimization plan” that, according to Mr. Amorrortu, had to be developed to increase production in the Blocks (SoC, ¶ 54); and (ii) explained that Mr. Amorrortu has failed to provide evidence that such plans were ever developed, let alone of the results that they produced.</p> <p>In his objection, Mr. Amorrortu ignores these plans, as well as the express terms of Peru’s Request No. 8. Instead, he incorrectly states that Perupetro prevented Baspetro from executing his Alleged Proposal for the operation of the Blocks, and asserts that, that for that reason, Peru’s Request is “illogical”.</p>

¹¹ R. Mikhailovich Khodykin Khodykin, C. Mulcahy, N. Fletcher, A Guide to the IBA Rules on the Taking of Evidence in International Arbitration (OUP, 2019), ¶ 12.275.

¹² *See supra*, Definitions and Interpretations, ¶ 12 (“To the extent that documents responsive to any request are located and withheld by Claimant on account of any alleged privilege or for any other reason, Claimant is asked to provide, together with its response, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production. Similarly, to the extent Claimant redacts any document, it is requested to provide full reasons for doing so. Peru reserves its rights in connection with both eventualities.”).

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	<p>As Mr. Amorrortu is well aware, Request No. 8 does not seek information about Baspetro’s execution of Mr. Amorrortu’s Alleged Proposal (which, by its own terms, would have occurred as of April 2015 (C-11, p. 8)). As that Request makes clear, Peru has sought the production of documents prepared between 2012 and 2014 – that is, well before the commencement by Mr. Amorrortu of operations as contemplated in his Alleged Proposal – regarding Mr. Amorrortu’s and Baspetro’s analysis of (i) the investment opportunity in the Blocks; and (ii) Baspetro’s expected operations of the Blocks.</p>
Decision of the Tribunal	<p>The Tribunal takes note of the Claimant’s agreement to produce certain documents in response to Respondent’s RFP No. 8.</p> <p>To the extent the Claimant has not agreed to production, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), he is required to provide the Respondent with a privilege log for any responsive documents over which he claims privilege and/or confidentiality (Art. 9(2)(e) of the IBA Rules) identifying for each document (i) the author(s); (b) the recipient(s) (if any); (c) the subject matter of the document or portion thereof claimed to be privileged or confidential; (d) the date; (e) the basis for the claim of privilege, confidentiality or other grounds on which the responsive documents are withheld (whether under domestic or international law, or otherwise under an applicable legal or ethical standard and citations of the law or standard relied upon); and (f) an indication of which relevant interest(s), if any, might be prejudiced in the event the Tribunal were to order the production of the requested documents.</p>

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Document Request No.	9
Documents or category of documents requested (requesting Party)	<p>Any forecast, model, assessment, or study, prepared between 2012 and 2014 by either Amorrortu, any of Amorrortu’s employees, any consultant or advisor (external or otherwise) of Amorrortu, Baspetrol, any of Baspetrol’s employees, and/or any consultant or advisor (external of otherwise) of Baspetrol, on, or related to:</p> <ul style="list-style-type: none"> (i) Operating expenditures (whether operating expenditures per barrel or otherwise) expected during Baspetrol’s planned operation of Blocks III and IV; (ii) Capital expenditures (whether capital expenditures per well or otherwise) expected during Baspetrol’s planned operation of Blocks III and IV; (iii) Total amount of money that Baspetrol would have invested over the 30-year term of the license contracts for Blocks III and IV; (iv) Number of wells expected to be drilled during Baspetrol’s planned operation of Blocks III and IV; (v) Total production per well in new wells expected to be drilled during Baspetrol’s planned operation of Blocks III and III; and (vi) Oil price indexes during Baspetrol’s planned operation of Blocks III and IV.
Relevance and materiality, incl. references to submission (requesting Party)	The documents requested are relevant and material for the same reasons stated in Document Request No. 8 above.
Reasoned objections to document production request (objecting Party)	<p>Mr. Amorrortu further repeats and incorporates his statements provided in No. 8 above as if set forth fully herein.</p> <p>Mr. Amorrortu will produce responsive, nonprivileged documents in his possession, custody, or control.</p>
Response to objections to document	The Republic of Peru takes note of Claimant’s agreement to produce responsive, nonprivileged documents in his possession, custody, or control.

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production request (requesting Party)	<p><u>Documents protected from disclosure by commercial privilege (IBA Rules, Article 9(2)(e)).</u></p> <p>To the extent that Mr. Amorrortu is invoking commercial privilege, it is important to recall that “[i]t is up to the party invoking confidentiality as a ground for exclusion to prove its existence.”¹³ Mr. Amorrortu has done no such thing. Additionally, to the extent Claimant withholds disclosure of the documents requested on grounds of commercial privilege, Respondent reiterates its request made in paragraph 12 <i>supra</i>,¹⁴ and requests the Tribunal to direct Claimant to produce a privilege log identifying, in each case, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production and otherwise identifying sufficient information so that Respondent may assess the applicability of the privilege invoked.</p> <p><u>Mr. Amorrortu’s objection is without merit.</u></p> <p>Mr. Amorrortu’s objection is unfounded for the same reasons set forth in Peru’s response to Mr. Amorrortu’s objection to Request No. 8.</p> <p>The Republic of Peru thus maintains its Request No. 9.</p>
Decision of the Tribunal	<p>The Tribunal takes note of the Claimant’s agreement to produce certain documents in response to Respondent’s RFP No. 9.</p> <p>To the extent the Claimant has not agreed to production, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), he is required to provide the Respondent with a privilege log for any responsive documents over which he claims privilege and/or confidentiality (Art. 9(2)(e) of the IBA Rules) identifying for each document (i) the author(s); (b) the recipient(s) (if any); (c) the subject matter of the document or portion thereof claimed to be privileged or confidential; (d) the date; (e) the basis for the claim of privilege, confidentiality or other grounds on which the responsive documents are withheld (whether under domestic or international law, or otherwise under an applicable legal or ethical standard and citations of the law or standard relied upon); and (f) an indication of which relevant interest(s), if any, might be prejudiced in the event the Tribunal were to order the production of the requested documents.</p>

¹³ R. Mikhailovich Khodykin Khodykin, C. Mulcahy, N. Fletcher, A Guide to the IBA Rules on the Taking of Evidence in International Arbitration (OUP, 2019), ¶ 12.275.

¹⁴ See *supra*, Definitions and Interpretations, ¶ 12 (“To the extent that documents responsive to any request are located and withheld by Claimant on account of any alleged privilege or for any other reason, Claimant is asked to provide, together with its response, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production. Similarly, to the extent Claimant redacts any document, it is requested to provide full reasons for doing so. Peru reserves its rights in connection with both eventualities.”).

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Document Request No.	10
Documents or category of documents requested (requesting Party)	<p>To the extent not provided with Document Request No. 9 above, any forecast, model, assessment, or study, prepared between 2012 and 2014 by either Amorrortu, any of Amorrortu’s employees, any consultant or advisor (external or otherwise) of Amorrortu, Baspetrol, any of Baspetrol’s employees, and/or any consultant or advisor (external or otherwise) of Baspetrol, on, or related to, the value that Baspetrol was expected to generate through the operation of the Blocks.</p> <p>This includes, but is not limited to:</p> <ul style="list-style-type: none"> (i) Baspetrol’s cost of capital expected during Baspetrol’s planned operation of Blocks III and IV; (ii) Baspetrol’s cost of equity expected during Baspetrol’s planned operation of Blocks III and IV; and (iii) Baspetrol’s cost of debt expected during Baspetrol’s planned operation of Blocks III and IV.
Relevance and materiality, incl. references to submission (requesting Party)	<p>Amorrortu affirms that, when he submitted his Alleged Proposal in 2014, he “was expect[ing] to generate substantial value once the investment in Blocks III and IV became operational” (SoC, ¶ 395).</p> <p>However, Amorrortu has provided no contemporaneous evidence about the “substantial value” he was expecting to generate through Baspetrol’s operation of the Blocks. This includes information about (i) Baspetrol’s expected <u>cost of capital</u> (that is, the minimum rate of return of Baspetrol’s operations before Baspetrol could have started generating value); (ii) Baspetrol’s expected <u>cost of debt</u> (that is, the interest rate that Baspetrol would have paid in order to secure financing for its operations in Blocks III and IV); and (iii) Baspetrol’s expected <u>cost of equity</u> (that is, the rate of return that Baspetrol would pay to its shareholders to compensate for the risk undertaking by investing their capital).</p> <p>Thus, the documents requested are relevant and material to the assessment of Claimant’s damages claim, in particular Amorrortu’s expectations as to the value Baspetrol would have generated, and whether Baspetrol’s operation of the Blocks would have generated any value or profits at all.</p>
Reasoned objections to document production request (objecting Party)	<p>Mr. Amorrortu further repeats and incorporates his statements provided in No. 8 above as if set forth fully herein.</p> <p>Mr. Amorrortu will produce responsive, nonprivileged documents in his possession, custody, or control.</p>

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Response to objections to document production request (requesting Party)	<p>The Republic of Peru takes note of Claimant’s agreement to produce responsive, nonprivileged documents in his possession, custody, or control.</p> <p><u>Documents protected from disclosure by commercial privilege (IBA Rules, Article 9(2)(e)).</u></p> <p>To the extent that Mr. Amorrortu is invoking commercial privilege, it is important to recall that “[i]t is up to the party invoking confidentiality as a ground for exclusion to prove its existence.”¹⁵ Mr. Amorrortu has done no such thing. Additionally, to the extent Claimant withholds disclosure of the documents requested on grounds of commercial privilege, Respondent reiterates its request made in paragraph 12 <i>supra</i>,¹⁶ and requests the Tribunal to direct Claimant to produce a privilege log identifying, in each case, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production and otherwise identifying sufficient information so that Respondent may assess the applicability of the privilege invoked.</p> <p><u>Mr. Amorrortu’s objection is without merit.</u></p> <p>Mr. Amorrortu’s objection is unfounded for the same reasons set forth in Peru’s response to Mr. Amorrortu’s objection to Request No. 8.</p> <p>The Republic of Peru thus maintains its Request No. 10.</p>
Decision of the Tribunal	<p>The Tribunal takes note of the Claimant’s agreement to produce certain documents in response to Respondent’s RFP No. 10.</p> <p>To the extent the Claimant has not agreed to production, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), he is required to provide the Respondent with a privilege log for any responsive documents over which he claims privilege and/or confidentiality (Art. 9(2)(e) of the IBA Rules) identifying for each document (i) the author(s); (b) the recipient(s) (if any); (c) the subject matter of the document or portion thereof claimed to be privileged or confidential; (d) the date; (e) the basis for the claim of privilege, confidentiality or other grounds on which the responsive documents are withheld (whether under domestic or international law, or</p>

¹⁵ R. Mikhailovich Khodykin Khodykin, C. Mulcahy, N. Fletcher, A Guide to the IBA Rules on the Taking of Evidence in International Arbitration (OUP, 2019), ¶ 12.275.

¹⁶ See *supra*, Definitions and Interpretations, ¶ 12 (“To the extent that documents responsive to any request are located and withheld by Claimant on account of any alleged privilege or for any other reason, Claimant is asked to provide, together with its response, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production. Similarly, to the extent Claimant redacts any document, it is requested to provide full reasons for doing so. Peru reserves its rights in connection with both eventualities.”).

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	<p>otherwise under an applicable legal or ethical standard and citations of the law or standard relied upon); and (f) an indication of which relevant interest(s), if any, might be prejudiced in the event the Tribunal were to order the production of the requested documents.</p>
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Document Request No.	11
Documents or category of documents requested (requesting Party)	<p>The following documents relating to Baspetrol’s shares:</p> <ul style="list-style-type: none">(i) Baspetrol’s shares registration book (<i>libro de matricula de acciones</i>) open at the Peruvian National Superintendency of Tax Administration (<i>Superintendencia Nacional de Administración Tributaria</i>, or “SUNAT”), updated to date;(ii) Baspetrol’s shares certificates (<i>certificados de acciones</i>), 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.
Relevance and materiality, incl. references to submission (requesting Party)	<p>Under the USPTPA, a “covered investment” means “every asset that an investor owns or controls[.]” (CLA-1, Art. 10.28). Under both international law and Peruvian law, a company is controlled when the controlling entity holds a shareholding interest of more than 50% of the shares, and/or has voting rights that allow it to exercise effective control over the company (SoD, ¶ 292).</p> <p>Here, Amorrortu alleges that his investment in Peru “beg[an] with the Baspetrol enterprise[.]” (SoC, ¶ 185). However, Baspetrol’s 2012 Certificate of Incorporation shows that Amorrortu only owned 40% of Baspetrol’s shares, which means that Amorrortu did not control Baspetrol (SoD, ¶ 293; C-24, Art. 3, p. 3). And Amorrortu has failed to provide any information as to whether his 40% share in Baspetrol increased or decreased in the years following Baspetrol’s incorporation in 2012, which could also have an impact on the determination of whether he controlled Baspetrol.</p> <p>Thus, the requested documents are relevant and material to confirm that Amorrortu did not control Baspetrol.</p> <p>In addition, Amorrortu’s quantum expert, BRG, calculates Amorrortu’s purported damages on the basis of his “expected equity stake in Blocks III and IV” (CER-03, ¶ 12). BRG’s calculation, however, does not take into account that Amorrortu only owned 40% of Baspetrol’s shares (SoD, ¶ 549). In addition, that calculation could be impacted both by any variation in Baspetrol’s shareholding structure after its incorporation in 2012, and by any liens or encumbrances on Amorrortu’s shares in Baspetrol (which would limit Amorrortu’s ability to receive dividends). Amorrortu has not provided any information on these two points.</p>

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	<p>Thus, the requested documents are also relevant and material to the assessment of Amorrortu’s alleged damages.</p>
<p>Reasoned objections to document production request (objecting Party)</p>	<p>Mr. Amorrortu objects to this Request as it seeks information that is irrelevant and immaterial to the outcome of this dispute. Potential liens or encumbrances on Baspetrol’s shares arising from liabilities unrelated to this matter have no bearing on this dispute. In any event, no such liens or encumbrances exist. Subject to and without waiving this objection, Mr. Amorrortu will produce responsive, nonprivileged documents in his possession, custody, or control.</p>
<p>Response to objections to document production request (requesting Party)</p>	<p>The Republic of Peru takes note of Claimant’s agreement to produce responsive, nonprivileged documents in his possession, custody, or control.</p> <p><u>Documents protected from disclosure by commercial privilege (IBA Rules, Article 9(2)(e)).</u></p> <p>To the extent that Mr. Amorrortu is invoking commercial privilege, it is important to recall that “[i]t is up to the party invoking confidentiality as a ground for exclusion to prove its existence.”¹⁷ Mr. Amorrortu has done no such thing. Additionally, to the extent Claimant withholds disclosure of the documents requested on grounds of commercial privilege, Respondent reiterates its request made in paragraph 12 <i>supra</i>,¹⁸ and requests the Tribunal to direct Claimant to produce a privilege log identifying, in each case, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production and otherwise identifying sufficient information so that Respondent may assess the applicability of the privilege invoked.</p> <p><u>The documents requested are relevant and material and Mr. Amorrortu’s objection is without merit.</u></p> <p>Contrary to Mr. Amorrortu’s objection, the documents requested are relevant and material to the outcome of the dispute. Indeed, whether Mr. Amorrortu owns the majority of Baspetrol’s shares is a key element for the determination of whether Amorrortu has a protected investment under the USTPA (SoD, ¶ 291). At the same time, Mr. Amorrortu’s percentage of shares in Baspetrol is set forth, <i>inter alia</i>, in Baspetrol’s shares registration book and in any of the other documents requested.</p>

¹⁷ R. Mikhailovich Khodykin Khodykin, C. Mulcahy, N. Fletcher, A Guide to the IBA Rules on the Taking of Evidence in International Arbitration (OUP, 2019), ¶ 12.275.

¹⁸ *See supra*, Definitions and Interpretations, ¶ 12 (“To the extent that documents responsive to any request are located and withheld by Claimant on account of any alleged privilege or for any other reason, Claimant is asked to provide, together with its response, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production. Similarly, to the extent Claimant redacts any document, it is requested to provide full reasons for doing so. Peru reserves its rights in connection with both eventualities.”).

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	<p>(Mr. Amorrortu does not deny this in his objection.) This thus confirms the relevance and materiality of these documents.</p> <p>Moreover, Mr. Amorrortu’s shareholding interest in Baspetrol is also a key element for the determination of his alleged damages (SoD, ¶ 549). At the same time, the percentage of Mr. Amorrortu’s shareholding in Baspetrol is also set forth, <i>inter alia</i>, in Baspetrol’s shares registration book and in any of the other documents requested. (Mr. Amorrortu does not deny this in his objection.) This also confirms the relevance and materiality of these documents.</p> <p>Finally, Mr. Amorrortu’s ability to receive dividends from Baspetrol is also a key element for the determination of his alleged damages. This is because Mr. Amorrortu’s quantum expert, BRG, calculates Amorrortu’s purported damages on the basis of his “expected equity stake in Blocks III and IV” (CER-03, ¶ 12) – or, in other words, of the profits Mr. Amorrortu would have received as a shareholder in Baspetrol (which is the company through which he would have participated in the operation of the Blocks). Since Mr. Amorrortu’s ability to receive dividends could be limited by any liens or encumbrances on his shares in Baspetrol, any such liens or encumbrances would be relevant and material to the determination of his alleged damages and thus to the outcome of the dispute.</p> <p>In light of the above, the Republic of Peru maintains its Request No. 11.</p>
Decision of the Tribunal	<p>The Tribunal takes note of the Claimant’s agreement to produce certain documents in response to Respondent’s RFP No. 11.</p> <p>To the extent the Claimant has not agreed to production, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), he is required to provide the Respondent with a privilege log for any responsive documents over which he claims privilege and/or confidentiality (Art. 9(2)(e) of the IBA Rules) identifying for each document (i) the author(s); (b) the recipient(s) (if any); (c) the subject matter of the document or portion thereof claimed to be privileged or confidential; (d) the date; (e) the basis for the claim of privilege, confidentiality or other grounds on which the responsive documents are withheld (whether under domestic or international law, or otherwise under an applicable legal or ethical standard and citations of the law or standard relied upon); and (f) an indication of which relevant interest(s), if any, might be prejudiced in the event the Tribunal were to order the production of the requested documents.</p>

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Document Request No.	12
Documents or category of documents requested (requesting Party)	<p>The following documents relating to Baspetrol’s shareholders:</p> <ul style="list-style-type: none"> (i) Baspetrol’s shareholders’ agreement, and any modifications and/or amendments thereto, from 2012 to the present; and/or (ii) Any other arrangement, contractual or otherwise, among Baspetrol’s shareholders, setting forth how Baspetrol was to be operated and/or describing Baspetrol’s shareholders’ rights and obligations (including voting rights and entitlement to dividends and profits).
Relevance and materiality, incl. references to submission (requesting Party)	<p>Under the USPTPA, a “covered investment” means “every asset that an investor owns or controls[.]” (CLA-1, Art. 10.28). Under both international law and Peruvian law, a company is controlled when the controlling entity holds a shareholding interest of more than 50% of the shares, and/or has voting rights that allow it to exercise effective control over the company (SoD, ¶ 292). Those voting rights are typically set forth in a shareholders’ agreement.</p> <p>Here, Amorrortu alleges that his investment in Peru “beg[an] with the Baspetrol enterprise[.]” (SoC, ¶ 185). As explained in Document Request No. 11 above, however, Baspetrol’s 2012 Certificate of incorporation shows that Amorrortu only owned 40% of Baspetrol’s shares, which means that Amorrortu did not control Baspetrol (SoD, ¶ 293; C-24, Art. 3, p. 3). In this regard, Amorrortu has not provided any information on Baspetrol’s shareholders’ voting rights, nor on whether those voting rights would allow him to effectively control Baspetrol.</p> <p>Thus, the requested documents are relevant and material to confirm that Amorrortu did not control Baspetrol.</p> <p>In addition, Claimant’s quantum expert, BRG, calculates Amorrortu’s purported damages on the basis of Amorrortu’s “expected equity stake in Blocks III and IV” (CER-03, ¶ 12). (CER-03, ¶ 12). BRG’s calculation, however, does not take into account that Amorrortu only owned 40% of Baspetrol’s shares (SoD, ¶ 549). This means that, absent an agreement to the contrary in Baspetrol’s shareholders’ agreement, Amorrortu would have received only 40% of the alleged profits generated by Baspetrol through its purported operation of Blocks III and IV.</p> <p>Thus, the requested documents are also relevant and material to the assessment of Claimant’s alleged damages.</p>
Reasoned objections to document production	<p>Mr. Amorrortu objects to this Request as it seeks information that is irrelevant and immaterial to the outcome of this dispute. Baspetrol’s internal shareholder agreements are simply irrelevant to this dispute. Subject to and without waiving</p>

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request (objecting Party)	<p>this objection, Mr. Amorrortu will produce responsive, nonprivileged documents in his possession, custody, or control.</p>
Response to objections to document production request (requesting Party)	<p>The Republic of Peru takes note of Claimant’s agreement to produce responsive, nonprivileged documents in his possession, custody, or control.</p> <p><u>Documents protected from disclosure by commercial privilege (IBA Rules, Article 9(2)(e)).</u></p> <p>To the extent that Mr. Amorrortu is invoking commercial privilege, it is important to recall that “[i]t is up to the party invoking confidentiality as a ground for exclusion to prove its existence.”¹⁹ Mr. Amorrortu has done no such thing. Additionally, to the extent Claimant withholds disclosure of the documents requested on grounds of commercial privilege, Respondent reiterates its request made in paragraph 12 <i>supra</i>,²⁰ and requests the Tribunal to direct Claimant to produce a privilege log identifying, in each case, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production and otherwise identifying sufficient information so that Respondent may assess the applicability of the privilege invoked.</p> <p><u>The documents requested are relevant and material and Mr. Amorrortu’s objection is without merit.</u></p> <p>In its Request No. 12, the Republic of Peru set forth the reasons why the requested documents are relevant and material. The Republic incorporates by reference the same reasons provided in Request No. 12.</p> <p>In his objection, Mr. Amorrortu merely asserts that the requested documents are “irrelevant and immaterial to the outcome of the dispute” but provides no reason as to why this would be so (perhaps because he is aware that no such reasons exist). This contravenes section 5.2 of Procedural Order No. 1, which requires Mr. Amorrortu to “state the reasons for [his] objections”.</p> <p>In addition, Mr. Amorrortu’s objection is wholly unfounded because the requested documents <i>are</i> relevant and material to the outcome of the dispute. Indeed, whether Amorrortu owns the majority of Baspetro’s shares, and/or whether he controls</p>

¹⁹ R. Mikhailovich Khodykin Khodykin, C. Mulcahy, N. Fletcher, A Guide to the IBA Rules on the Taking of Evidence in International Arbitration (OUP, 2019), ¶ 12.275.

²⁰ *See supra*, Definitions and Interpretations, ¶ 12 (“To the extent that documents responsive to any request are located and withheld by Claimant on account of any alleged privilege or for any other reason, Claimant is asked to provide, together with its response, a description of the responsive document (including its date, author, and its recipient) and the reason for withholding that document from production. Similarly, to the extent Claimant redacts any document, it is requested to provide full reasons for doing so. Peru reserves its rights in connection with both eventualities.”).

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	<p>Baspetrol, are key elements for the determination of whether Amorrortu has a protected investment under the USTPA (SoD, ¶ 291). At the same time, Mr. Amorrortu’s percentage of shares in Baspetrol, as well as his voting rights therein, are set forth, <i>inter alia</i>, in Baspetrol’s shareholders agreement and in any of the other documents requested herein. (Mr. Amorrortu does not deny this in his objection.) This thus confirms the relevance and materiality of these documents.</p> <p>Moreover, Mr. Amorrortu’s shareholding in Baspetrol is also a key element for the determination of his alleged damages (SoD, ¶ 549). At the same time, the percentage of Mr. Amorrortu’s shareholding in Baspetrol is also set forth, <i>inter alia</i>, in Baspetrol’s shareholders agreement and in any of the other documents requested herein. (Mr. Amorrortu does not deny this in his objection.) This also confirms the relevance and materiality of these documents.</p> <p>In light of the above, the Republic of Peru maintains its Request No. 12.</p>
Decision of the Tribunal	<p>The Tribunal takes note of the Claimant’s agreement to produce certain documents in response to Respondent’s RFP No. 12.</p> <p>To the extent the Claimant has not agreed to production, as more fully set out in Sections II and III of Procedural Order No. 4 (Document Production), he is required to provide the Respondent with a privilege log for any responsive documents over which he claims privilege and/or confidentiality (Art. 9(2)(e) of the IBA Rules) identifying for each document (i) the author(s); (b) the recipient(s) (if any); (c) the subject matter of the document or portion thereof claimed to be privileged or confidential; (d) the date; (e) the basis for the claim of privilege, confidentiality or other grounds on which the responsive documents are withheld (whether under domestic or international law, or otherwise under an applicable legal or ethical standard and citations of the law or standard relied upon); and (f) an indication of which relevant interest(s), if any, might be prejudiced in the event the Tribunal were to order the production of the requested documents.</p>