INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

RIVERSIDE COFFEE, LLC

Claimant

v.

REPUBLIC OF NICARAGUA

Respondent

(ICSID Case No. ARB/21/16)

NICARAGUA'S SUBMISSION ON COSTS

November 8, 2024

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Respondent, the Republic of Nicaragua, hereby provides its Submission on Costs in accordance with Procedural Order No. 1, Rule 22, the Tribunal's Letter dated July 17, 2024, and the Tribunal's email of October 8, 2024. Nicaragua requests that the Tribunal order Claimant, Riverside Coffee, LLC ("**Riverside**"), to bear all costs and fees of this arbitration under Article 61(2) of the ICSID Convention and Rule 28(1) of the ICSID Arbitration Rules in force as of April 10, 2006, in an amount no less than US$8,240,445.86.

I. INTRODUCTION

1. Riverside brought this arbitration with salacious allegations. The gist of Riverside's claim was that the Nicaraguan Government forcibly expropriated Hacienda Santa Fé ("**HSF**") by using government-backed paramilitaries, who savagely beat Riverside's employees to force them off the property. The damages claim was shocking, seeking US$700 million—roughly 4% of the country's GDP—to compensate Riverside for its supposedly lucrative avocado business that Nicaragua destroyed in the process.

2. Given the stakes involved, this Tribunal would be well within its rights to award Nicaragua costs as the prevailing party on this ground alone. Riverside's case necessarily forced Nicaragua to treat it with extreme seriousness, and Nicaragua did so.

3. However, Riverside's unreasonable arbitration conduct and guerilla tactics exacerbated Nicaragua's legal fees and costs in this arbitration.

4. Emblematic of these tactics was Riverside's presentation of Domingo Ferrufino, brought to this Tribunal as a witness who could supposedly rebut Nicaragua's defense and provide first-hand testimony about all manner of events at HSF, including the invasions, the avocado plantation, and more. But while Mr. Ferrufino's witness statement stated that he could and did read various documents, it was revealed at the Hearing that Mr. Ferrufino can neither read nor write. Instead of informing Nicaragua and this Tribunal of this issue in a timely fashion, Riverside hid it

until just before he testified. Riverside then unsuccessfully opposed an application to strike this testimony, with the Tribunal stating in no uncertain terms that there was "no justification for the Claimant's failure" for not telling Nicaragua about Mr. Ferrufino's illiteracy.

5. This exemplar was, indeed, just an example of Riverside's conduct. Nicaragua repeatedly filed out-of-time, unsolicited submissions. It started with Riverside's improvident "Motion for a Protective Order," coming just weeks after filing its initial Memorial, that argued Nicaragua somehow committed a judicial expropriation when the country simply sought to secure HSF pending resolution of this arbitration. Riverside then filed a "Motion to Dismiss," asking this Tribunal to dismiss, prematurely, jurisdictional defenses properly raised by Nicaragua in its Counter-Memorial. After Nicaragua filed its Rejoinder, Riverside did it again, raising a "Motion on Procedural Issues" in an attempt for Riverside to have the last word. This was all too much for the Tribunal, ordering the Parties (but really, Riverside) "not to make any further unsolicited procedural motions without first seeking leave from the Tribunal."

6. None of this addresses the Parties' correspondence that was never elevated to the Tribunal's attention. It does not take much of an imagination to realize that Riverside was not shy about writing to Nicaragua to complain about all manner of supposed slights and deficiencies. More perniciously, Nicaragua had to treat all of this correspondence as having the potential to land before the Tribunal, no matter how unmeritorious the complaint.

7. Riverside abused the document production process too. Its Stern schedule was 117 pages long, with no less than 112 document requests. Over half were rejected. Riverside then made bad-faith objections, such as turning an obvious typographical error into a basis for a pointless dispute.

8. Riverside's conduct also complicated the Hearing in this case. Riverside first tried to call some of Nicaragua's witnesses "conditionally," and then belatedly jettisoned witnesses it wanted Nicaragua to bring to the Hearing. Riverside wanted a fully virtual hearing despite asking for hundreds of millions in damages. It repeatedly tried to introduce new evidence at the Hearing. Then, just days before the end of the Hearing, Riverside forced the cancellation of a closing argument Nicaragua had been preparing for pursuant to the Parties' previously agreed procedure.

9. Riverside's overly prolix Memorials imposed real costs on Nicaragua. By any measure, these Memorials were lengthy, chock full of every conceivable argument. For example, Riverside actually asked this Tribunal to disregard the terms of DR-CAFTA in favor of the Russian-Nicaraguan BIT. Nicaragua, of course, was compelled to respond.

10. But while the length and numerosity of the issues were costly, Riverside's constant shifting of its story was even worse. Riverside first contended that Government-backed paramilitaries expropriated HSF. Riverside then changed it story, so that the paramilitaries were not necessarily Government-backed yet Nicaragua should still be responsible for not forcing the paramilitaries off HSF. At the Hearing, Riverside then reverted to its original theory. Riverside's damages case was similar; the claim first started at US$700 million, before dropping by over $400 million, this time with multiple scenarios and options. Again, Nicaragua had to respond to it all.

11. Under these circumstances and as set out in more detail below, Nicaragua is entitled to its costs and fees for this arbitration, including its legal fees, expert fees, witness costs, travel costs, costs associated with preparation of the Hearing, and the fees and expenses advanced by Nicaragua to ICSID and the members of the Tribunal—in an amount no less than US$8,240,445.86.

II. TRIBUNALS HAVE DISCRETION TO AWARD COSTS TO THE PREVAILING PARTY

12. Tribunals have broad discretion under the ICSID Convention, the ICSID Arbitration Rules, and DR-CAFTA to allocate legal fees and costs in the absence of an agreement by the parties.[1]

13. Article 61(2) of the ICSID Convention provides that the tribunal "shall assess the expenses incurred by the Parties in connection with the proceeding, and shall decide how and by whom those expenses, the fees and expenses of the members of the tribunal and ICSID shall be paid." ICSID Arbitration Rule 28.1 provides that the tribunal may decide that these costs shall be "borne entirely or in a particular share by one of the parties."

14. Similarly, the Dominican Republic-Central America Free Trade Agreement ("**DR-CAFTA**") sets forth that the tribunal "may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules."[2] And Rule 22.1 of the Procedural Order No. 1 states that "[t]he schedule of Post-Hearing Submissions and Statements of Costs shall be decided by the tribunal, after consulting with the Parties at a later stage."

15. Tribunals previously followed the "pay your own way" approach, as long as the parties acted in good faith and not in an abusive manner.[3] Recently, however, the prevailing trend is for tribunals to apply the "costs follow the event" approach.[4] But regardless of the approach

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[1] *Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania*, ICSID Case No. ARB/15/31, Award, March 8, 2024, ¶¶ 1340-1341 (**RL-0222**). *See also*, *Mazen Al Ramahi v. Hungary*, ICSID Case No. ARB/17/45, Award, April 19, 2021, ¶ 200 (**RL-0223**).

[2] Article 10.26.1 of DR-CAFTA (**CL-0001**).

[3] *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, October 8, 2009, ¶ 322 (**RL-0029**).

[4] *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, August 2, 2006, ¶ 338 (**RL-0224**); *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, August 27, 2008, ¶¶ 316 et seq (**RL-0225**); *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award, April 15, 2009, ¶ 151 (**RL-0226)**; *ADC Affiliate Limited and ADC & ADMC*

adopted, the vast majority of tribunals have determined the allocation of costs considering the particular facts the case,[5] based upon a consideration of factors such as the relative success of the parties,[6] the reasonableness of the costs,[7] the complexity of the issues,[8] and the parties' conduct during the arbitration process.[9]

Management Limited. v. The Republic of Hungary, ICSID Case No. ARB/03/16, Award, October 2, 2006, ¶¶ 532, 533 (**CL-0106**).

[5] *Grenada Private Power and WRB Enterprises Inc. v. Grenada*, ICSID Case No. ARB/17/13, Award, March 19, 2020, ¶ 370 (**RL-0227**); *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Award, July 2, 2018, ¶¶ 737, 738 (**RL-0228**); *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award, May 19, 2023, ¶ 146 (**RL-0229**); *Kornikom EOOD v. Republic of Serbia*, ICSID Case No. ARB/19/12, Award, September 20, 2023, ¶ 748 (**RL-0230**).

[6] *Public Joint Stock Company Mobile TeleSystems v. Turkmenistan (II),* ICSID Case No. ARB(AF)/18/4, Award, June 14, 2023, ¶¶ 838, 839 (**RL-0231**); *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, August 27, 2008, ¶ 316 (**RL-0225**).

[7] *Hulley Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226, Award, July 18, 2014, ¶¶ 1876-1882 (**RL-0232**); *Kimberly-Clark Dutch Holdings, B.V., Kimberly-Clark S.L.U., and Kimberly-Clark BVBA v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/18/3, Award, November 5, 2021, ¶¶ 253 (**RL-0233**), *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No ARB/07/30, Award, March, 8, 2019, ¶¶ 982, 989 (**RL-0234**).

[8] *CDC Group plc v. Republic of Seychelles*, ICSID Case No. ARB/02/14, Decision on Annulment, June 29, 2005, ¶¶ 89, 90 (**RL-0235**); *Philip Morris Brand SARL, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award, July 8, 2016, ¶ 586 (**RL-0236**).

[9] *Europe Cement Investment & Trade SA v. Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, August 13, 2009, ¶ 185 (**CL-0075**) ("In the circumstances of this case, where the Tribunal has reached the conclusion that the claim to jurisdiction is based on an assertion of ownership which the evidence suggests was fraudulent, an award to the Respondent of full costs will go some way towards compensating the Respondent for having to defend a claim that had no jurisdictional basis and discourage others from pursuing such unmeritorious claims."); *Cementownia "Nowa Huta" SA v. Republic of Turkey*, ICSID Case No. ARB(AF)/06/2, Award, September 17, 2009, ¶ 177 (**CL-0076**) ("In the circumstances of this case, the Arbitral Tribunal intends to employ this principle ["costs follow the event"] for the following reasons: - The Claimant has filed a fraudulent claim; - The Claimant has failed on all its requests for relief; - The Claimant has delayed the present arbitration proceeding and therefore raised its costs; […]."); *Alasdair Ross Anderson et al v. Republic of Costa Rica*, ICSID Case No. ARB(AF)/07/3, Award, May 19, 2010, ¶ 63 (**RL-0237**) (referring to "special circumstances […], such as procedural misconduct, the existence of a frivolous claim, or an abuse of the BIT process or of the international investment protection regime."); *Libananco Holdings Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Award, September 2, 2011, ¶ 562 (**RL-0238**) ("In this regard [allocating costs], the Tribunal has considered, among other things, the following factors: […] the conduct of the Parties during the proceedings; […]").

16. This practice has been crystallized in Rule 52.1 of the new ICSID Arbitration Rules,[10] which states:

> (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:
>
> (a) the outcome of the proceeding or any part of it; (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal; (c) the complexity of the issues; and (d) the reasonableness of the costs claimed.

17. International arbitration practice generally accepts that the term "expenses" cover both the (i) fees, allowances and any other expense incurred by attorneys and experts, and (ii) allowances and costs incurred by witnesses, counsel and representatives of the parties.[11]

III. RIVERSIDE NEEDLESSLY INCREASED THE COSTS OF THIS ARBITRATION

18. Riverside's conduct during the entire proceeding weighs heavily in favor of awarding Nicaragua its full costs and fees.

19. No single episode better captures Riverside's approach to this case than its failure to disclose that one of its key witnesses was illiterate, despite having supposedly submitted an extensive written witness statement that commented at length on documents relevant to this case and was ultimately stricken by the Tribunal in Procedural Order No. 12.

20. But, as the Tribunal will recall, Riverside's egregious conduct hardly stopped there. Riverside repeatedly filed extraordinary and improper applications; burdened Nicaragua with excessive document requests that were deemed immaterial by the Tribunal; increased Nicaragua's

[10] *MAKAE Europe SARL v. Kingdom of Saudi Arabia*, ICSID Case No. ARB/17/42, Award, August 30, 2021, ¶¶ 191-192 (**RL-0239**); *BRIF TRES d.o.o. Beograd and BRIF-TC d.o.o. Beograd v. Republic of Serbia*, ICSID Case No. ARB/20/12, Award, January 30, 2023, ¶ 234 (**RL-0240**).

[11] Christoph H. Schreuer, *The ICSID Convention: A Commentary* (Cambridge University Press, Second Edition, 2009), Chapter VI, Article 61, pp. 1223-1243 (**RL-0242**).

Hearing expenditures by calling Nicaragua's witnesses and experts to testify and then belatedly changing its mind a few days before the Hearing; sought a virtual hearing that was rejected by the Tribunal; requested the Tribunal to cancel the closing arguments just two days before they were going to occur; and introduced late and irrelevant evidence in the proceeding, attended by constant shifts of its story and underlying theories. Riverside also saturated these proceedings with extravagantly long pleadings, and—as it has never denied—did so by relying on undisclosed artificial intelligence software, leading to the interposition of non-existent authorities into the record of the case.

21. Even assuming there had been some merit to its claims, the totality of Riverside's egregious conduct consistently threatened the integrity of the arbitral process and imposed unnecessary costs.[12]

22. Riverside's conduct fully justifies an award of Nicaragua's full costs and fees, as borne out by consistent arbitral practice in similar—but perhaps less egregious—situations:

23. In *Border Timbers v. Zimbabwe*, the tribunal considered Zimbabwe's conduct which resulted in an "unnecessary escalation of costs of the proceedings" and awarded costs accordingly. The tribunal noted that there was a "convoluted and repetitive presentation" of pleadings, the "inclusion of irrelevant material," the "late elaboration of certain objections to jurisdiction, admissibility and defenses" as well as the inclusion of "inadmissible material in the Hearing Transcripts and Post-Hearing Briefs."[13]

[12] Annex A of this submission includes the total amount of fees and expenses incurred by Nicaragua, broken down by phase of the proceeding. Annex A includes the fees and costs per phase of the case, as well as all the additional tasks the legal team had to handle outside the procedural calendar, and estimated costs that Nicaragua additionally incurred due to the unsolicited and extraordinary motions and applications filed by Claimant in this case. Nicaragua's attorneys' hours, rates, and the individual phase amounts are confidential and we request that they be redacted for publication.

[13] *Border Timbers v. Zimbabwe*, ICSID Case No. ARB/10/25, Award, July 28, 2015, ¶ 1003 (**RL-0108**).

24. Similarly, in *Plama v. Bulgaria*, the tribunal considered that fraudulent misrepresentation of the identity of the investors was a sufficient basis to order Claimant to bear all the costs and fees of the tribunal and respondent. The tribunal considered that the failure to "earlier disclose to Respondent the details of the ownership and structure of the PCL-PHL-EMU group" added to Respondent's costs.[14] The tribunal found Claimant committed fraudulent misrepresentation[15] and ordered Claimant to pay Respondent $7,460,000 on advance payments, legal fees and other costs.[16]

25. In *Cementownia v. Turkey*, the tribunal observed that "the misconduct of an arbitration proceeding leads generally to the allocation of all costs on the party in bad faith."[17] The tribunal found that "[t]he arbitration proceeding and its schedule have been considerably delayed upon several requests of the Claimant," "[t]he Claimant's prayers for relief have changed [during the arbitration]," and Cementownia was an "empty shell" for the purpose of pursuing "this arbitral proceeding without any exposure to an award of costs."[18] On those bases, the tribunal explained that "ICSID tribunals can award costs against parties as a sanction against what they see as dilatory or otherwise improper conduct in the proceedings" and ordered Claimant to pay all Respondent's fees and costs amounting to US$5,304,822.06.[19]

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[14] *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, August 27, 2008, ¶ 318 (**RL-0225**).

[15] *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, August 27, 2008, ¶ 321 (**RL-0225**).

[16] *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, August 27, 2008, ¶ 325.6 (**RL-0225**).

[17] *Cementownia "Nowa Huta" S.A. v. Republic of Turkey (I)*, ICSID Case No. ARB(AF)/06/2, Award, September 17, 2009, ¶ 159 (**CL-0076**).

[18] *Cementownia "Nowa Huta" S.A. v. Republic of Turkey (I)*, ICSID Case No. ARB(AF)/06/2, Award, September 17, 2009, ¶ 158 (**CL-0076**).

[19] *Cementownia "Nowa Huta" S.A. v. Republic of Turkey (I)*, ICSID Case No. ARB(AF)/06/2, Award, September 17, 2009, ¶ 158 (**CL-0076**).

26. In *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, the tribunal awarded costs because of the lack of cooperation in good faith, the use of dilatory tactics, the request to introduce new evidence only at the end of the proceeding causing unnecessary disruption and expenses and supporting applications with witness statements and notes from its own counsel without authentication. These were all elements that demonstrated bad faith, making the losing party responsible for reasonable costs in the arbitration.[20]

27. In *Burlington v. Ecuador*, the tribunal considered in its costs analysis "the procedural conduct of the parties, and in particular, whether such conduct delayed the proceedings or increased costs unnecessarily."[21] Moreover, the *Burlington* tribunal took into consideration the good faith of the State when assessing the costs. It stated that "[i]n particular, where the actions of a State have been guided by its good faith understanding of the public interest and the State could reasonably doubt that it was breaching its international obligations, the tribunal may consider it appropriate to apportion costs in a manner that alleviates the burden on the respondent State. These considerations apply to situations in which the State is the respondent, not the claimant."[22]

28. As shown below, Riverside has unduly prejudiced Nicaragua and has unnecessarily and substantially increased Nicaragua's expenses during the arbitral proceeding.

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[20] *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, August 22, 2017, ¶¶ 1063-1072 (**RL-0130**).

[21] *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, February 7, 2017, ¶ 620 (**CL-0210**).

[22] *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, February 7, 2017, ¶ 621 (**CL-0210**).

A. The Circumstances Concerning Mr. Ferrufino's Ostensible Testimony Exemplify Riverside's Bad Faith Conduct

29. A general principle of law is that of good faith, which requires the parties "to deal honestly and fairly with each other, to represent their motives and purposes truthfully, and to refrain from taking unfair advantage."[23] Tribunals have regularly found that bad faith should guide an allocation of fees and costs against the breaching party.[24]

30. The debacle concerning Mr. Ferrufino's testimony epitomizes Riverside's bad faith throughout this arbitration. Its failure to disclose Mr. Ferrufino's inability to read and write prejudiced Nicaragua's preparation of his cross examination and raised serious questions about how his testimony was prepared.

31. These troubling circumstances are described in Procedural Order No. 12, but are worth reviewing here: Riverside caused Mr. Ferrufino to submit a witness statement that, *inter alia*, asserting that he had read various other witness statements and articles. This occurred despite the fact that counsel for Riverside *knew* Mr. Ferrufino was illiterate, at a minimum, no less than eight days before the Hearing; Riverside, though, failed to report this situation to Nicaragua and to the Tribunal until minutes before Mr. Ferrufino was presented for cross-examination. After Nicaragua moved to strike Mr. Ferrufino's testimony, the Tribunal found that Riverside's misconduct was "serious," that there could be "no justification for the Claimant's failure," inferred that "Claimant improperly sought to benefit at the Hearing from its failure to promptly inform the Respondent and the Tribunal of Mr. Ferrufino's circumstances," and thus decided to strike the testimony from the record.

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[23] *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, April 15, 2009, ¶ 107 (**RL-0226**).

[24] *Cementownia "Nowa Huta" S.A. v. Republic of Turkey (I)*, ICSID Case No. ARB(AF)/06/2, Award, September 17, 2009, ¶ 159 (**CL-0076**).

32. Riverside's concealment of Mr. Ferrufino's illiteracy was egregious, especially since Riverside touted Mr. Ferrufino as a witness with "direct first-hand testimony about the invasion and occupation of Hacienda Santa Fe, both in 2003 and 2017"[25] and submitted a witness statement in Mr. Ferrufino's name explicitly asserting that he had "***read*** the witness statement of Jose Valentin López Brandon (RWS-04)" as well as "news articles in an effort to rebut Nicaragua's contentions in this arbitration."[26]

33. Given the centrality of Mr. Ferrufino's ostensible evidence to Riverside's case, Nicaragua made an extensive effort to rebut his testimony in its Rejoinder and the accompanying witness statements of Diana Gutierrez (RWS-10), Marvin Castro (RWS-11), William Herrera (RWS-12), and José Valentín López Blandón (RWS-13), all of whom rebutted Mr. Ferrufino's testimony.

34. Nicaragua's counsel also devoted considerable time preparing to cross-examine Mr. Ferrufino, assuming, that, like most cross-examinations, this would involve confronting the witness with the documentary record. Nicaragua's counsel instead learned of Mr. Ferrufino's illiteracy only minutes before the cross-examination. Had Nicaragua known this crucial fact well in advance, it would have had the opportunity to challenge Mr. Ferrufino's witness statement prior to the Hearing, approached Mr. Ferrufino's examination differently, and submitted materially different arguments in its pleadings.

35. As a result of this incident, moreover, Nicaragua was required to redirect its legal team from preparing for the Hearing to drafting a motion to exclude Mr. Ferrufino's written

[25] Reply Memorial ¶ 67(e).

[26] Ferrufino Witness Statement (**CWS-12**) ¶¶ 6, 13, 39; *see also id.* ¶ 104 (claiming to have reviewed notes regarding the 2018 Tree Census) (emphasis added).

witness statement. Riverside contested this motion at length, resulting in two more rounds of pleadings that occurred during the Hearing.

36. In this context, Riverside contended that it was not aware of Mr. Ferrufino's illiteracy until preparing him for the Hearing on June 25, 2024, despite having conducted multiple interviews. Even taking this statement as true, it would mean that Riverside failed to alert the Tribunal and Nicaragua of this situation as soon as its counsel became aware of Mr. Ferrufino's inability to read his own witness statement or any of the documents referenced therein.

37. On July 10, 2024, the Tribunal excluded Mr. Ferrufino's witness statement, but decided to keep his oral evidence in the record. The Tribunal expressly acknowledged Riverside's bad faith and procedural misconduct, holding that:

> The Tribunal takes note of, and accepts, the Claimant's position, which is supported by Ms. De Pena's Declaration, that the Claimant only became aware of Mr. Ferrufino's illiteracy on 25 June 2024, when preparing him for the Hearing. However, the Claimant has not provided any explanation or justification for its failure to inform the Respondent and the Tribunal of Mr. Ferrufino's circumstances during the period from 25 June 2024, when it became aware of the matter, until the start of the Hearing on 1 July 2024. Indeed, Ferrufino's circumstances only on 2 July 2024, the second day of the Hearing, and even then, only after Mr. Ferrufino's examination had commenced. **The Claimant's failure in this regard is serious**. **It not only prejudiced the Respondent's ability to prepare for the cross-examination of an illiterate witness, but also affected the Tribunal's preparation for the Hearing, including by preventing the Tribunal from inviting the Respondent to comment on the impact of Mr. Ferrufino's illiteracy on the conduct of his examination at the Hearing and on the circumstances of preparation of his witness statement**. It also casts doubt on the sections of his Witness Statement which indicated that he had read the witness statement of another witness, and two news articles filed by the Respondent (on which he commented extensively), and that he recognized the handwriting in notes prepared by another witness…[27]

[27] Procedural Order No. 12, ¶ 28.

> Having considered the Respondent's Application and the Parties' positions, as summarized above, and the procedural rules governing the matter, the Tribunal considers that Mr. Ferrufino's Witness Statement must be considered **inadmissible** under Rule 34(1) of the ICSID Arbitration Rules and accordingly must be stricken from the record of this case, for the **Claimant's failure to inform the Respondent and the Tribunal promptly of Mr. Ferrufino's illiteracy, as soon as it became aware of the matter on 25 June 2024. It should have been immediately evident to the Claimant that Mr. Ferrufino's circumstances would raise legitimate questions about how his witness statement was prepared and why there was no mention in the Witness Statement of his illiteracy, and that this would also have an impact on the conduct of his examination at the Hearing. In the circumstances, there can be no justification for the Claimant's failure. Indeed, the inference must be that the Claimant improperly sought to benefit at the Hearing from its failure to promptly inform the Respondent and the Tribunal of Mr. Ferrufino's circumstances**.[28]

38. This bad faith conduct was not an isolated incident, but characteristic of Riverside's behavior throughout the entire arbitration. At a minimum, Riverside's irresponsible handling of Mr. Ferrufino's testimony prejudiced Nicaragua and forced Nicaragua to incur in additional costs to safeguard its rights. The Tribunal should take this egregious behavior into account in its allocation of costs.

B. Riverside's Procedural Abuse Increased Nicaragua's Costs

39. Investment tribunals have frequently awarded costs against the party that "delayed the proceedings or increased costs unnecessarily"[29] used "dilatory tactics" [30] and had a "convoluted and repetitive presentation" of pleadings, included "irrelevant materials," proceeded with a "late elaboration of certain objections to jurisdiction, admissibility and defenses" as well as the inclusion of "inadmissible material in the Hearing Transcripts and Post-Hearing Briefs."[31]

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[28] Procedural Order No. 12, ¶ 30.

[29] *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, February 7, 2017, ¶ 620 (**CL-0210**).

[30] *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, August 22, 2017, ¶¶ 1063-1072 (**RL-0130**).

[31] *Border Timbers v. Zimbabwe*, ICSID Case No. ARB/10/25, Award, 28 July 2015, ¶ 1003 (**RL-0108**).

40. Here, Riverside repeatedly submitted unsolicited and voluminous motions and pleadings that drove up legal fees and also unnecessarily delayed the proceeding. The Tribunal consistently found these submissions to be groundless, but they nevertheless prolonged the arbitration and increased the Nicaragua's defense costs. As further described below, this conduct also weighs in favor of Nicaragua's being awarded the entirety of its fees and costs.

1. Riverside's application in connection with the taking of Hacienda Santa Fé (November 13, 2022)

41. One example of Riverside's dilatory tactics and deliberate attempts to increase Nicaragua's workload has been Riverside's extraordinary application related to Nicaragua's provisional measure to safeguard HSF.

42. As the Tribunal will recall, on November 13, 2022, three weeks after its Memorial, Riverside filed an "extraordinary application" alleging that it had "accidentally" discovered new information while reviewing unrelated litigation files at the Court of Jinotega. Riverside accused Nicaragua of expropriating HSF through that court's issuance of an order appointing a judicial depositary to protect HSF in light of Riverside and Inagrosa's absence from the property.

43. Setting aside the absurdity of locating an expropriation in a measure intended to protect an investor's rights, as pointed out by Nicaragua in its Reply of December 12, 2022[32] and reconfirmed by Dr. Sequeira in the Hearing,[33] Riverside almost certainly had knowledge of this measure since July 13, 2022. In a transparent attempt to disrupt the efficient resolution of its case and divert Nicaragua's attention from preparing its Counter-Memorial, Riverside waited until after its Memorial submission to ambush Nicaragua with its "extraordinary application" seeking discretionary relief.

[32] Nicaragua's Rejoinder to Riverside's Reply dated December 12, 2022.

[33] Tr. 1781:7-1782:24 (Day 8).

44. Specifically, Riverside requested the Tribunal to order Nicaragua to disclose judicial and administrative measures and produce files, allow Riverside to supplement its Memorial and supporting materials, and order the disputing Parties to refrain from aggravating the dispute.[34] This application forced Nicaragua to engage in two rounds of additional pleadings and disrupted Nicaragua's preparation of its Counter-Memorial.

45. As the Tribunal found in Procedural Order No. 4, Riverside's application was baseless.[35] The Tribunal agreed with Nicaragua's position that the Protective Order could not be characterized as a "seizure order,"[36] recognized that the order did not purport to transfer ownership,[37] and rejected Riverside's contention that "Respondent has 'jeopardized the procedural integrity and the exclusivity' of the Tribunal's jurisdiction under Article 26 of the ICSID Convention."[38] Moreover, the Tribunal denied Riverside's request to disclose judicial and administrative measures and all related files as premature[39] and refused Riverside's request to supplement its Memorial.[40]

46. Despite the Tribunal's decision, Riverside continued litigating the issue, increasing Nicaragua's costs. In the Reply Memorial, Riverside devoted seventeen pages to revisiting this matter and presented a new expert report to support its position, insisting that the Tribunal's decision had been made "in the absence of specialized knowledge concerning Nicaraguan law."[41]

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[34] Riverside's Application of November 13, 2022, ¶ 68.

[35] Procedural Order No. 4, ¶ 41.

[36] Procedural Order No. 4, ¶ 30.

[37] Procedural Order No. 4, ¶ 33.

[38] Procedural Order No. 4, ¶ 35.

[39] Procedural Order No. 4, ¶¶ 36, 38.

[40] Procedural Order No. 4, ¶ 39.

[41] Reply, ¶ 47.

47. Nicaragua was thus forced to dedicate time and effort to responding to these arguments in its Rejoinder and even to engage an expert on Nicaraguan law to debunk Riverside's assertions and Riverside's expert testimony.[42] These issues were then litigated heavily at the Hearing, notwithstanding that the Tribunal had decided them in relevant part with Procedural Order No. 4.

48. Riverside's meritless extraordinary application—and refusal to accept the Tribunal's decision in Procedural Order No. 4—disrupted the procedural calendar and imposed additional costs on Nicaragua's defense.

2. Riverside's Motion to Dismiss Nicaragua's jurisdictional objection (March 16, 2023)

49. Riverside's filing a Motion to Dismiss outside of the procedural calendar, without seeking leave from the Tribunal, a mere three days after Nicaragua filed its Counter-Memorial, furnishes a second example of Riverside's abusive and dilatory approach.

50. On March 16, 2023, Riverside filed a wholly improper "Motion to Dismiss" Nicaragua's jurisdictional objection based on Riverside's lack of control over Inagrosa at the time of the alleged breaches.[43] In this motion, Riverside made untimely and improper arguments without identifying any *bona fide* reason, prejudice, or urgency as to why Riverside's request should be decided on an expedited basis or why it should disrupt the process agreed by the Parties.[44] Nicaragua was compelled to respond to another unsolicited and baseless motion.

51. The Tribunal dismissed Riverside's request as premature and unfounded in its March 17, 2023, letter, observing that Riverside would have the opportunity to address and respond to the Nicaragua's jurisdictional and admissibility objections in its Reply. In particular, the

[42] Rejoinder, ¶¶ 371-470.

[43] At the same time, Riverside informed the Tribunal that it was withdrawing its claim under Article 10.16(1)(b) of DR-CAFTA (relating to Inagrosa).

[44] Email from Nicaragua (Mr. East) to the Tribunal of March 16, 2023 (**R-0124**).

Tribunal found that "Claimant has not demonstrated why it would be in the interest of procedural efficiency or indeed appropriate or justified to address such objections at this time on an expedited basis, outside the agreed procedural timetable."[45]

3. Riverside's Motion on Procedural Issues (March 26, 2024)

52. Undeterred by the Tribunal's last ruling, and without seeking leave, Riverside repeated the exact same action after Nicaragua's Rejoinder was filed. On March 26, 2024, Riverside filed an untimely 40-page (single spaced) "Motion on Procedural Issues," asking the Tribunal to strike arguments and evidence filed by Nicaragua in its Rejoinder or alternatively, to suspend the procedural calendar completely to give Riverside the opportunity to file yet another pleading.[46] Riverside's motion relied on the misguided premise that Nicaragua could not have the last word on anything in the arbitral record and articulated fundamentally misleading arguments that Nicaragua's Rejoinder arguments and evidence were not responsive to Riverside's Reply.

53. Riverside's motion precipitated two rounds of briefing, before the Tribunal almost entirely rejected the application on April 22, 2024, while warning against "any further unsolicited procedural motions without first seeking leave from the Tribunal."[47]

4. Riverside's continued filing of defective submissions and failed to cooperate on procedural matters.

54. These were not Riverside's only untimely and procedurally defective submissions. Other instances included:

[45] Letter from the Secretary on behalf of the Tribunal of March 17, 2023 (**R-0125**).

[46] *See* Riverside's motion to strike dated March 26, 2024.

[47] Procedural Order No. 9, ¶ 104(c).

a. On August 24, 2023, Riverside asked the Tribunal to limit Nicaragua's right to request security for costs and submitted an extensive opposition without any directive from the Tribunal.[48] On August 28, 2024, the Tribunal rejected Riverside's position and noted that "there is no basis either in ICSID Arbitration Rules or in the Procedural Rule No. 1 for granting Claimant's request."[49] On October 5, 2023, in relation to the security for costs application, the Tribunal requested the Parties to file nothing more than a proposed "procedural timetable for the briefing of the Respondent's Application by Monday October 9, 2023." Despite this narrow instruction, on October 10, 2023, Riverside filed additional and unsolicited substantive comments in response to Nicaragua's application for security for costs.[50] Nicaragua had no choice but to incur the additional cost of replying to those comments incurring, once again, in additional costs.

b. On January 12, 2024, the Parties and the Tribunal held a procedural meeting by videoconference. After Nicaragua advised ICSID of the individuals who would require a travel certificate, Riverside sent a January 17, 2024 email to the Tribunal demanding that Nicaragua disclose the witnesses it intended to call and disclose its communication with the U.S. Department of State.[51] Nicaragua again incurred significant costs in responding to these improper and unsuccessful demands.[52]

[48] Email from Claimant (Mr. Appleton) to the Tribunal of August 24, 2023.

[49] Email from the Secretary on behalf of the Tribunal of August 29, 2023.

[50] Email from Claimant (Mr. Appleton) to the Tribunal of October 10, 2023 (**R-0133**).

[51] Email from Claimant (Mr. Appleton) to the Tribunal of January 17, 2024.

[52] Email from Respondent (Ms. Gonzalez) to the Tribunal of January 18, 2024.

55. Riverside was also uncooperative about addressing even minor procedural issues that arose during the arbitration. For example, after Riverside filed its November 13, 2022 application regarding the alleged juridical seizure, Nicaragua sought to agree with Riverside on a modest four-week extension for the then-ongoing preparation of its Memorial (and a corresponding extension for Riverside's Reply Memorial). After Riverside refused,[53] Nicaragua asked the Tribunal on December 29, 2022 for the extension.[54] Nicaragua's request was succinct, but Riverside filed an unsolicited opposition of 9 pages and 4 exhibits, while making false statements regarding the motives of Nicaragua's request.[55] That same day, Nicaragua requested leave to submit the complete exchange of communication between the Parties that Riverside failed to submit; the next day (December 30) Riverside made a further lengthy submission alleging a supposed "settlement privilege," but then voluntarily withdrew its objections two hours later.[56] The Tribunal ultimately granted Nicaragua a three-week extension to file its Counter-Memorial.[57]

56. As with its Memorials, Riverside's submissions were consistently voluminous. Nicaragua trusts that the Tribunal can recognize the unreasonable burden imposed on Nicaragua by Riverside's conduct in this regard.

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[53] Email from Nicaragua (Ms. Analia Gonzalez) to Riverside (Mr. Appleton) of December 23, 2022 (1:46 PM EST) (**R-0119**); Email from Riverside (Mr. Appleton) to Nicaragua (Ms. Analia Gonzalez) of December 23, 2022 (6:50 PM) (**R-0119**); Email from Nicaragua (Ms. Analia Gonzalez) to Riverside (Mr. Appleton) of December 23, 2022 (9:51 PM EST) (**R-0119**); Email from Riverside (Mr. Appleton) to Nicaragua (Ms. Analia Gonzalez) of December 28, 2022 (4:03 PM EST) (**R-0119**); Email from Nicaragua (Ms. Analia Gonzalez) to Riverside (Mr. Appleton) of December 29, 2022 (2:13 PM) (**R-0119**); Email from Riverside (Mr. Appleton) to Nicaragua (Ms. Analia Gonzalez) of December 29, 2022 (3:39 PM EST) (**R-0119**); Email from Nicaragua (Ms. Analia Gonzalez) to Riverside (Mr. Appleton) of December 29, 2022 (7:47 PM) (**R-0119**).

[54] *See* Email from Nicaragua (Ms. Analia Gonzalez) to the Tribunal of December 29, 2022 (**R-0120**).

[55] *See* Email from Riverside (Mr. Appleton) to the Tribunal of January 4, 2023 (**R-0121**).

[56] *See* Email from Nicaragua (Ms. Analia Gonzalez) to Nicaragua of January 4, 2023 (**R-0121**).

[57] Letter from the Secretary on behalf of the Tribunal of January 6, 2023. In comparison, Nicaragua engaged cooperatively with Riverside in its request for additional time for its Reply Memorial, agreeing to a six-week extension.

5. Riverside repeatedly burdened Nicaragua with needless requests

57. Riverside also repeatedly burdened Nicaragua with unnecessary administrative correspondence and requests that were baseless and/or unreasonable but drove up the costs of the proceeding.

58. While correspondence between the Parties is expected to occur during any arbitration, Riverside's repeated requests, many of them unfounded, burdened Nicaragua far beyond what is expected in a normal arbitral proceeding. Riverside's proclivity for making submissions to the Tribunal significantly compounded the burden imposed. While Nicaragua cannot possibly detail every communication here, some typical examples follow below:

59. On October 22, 2023, Riverside approached Nicaragua's counsel explaining that Riverside had "discovered an oversight about ten particular business confidential documents" that were "inadvertently omitted from [its] June 9, 2023 [document] production" over four months ago.[58] Nicaragua conducted a review, expended legal resources, and informed Riverside that those documents had already been produced.[59] As usual, Riverside confirmed the documents were produced after conducting a "comprehensive review" of its files.[60] A minimal amount of diligence in reviewing its own documents would have shown that the Riverside did not need to contact and burden Nicaragua with this matter.

60. On February 2, 2024, in a four-page letter, Riverside accused Nicaragua of withholding documents during the document production phase.[61] Riverside "urgently request[ed]

[58] Email from Claimant (Mr. Appleton) to Respondent (Ms. Gonzalez) of October 20, 2023 (**R-0135**)

[59] Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of October 23, 2023 (**R-0136**).

[60] Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of October 25, 2023 (**R-0140**).

[61] Letter from Claimant to Respondent dated February 2, 2024. This is correspondence between the Parties, which Nicaragua will provide upon the Tribunal's request.

a detailed response from Nicaragua, outlining specific steps taken to address these compliance gaps" and "expect[ed] Nicaragua's comprehensive response by no later than February 6, 2024."[62] Riverside thus responded on this expedited timetable, demonstrating that the documents had already been produced or did not exist.[63] The context of Riverside's letter is important because, at that time, Nicaragua was focused on preparing its Rejoinder. Riverside's letter thus burdened Nicaragua at a critical time.[64]

61. On April 4, 2024, Riverside sent Nicaragua a five-page letter purportedly seeking documents pursuant to Riverside's Document Request No. 76, including the production of records in electronic format such as GIS data and underlying information for eight exhibits.[65] Riverside framed these documents as a request related to the private wildlife reserve, except that none of the exhibits mentioned by Riverside in the letter were related to the application to a private wildlife reserve. Even worse, the requests actually fall under Riverside's Document Production Request No. 77, that specifically covered metadata for certain documents, which the Tribunal denied in Procedural Order No. 6, Annex A. Despite this, Riverside accused Nicaragua of an inadequate and

[62] Letter from Claimant to Respondent dated February 2, 2024. These exchanges are correspondence between the Parties, which Nicaragua will provide upon request.

[63] Letter from Respondent to Claimant dated February 6, 2024. This is correspondence between the Parties, which Nicaragua can provide upon the Tribunal's request.

[64] Again, these exchanges are detailed in correspondence between the Parties, which Nicaragua will provide upon request.

[65] Letter from Claimant to Respondent, re: Riverside Coffee, LLC-Request for maps native files, and source information, dated April 4, 2024. This is detailed in correspondence between the Parties, which Nicaragua will provide upon request.

insufficient document production.[66] Nicaragua, of course, was forced to respond to point out to Riverside its own errors and inconsistencies.[67]

62. Moreover, this request was extremely untimely. Riverside asserted that these exhibits had been introduced with the Rejoinder, but all save one had in fact been introduced with the Counter-Memorial. Riverside thus could have addressed this issue in its Reply or during document production. However, it chose neither to submit further evidence nor expert testimony to contest these materials. In addition, the context of Riverside's baseless letter again demonstrates Riverside's abusive conduct towards Nicaragua. At that time, Nicaragua's Opposition to Riverside's Motion to Strike was due on April 8, 2024, a needless distraction at the same time Nicaragua's counsel was already responding to Riverside's other meritless motion.

63. The next day, on April 5, 2024, Riverside sent Nicaragua yet another four-page letter, this time raising another baseless document production issue (begging the question why Riverside did so seriatim). Riverside sought more documents allegedly responsive to Riverside's Document Requests Nos. 31, 49, and 50, in connection with Exhibit R-0223.[68] In particular, Riverside requested "the daily updated list of properties taken" and "the registry, cadastral information, location, area, type of seizure, people who invaded, leaders of the seizures, background with the police of these, public or private property, natural or legal persons."[69] In its

[66] Letter from Claimant to Respondent, re: Riverside Coffee, LLC-Request for maps native files, and source information, dated April 4, 2024, p. 1. This is correspondence between the Parties, which Nicaragua will provide upon request.

[67] Letter from Respondent to Claimant, re: Letter from A. Gonzalez to B. Appleton in response to April 4, 2024 letter, dated April 16, 2024. This is correspondence between the Parties, which Nicaragua will provide upon request.

[68] Letter from Claimant to Respondent, re: Riverside Coffee, LLC-Request for invasion reports, dated April 5, 2024. This is correspondence between the Parties, which Nicaragua will provide upon request.

[69] Letter from Claimant to Respondent, re: Riverside Coffee, LLC-Request for invasion reports, dated April 5, 2024, p. 4. This is correspondence between the Parties, which Nicaragua will provide upon request.

April 16, 2024 letter, Nicaragua explained that R-0223 was not responsive to Riverside's Document Requests Nos. 31, 49, and 50, and Riverside misrepresented the content of R-0223 and failed to clarify how and why those document categories pertained to Exhibit R-0223.[70] Once again Nicaragua had to expend significant resources in responding, undertaking extensive searches for the documents Riverside alleged to have existed. But Nicaragua found none because they never existed in the first place.[71]

C. Riverside's Document Production Conduct Unduly Burdened Nicaragua

64. The Tribunal largely rejected Riverside's excessively broad document requests, as well as its baseless objections to Nicaragua's requests. Riverside's unreasonable conduct in the document production phase nevertheless served to drive up costs unnecessarily.

65. ***First***, Riverside served Nicaragua with a 177-page Stern Schedule containing 112 document requests.[72] Many of Riverside's requests were argumentative, distorted the facts of the case, and required Nicaragua to spend considerable amount of time answering to each request and correcting the record and the facts. The Tribunal rejected more than half of Riverside's document requests in full.

66. Indeed, of Riverside's 112 document requests, the Tribunal only granted three requests in full and completely rejected 59 requests for either being overbroad or irrelevant and

[70] Letter from Respondent to Claimant, re: Letter from A. Gonzalez to B. Appleton in response to Claimant's Letter of April 5, 2024, dated April 16, 2024. This is correspondence between the Parties, which Nicaragua will provide upon request.

[71] Letter from Respondent to Claimant, re: Letter from A. Gonzalez to B. Appleton in response to Claimant's Letter of April 5, 2024, p. 3. These exchanges are detailed in correspondence between the Parties, which Nicaragua will provide upon request.

[72] Procedural Order No. 6.

immaterial to the outcome of the case.[73] (By contrast, Nicaragua submitted 62 document requests, of which 48 were either granted by the Tribunal or Riverside accepted to search and produce, and 4 more were narrowed.)[74]

67. ***Second***, in responding to Nicaragua's document requests, Riverside made extensive bad faith objections, which were noted and rejected by the Tribunal. For instance, Riverside included a "Standard Response -RDR No. 1" by which Riverside purported to object to Nicaragua's request being addressed to an unknown company.[75] The Tribunal summarily rejected this tactic, ruling that Riverside cold not "legitimately rely on what is clearly a typographical error to resist an otherwise valid request for production of documents, and therefore cannot refuse to produce documents requested by the Nicaragua on the sole basis of such an error."[76] Where an issue could have easily been addressed between the Parties, Riverside made a point of elevating form over substance, to the detriment of all involved.

D. Riverside Unreasonably Increased Costs Related to the Hearing

68. Well beyond the episode concerning Mr. Ferrufino's ostensible testimony, Riverside's conduct leading up to and during the Hearing unnecessarily and consistently increased the costs of the proceeding.

[73] Procedural Order No. 6, Annex A. The Tribunal partially granted 23 requests, did not make any decisions on 23 requests because Nicaragua agreed to conduct reasonable searches, and four requests were withdrawn by Claimant.

[74] Procedural Order No. 6, Annex B.

[75] Procedural Order No. 6, ¶ 9.

[76] Procedural Order No. 6, ¶ 9.

1. Riverside left Nicaragua in doubt as to which witnesses would be required to testify until just weeks before the Hearing

69. Riverside caused Nicaragua to incur unnecessary costs by dropping witnesses and experts from the list of Nicaragua's witnesses called for cross-examination. The Parties had a long-standing agreement to inform the Tribunal by May 10, 2024 which fact and expert witnesses each intended to call for cross-examination.[77] On that date, Riverside notified the Tribunal and Nicaragua that it intended to call eleven fact witnesses and four expert witnesses for cross examination.

70. However, Riverside called five fact witnesses on a "conditional" basis, a provision not in the Procedural Orders and not contemplated in the Arbitration Rules. Instead, Riverside explained that it would finalize its list after the pre-hearing conference scheduled for June 10, 2024.[78]

71. Nicaragua thus asked the Tribunal to "order Claimant to comply with the agreed Procedural Calendar and inform by Tuesday of next week if it wishes to call the Witnesses with an asterisk for Cross-Examination."[79] In response, Riverside sent eight pages commenting on the circumstances surrounding its decision about the witnesses, with additional arguments over matters on which it had not been invited to comment.[80]

72. On May 14, 2023, the Tribunal rejected Riverside's position entirely. The Tribunal emphasized that "[n]either the applicable procedural calendar nor Procedural Order No. 1 provide for the possibility of calling witnesses or experts conditionally or otherwise subject to further

[77] Procedural Order No. 1 and Procedural Order No. 5, Annex A ("**Procedural Calendar**").

[78] Email from Respondent (Mr. Appleton) to the Tribunal of May 10, 2024.

[79] Email from Respondent (Ms. Gonzalez) to the Tribunal of May 10, 2024 (9:05pm).

[80] Email from Respondent (Mr. Appleton) to Mr. Conover of May 13, 2024 (9:56pm).

developments. Accordingly, the Tribunal confirmed that the deadline of 10 May 2024 was not conditional or otherwise subject to reservations." Moreover, the Tribunal acknowledged that "[s]hould, however, either party waive the examination of a witness or an expert it had notified, the Tribunal will take this into account in its cost decision if the other party can show that it incurred costs in reliance on the opposing party's notification."[81]

73. The Tribunal also recognized that Riverside was raising issues without instruction of the Tribunal and was reminded the Parties that the submissions should be concise and focused on the issues in dispute:

> Finally, the Tribunal notes that the Claimant's communication of 13 May 2024 raised issues on which it **was not invited to comment**. To the extent that the Claimant's comments relate to procedural issues that will be addressed at the Pre-hearing Organizational Meeting, it remains free to raise them in that connection. The Tribunal reminds the Parties of its previous instruction of 9 April 2024 that it expects that the Parties' submissions are **concise and focused on the issues in dispute**.[82]

74. On June 10, 2024, during the pre-hearing conference, Riverside decided not to cross-examine Dr. Odilo Duarte and Professor William Burke-White, two of the four expert witnesses it initially called[83] and the next day, Riverside dropped six fact witnesses.[84]

75. Thus, for a whole month, from May 10, 2024 through June 11, 2024 Nicaragua had been left in doubt as to which witnesses and experts would ultimately testify at the Hearing. Riverside's conduct left Nicaragua no option but to prepare *all* of the witnesses and experts originally called by Riverside, holding meetings, preparing outlines, and traveling to New York to hold in-person meetings with the experts (Prof. Burke-White). Several of the witnesses and experts

[81] Letter from the Secretary on behalf of the Tribunal of May 14, 2024.

[82] Letter from the Secretary on behalf of the Tribunal of June 11, 2024.

[83] Letter from the Secretary on behalf of the Tribunal of June 11, 2024.

[84] Email from Respondent (Mr. Appleton) to the Tribunal of June 11, 2024.

whom Riverside belatedly declined to examine had already arranged their travel to the Hearing at Nicaragua's expense.

76. This was more than just a trivial violation of Procedural Order No. 1, as waiting until few weeks before the Hearing to prepare witnesses would have been too late given the number of witnesses and experts initially called by Riverside. Per the Tribunal's decision of June 14, 2024, Riverside should be solely responsible for the costs related to preparing these experts and witnesses, including travel and administrative expenses.[85]

2. Riverside's unfounded request for a fully virtual merits hearing

77. Despite seeking hundreds of millions of dollars from Nicaragua, Riverside demanded a virtual hearing, supposedly based on the perceived visa restrictions and difficulties of travel to the United States for Nicaraguan nationals. Riverside's request (on October 13, 2023) emphasized that certain Nicaraguan nationals that were subject to sanctions, while overlooking that none of those persons were actually witnesses in this case.[86]

78. Because of this request, the Tribunal asked the Parties to submit further briefing, forcing Nicaragua to incur more costs. Riverside insisted that it would be impossible for Nicaraguan officials (Ms. Diana Gutierrez, Mr. Herrera, and Commissioner Castro) to obtain visas.[87] Similarly, Riverside baselessly argued that Nicaragua's fact witnesses (and even Riverside's fact witnesses), except for José Valentín López Blandón, would be ineligible to attend

[85] Letter from the Secretary on behalf of the Tribunal of June 11, 2024 ("The Tribunal considers that a party remains free waive its right to examine a witness or expert it has previously called for examination, however, depending on when the party indicated such waiver, the other party may be entitled to claim for the costs it incurred in making the necessary arrangements for a witness or expert to be available. The Tribunal's decision on this matter is reserved.")

[86] Riverside's observations on hearing organization, dated October 13, 2023.

[87] Riverside's observation on remote hearing, dated November 20, 2023, ¶ 17.

in person.[88] Moreover, Riverside also contended that all witnesses based in Nicaragua would face challenged in obtaining their visas.[89]

79. The Tribunal decided to conduct the Hearing in person, holding that "[t]]he tribunal is not convinced that the circumstances of this case require that the hearing be held remotely,"[90] and ordered the Parties to immediately start the visa application process with ICSID's support. In the end, Riverside's supposed visa concerns were entirely overblown, with only Commissioner Castro and Mr. Ferrufino unable to participate in person. Once again, Riverside precipitated costly and unnecessary procedural exchanges that needlessly drove up the costs of the proceeding.

3. Riverside repeatedly attempted to introduce new evidence at a late stage

80. Riverside, on multiple occasions, improperly sought to introduce new evidence during witness examinations without advance notification. This was highly irregular and further increased Nicaragua's costs.

81. On July 5, 2024, mere moments before Mr. Castro's cross examination, Riverside's counsel notified the Tribunal that it intended to introduce a 1 hour 27-minute video and planned to use it for Mr. Castro's cross examination. Although this new video was claimed to be the complete version of another video previously introduced by Riverside as C-339, Riverside contended that it had "just discovered" the incompleteness of the initial video.[91] The Tribunal rejected the request, explaining that "[n]either party shall be permitted to submit additional responsive documents after the filing of its respective last submission unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by

[88] Riverside's observation on remote hearing, dated November 20, 2023, ¶ 80.

[89] Riverside's observation on remote hearing, dated November 20, 2023, ¶¶ 15-16.

[90] Procedural Order No. 8, dated January 16, 2024, ¶ 29.

[91] Tr. 1166:5-1171:15 (Day 5).

observations from the other party. The Tribunal doesn't believe that there are sufficiently special circumstances to justify the late introduction of this video. It's the Claimant's own exhibit."[92]

82. Similarly, on July 8, 2024, Riverside's expert, Renaldy Gutierrez, attempted to introduce new factual evidence during his direct examination in violation of Procedural Order No. 1. Once more, the Tribunal discussed the issue and determined that an expert is not allowed to introduce factual evidence and noted that the proper procedure for introducing new evidence was not followed.[93]

83. All of these procedural sideshows increased costs unreasonably, forcing Nicaragua to be prepared to respond to unexpected procedural battles or belated attempts to introduce new evidence with little or no notice.

4. Nicaragua incurred unnecessary costs for a closing argument that never happened

84. Procedural Order No. 1 was negotiated between the Parties at the inception of this arbitration and provided for closing arguments during which the Parties would marshal the evidence and respond to Tribunal questions. As the Tribunal undoubtedly appreciates, preparing for a closing argument during a hearing is time-intensive and occurs in parallel with other aspects of an arbitration: counsel must scrutinize transcripts, compile arguments, and prepare demonstratives, all while conducting the rest of the evidentiary hearing.

[92] Tr. 1171: 5-14 (Day 5).

[93] Tr. 1432:13-1435:13 (Day 6). The Tribunal concluded: "The Tribunal has deliberated. Mr. Gutiérrez is an expert witness. He is not the witness of fact, and this would be factual evidence. It's not a legal opinion, so this cannot be admitted into the record. So this slide is excluded from the record. The parties know that there is a mechanism for introducing new evidence, and that mechanism has been set out in PO1. Introducing late evidence after the last written submission, that is the way to introduce or seek leave for new evidence. But this is not the way to introduce new factual evidence. So please proceed, Mr. Gutiérrez, but you cannot comment further on this subject. This is evidence of fact, not expert evidence." Tr. 1434:25-1435:13 (Day 6).

85. Riverside, however, was able to unilaterally cancel closing arguments, just two days before the closing arguments were scheduled to take place, on account of a health condition. While Nicaragua appreciates health emergencies may arise, the health condition befalling Riverside's counsel was something that should have been, at the very least, addressed between the Parties before the Hearing.[94] And, indeed, the Tribunal repeatedly admonished the Parties to "please communicate between counsel."[95]

86. No such discussion ever took place. Riverside and its counsel never once raised the possibility of a potential health issue in advance to either Nicaragua or the Tribunal (although, apparently, counsel asked for an accommodation from ICSID), even though he was aware it could impact the Hearing.[96] Good faith required a similar disclosure to the Tribunal and Nicaragua.

87. Despite the Tribunal's cancellation of the closing arguments, Riverside's last-minute requests did not stop there. The following day, Riverside's counsel—who continued to participate in the Hearing—leveraged that cancellation to claim that Riverside would be treated unfairly if it was not allowed to raise issues not addressed at the Hearing in its post-hearing submission (thus turning a post-hearing brief, into something closer to another memorial):

[94] This is especially the case where, throughout earlier stages of the arbitration, both the Tribunal and Respondent had repeatedly accommodated requests made by Claimant based on alleged health conditions (*See*, Email from Respondent to the Tribunal of August 24, 2023).

[95] Tr. 1778:22-25 (Day 8).

[96] Tr. 2137:22-2138:4 (Day 9) ("So all I point out is that this is not some type of a new issue. It's an ongoing issue to be managed, and I just find that to be very unfair, and I simply want to point out that on this issue this Tribunal has gone out of its way to be fair and to be highly respectful of those of us that need slight accommodations to be able to participate fully in society.").

> MR. APPLETON: We also want to note that the **parties didn't have the opportunity to present closing arguments** and despite the Tribunal's suggestion that it was possible to conduct them virtually, to which we had no objection to that suggestion, so we also have to bear that in mind as we deal with this process[97]….you'd have a situation where **arguments that were raised in the Rejoinder that were new would never have an opportunity to be responded to and that could never be appropriate. We had intended to be able to deal with some of that with respect to the matters in the closing**, and so we don't want that to be prejudicial or to **affect a fundamental opportunity to be able to present our case**[98]…First of all, the Tribunal is aware that there are fundamental rules of procedure that govern this hearing. They are -- the way that the ICSID is organized is a little bit different from almost all the other arbitration rules. They don't give you a nice rule like in the old UNCITRAL rule article 15. You have to find them in other ways, and they've come from **annulment committees**, so it's a little bit hard but **that rule is foundational and a requirement**. And one of the key elements in that is the *principe du contradictoire*, the right to be able to argue against. So given the fact that there were **issues that were raised that we were unable to respond to in the Rejoinder, we would have had that opportunity in the closing** and that would have been part of our plan to be able to respond to those in the closing. **Now that we don't have the closing, we would need to have that opportunity because, otherwise, we would be not permitted that opportunity. We don't want to be in a position to file formal objections. We simply want you to be aware of what the unintended effect would be if that was to be narrowed, and we think that would be something that should be avoided at all costs**.[99]

88. Riverside's conduct with respect to closing arguments significantly increased Nicaragua's costs. Nicaragua spent time and resources preparing for the closing arguments that never took place.

89. None of this meant to diminish any legitimate health condition facing Riverside's counsel. But where Riverside's counsel already knew of this condition and had alerted the ICSID Secretariat it was incumbent on counsel to engage Nicaragua's attorneys in good-faith discussions alerting them early to this possibility, so that the Parties could react appropriately or make appropriate accommodations. That did not happen.

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[97] Tr. 2116:13-18 (Day 9).

[98] Tr. 2117:10-17 (Day 9).

[99] Tr. 2129:8-2130:16 (Day 9).

5. Riverside failed to collaborate with Nicaragua in the transcript review process

90. Riverside's costly disregard of the Tribunal's instruction that the Parties work collaboratively to resolve procedural issues only continued post Hearing.[100] This has been particularly the case in connection with the transcript review process.

91. Nicaragua sought to reach an efficient protocol for doing so with Riverside, where both teams would share equal work to complete the review.[101] Riverside rejected Nicaragua's proposal for collaboration and declined further discussions.

92. Riverside took a similar tact with the quantum experts, repeatedly insisting that the entirety of their testimony should be confidential (with extremely limited exceptions).[102] Because Riverside refused to compromise in this regard, Nicaragua had to bring the issue to the Tribunal. The Tribunal ultimately sided with Nicaragua, recognizing that the decision to hold the quantum experts' testimony "in a closed session was based on the practicalities of the examination and was not intended to designate the entirety of the examination as protected information."[103] Had Riverside agreed to cooperate with Nicaragua, there would have been no need to approach the Tribunal and spend weeks litigating the matter.

[100] Tr. 1822:5-9 (Day 8).

[101] Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of July 18, 2024. The Parties exchanged correspondence in this regard, which Nicaragua can provide to the Tribunal if so requested.

[102] Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of July 24, 2024. The Parties exchanged correspondence in this regard, which Nicaragua can provide to the Tribunal if so requested.

[103] Letter from the Secretary on behalf of the Tribunal dated September 6, 2024.

E. Riverside's Changing Factual Allegations and Extravagantly Lengthy Memorials Imposed Extraordinary Costs on Nicaragua

93. Throughout the entire proceeding, Riverside has increased the costs of this arbitration by (i) switching between incompatible case theories; (ii) submitting extravagantly lengthy pleadings; and (iii) pursuing plainly specious arguments. Below are examples of this kind of conduct by Riverside, all of which unreasonably increased the costs borne by Nicaragua in this arbitration:

1. Riverside constantly changed the narrative of its case

94. Riverside could barely keep its stories straight, frequently altering the factual narrative and legal theory of its case. This increased Nicaragua's costs because Nicaragua had to address each new argument and variation on the alleged facts.

95. Most significantly, Riverside initially argued that the Nicaraguan government sent armed paramilitaries to seize HSF.[104] After Nicaragua refuted this false narrative, Riverside changed its story and switched to complaining about a "judicial expropriation" and that the Nicaraguan government had delayed in sending the police to remove the farmers during a period of significant violence and social unrest in the country.[105] At the Hearing, Riverside tried to advance both of these inconsistent theories at different times.[106]

96. Another inconsistency relates to the alleged avocado market. In the Memorial, Riverside claimed that Inagrosa planned to export Hass avocados to the United States.[107] Yet after

[104] Memorial, ¶¶ 57-58.

[105] Rejoinder, ¶ 43.

[106] Tr. 490:7-13 (Day 2) ("Mr. Molina: As you sit here today, is it your testimony that the Nicaraguan government sent paramilitaries, as defined by Riverside Coffee in paragraph 11 of the Memorial, to invade your Hacienda in 2018? Mr. Rondón: My knowledge is that the government of Nicaragua did send them to confiscate our farm.").

[107] Memorial, ¶¶ 360, 361; Rondón I, ¶¶ 183, 192 (**CWS-01**).

Nicaragua showed that the export of Nicaraguan avocados to the United States is barred by agricultural regulations, Riverside switched to arguing that it would have initially exported avocados to Canada but that it would have somehow succeeded in changing the applicable U.S. agricultural regulations designed to keep out an invasive pest. [108]

97. Meanwhile, Riverside's speculative damages claims, largely based upon a letter from Carlos Rondón created after it filed for arbitration (rather than on contemporaneous evidence), led to a massive swing of damages. All of this required more work by Riverside and its expert.

98. All told, Riverside's shifts and general pleading strategy added undue complexity to the proceeding and raised the Nicaragua's defense costs.

2. Riverside made specious arguments that wasted time and resources

99. Further compounding the costs of this arbitration, Riverside larded its nearly 800 pages of submissions with plainly specious arguments. Though standing little chance of success, each obliged Nicaragua to reply. Some of Riverside's most strikingly meritless arguments included:

- Asserting the existence of a voting bloc agreement between Inagrosa and Riverside without ever producing the actual document;
- Insisting that a protective order imposed to protect its investment from third parties and in full recognition of Inagrosa's ownership of HSF was in actuality an "expropriation," and persisting in this argument despite its resounding rejection by the Tribunal in Procedural Order No. 4;
- A litany of most-favored nation arguments seeking to import language from the Russia-Nicaragua BIT and Swiss-Nicaragua BIT or to delete Article 21.2(b) from DR-CAFTA on the basis that the Russia-Nicaragua BIT lacks an ESI clause;

[108] Reply, ¶¶ 987; Welty I, ¶ 90 (**CWS-11**).

- Quantifying its damages under the DCF methodology for hundreds of millions of dollars for an avocado project that lacked contemporaneous documents and had no sales, financing, know-how, or permits, based almost exclusively on a Representation Letter and witness testimony for its DCF model inputs;

- Seeking US$45 million in moral damages for a corporate entity without any commercial operations, without any serious explanation of who or what suffered those damages; and

- Seeking a "tax gross up" of 30% to the pre-interest DCF values without citing any legal basis whatsoever.

- Seeking damages for a supposed forestry business that, in reality, never existed and never sold a single tree, and for the "total deforestation" of rare hardwood species;

Each and every one of these specious arguments required Nicaragua to expend costs to provide a response.

3. Riverside's submissions were excessively lengthy. Claimant employed AI without disclosure and declined to establish a protocol for its transparent use.

100. In addition, Riverside's Memorials, to put it mildly, were outrageously long. Riverside's lengthy submissions created a Hobson's choice for Nicaragua: either respond in detail, addressing the points no matter how trivial, for fear of being accused of not responding, or spend more time, effort, and expense to provide a comprehensive response. Even then, Nicaragua's submissions were shorter and more efficient than those of Riverside.

101. Riverside's Memorial was 297 pages (single spaced), and its Reply Memorial (again, single spaced) was even longer at an astounding ***479 pages***.[109] Even by the standards of international investment arbitration, Riverside's Memorials were extravagantly lengthy. That length was directly prejudicial because Nicaragua had no choice but to scrutinize the entirety of these immense pleadings carefully and respond.

[109] By contrast, Nicaragua's Counter-Memorial was 228 double-spaced pages long and its Rejoinder Memorial was 310 double-spaced pages.

102. As set out in prior submissions to the Tribunal, Nicaragua also strongly suspects that Riverside used artificial intelligence to draft some of its pleadings and correspondence and accordingly proposed a protocol for its transparent and responsible use in this arbitration.[110]

103. The most striking evidence of Riverside's use of AI to generate voluminous submissions was the Reply Memorial's citation to the purported Article 39(2) of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts ("**ARSIWA**"). According to Riverside, this article provided that "(2) This rule does not apply to the breach of an international obligation which prohibits conduct irrespective of the existence or otherwise of fault of the responsible State, and which is for the protection of fundamental human rights." However, such an article does not even exist, with the United States noting in its non-disputing party submission of March 15, 2023, that "[a]rticle 39, contrary to the claimant's suggestion in its Reply Memorial, does not contain a second paragraph related to human rights obligations."[111]

104. Other aspects of Riverside's submissions also indicated reliance on generative artificial intelligence, in particular the use of faint boxes around case captions:[112]

[110] The Parties exchanged correspondence in this regard, which Nicaragua can provide to the Tribunal if so requested. For reference: Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of May 2, 2024; Email from Claimant (Mr. Appleton) to Respondent (Ms. Gonzalez) of May 9, 2024 (12:09 pm); Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of May 9 (2:02 pm).

[111] Submission of the United States of America, March 15, 2023, ¶ 47.

[112] Claimant's April 12, 2024 Reply on Riverside's Urgent Rejoinder Procedural Motion, ¶ 63. We encourage the Tribunal to verify Claimant's pleadings using AI detector. The one used by Nicaragua, called Originality, can be found at https://tinyurl.com/4wcvnph7.

63) **Procedural Imbalance and Fairness Concerns -** By incorporating new legal defenses in its final pleading, which were not made in its Counter-Memorial, Nicaragua sidesteps the critical issue of timely defense, which is essential to iterative submissions. Nicaragua's maneuver denies Riverside the fair opportunity to assess and counter these newly introduced arguments, embodying a profound procedural unfairness. The crux of arbitration justice—timely and equal opportunity to respond—has been compromised.

105. Despite having been asked on several occasions about the use of artificial intelligence, Riverside never denied using it but refused to discuss Nicaragua's proposed protocol.[113] Instead, Riverside chose to say only that artificial intelligence was supposedly not used for "international law research"—a striking non-answer to the question of whether artificial intelligence was used to generate its abusively long pleadings—evidently without proper oversight from human counsel.[114]

106. Yet whether or not Riverside used artificial intelligence, there can be no dispute that Riverside's submissions were immense, and that this unreasonably increased Nicaragua's legal costs.[115]

[113] The Parties exchanged correspondence in this regard, which Nicaragua can provide to the Tribunal if so requested. For reference: Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of May 6, 2024 (2:42pm); Email from Claimant (Mr. Appleton) to Respondent (Ms. Gonzalez) of May 6, 2024 (2:42 pm); Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of May 6, 2024 (8:19pm); Email from Claimant (Mr. Appleton) to Respondent (Ms. Gonzalez) of May 7, 2024 (6:15 pm); Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of May 7, 2024 (7:17pm); Email from Claimant (Mr. Appleton) to Respondent (Ms. Gonzalez) of May 9, 2024 (11:50 pm); Email from Claimant (Mr. Appleton) to Respondent (Ms. Gonzalez) of May 9, 2024 (12:09 pm); Email from Respondent (Ms. Gonzalez) to Claimant (Mr. Appleton) of May 9 (2:02 pm).

[114] Email from Claimant (Mr. Appleton) to Respondent (Ms. Gonzalez) of May 9, 2024 (12:09 pm).

[115] The use of artificial intelligence of course makes this sort of abuse easier, allowing Riverside to submit lengthy unchecked briefs at little cost while inflicting prejudicial legal expenses on Nicaragua.

F. Riverside Should Bear the Cost of Securing HSF

107. Riverside spurned Nicaragua's repeated invitations to resume possession of HSF once the illegal occupiers had been safely relocated. Under the circumstances, Nicaragua was left with no option but to spend public funds to safeguard Inagrosa's property and a foreign investment which was the subject of a DR-CAFTA claim. During the Hearing, Ms. Diana Gutierrez explained that:

> At present, those three agreements with this private security company comes to more than $800,000 for caring for that property ever since private security was placed there. This is an expense that has been incurred by the Nicaraguan government.[116]

108. As of the date of this submission, Nicaragua has incurred expenses of NIO 12,602,771.82, equivalent to **$342,827.40** to protect the property,[117] and these costs will continue to rise until Riverside resumes possession of HSF. Nicaragua has acted in good faith keeping the property safe and under custody for the benefit of Inagrosa and Riverside. Therefore, Nicaragua respectfully requests the Tribunal to order Riverside to reimburse Nicaragua all these expenses associated with the custody and protection of HSF (to the extent these expenses are not reimbursed previously).

[116] Tr. 1100:5-9 (Day 5).

[117] Total sum paid by Nicaragua to CYB as of this filing are NIO 12,602,771.82. Converted to U.S. dollars on November 5, 2024 using the currency conversion platform available at: https://www.xe.com/currencyconverter/.

IV. NICARAGUA'S COSTS ARE REASONABLE

109. Nicaragua seeks $8,240,445.86. That amount, in light of the conduct above and the amount requested, is reasonable and should be borne by Riverside in its entirety.[118]

110. When assessing the reasonableness of the costs, tribunals have considered the amount of compensation requested, the volume of the evidentiary record, the length of the proceeding and the complexity of the disputed issues.[119] Moreover, tribunals have found that the assessment of the reasonableness of the costs is subject to an objective standard and have stated that the discrepancy between each Party's legal costs is not itself proof of unreasonableness.[120]

111. In *Hulley Enterprises v. Russian Federation*, the tribunal determined that the reasonableness of the costs by reference to the size of the claim for damages. The tribunal acknowledged that the "stakes were high" and that the "parties litigated vigorously."[121] It also recognized that "[e]ach Party was represented by eminent counsel", "[t]he quality of the written and oral pleadings was outstanding" and "[c]ounsel of both Parties are commended for their high professionalism."[122]

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[118] As an additional proof of good faith, Nicaragua has identified in Annex A the legal fees incurred by Nicaragua's legal team related to the security for costs application and its reply. While Nicaragua had the right to request this measure on a reasonable basis, Nicaragua is deducting said amount from the total legal fees.

[119] *Hulley Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No 2005-03/AA226, Award, July 18, 2014, ¶¶ 1876-1882 (**RL-0232**), *Kimberly-Clark Dutch Holdings, B.V., Kimberly-Clark S.L.U., and Kimberly-Clark BVBA v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/18/3, Award, November 5, 2021, ¶¶ 253 (**RL-0233**), *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No ARB/07/30, Award March 8, 2019, ¶¶ 982, 989 (**RL-0234**).

[120] *ECE v. Czech Republic*, UNCITRAL, Award, September 19, 2023, ¶¶ 6.57-6.61 (**RL-0186**).

[121] *Hulley Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No 2005-03/AA226, Award, July 18, 2014, ¶ 1880 (**RL-0232**).

[122] *Hulley Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No 2005-03/AA226, Award, July 18, 2014, ¶ 1880 (**RL-0232**).

112. Therefore, it was unsurprising for the tribunal that the costs submissions were high. The tribunal observed that "[i]n the circumstances, it is unsurprising that the costs submissions of the Parties, as to their amounts, should reflect the very considerable work which each Party was required to expend in order to, on the other hand, press its claims and, on the other hand, defend itself."[123]

113. In *Kornikom EOOD v. Serbia*, the tribunal found that the "the reasonableness of a party's costs depends on several factors including but not limited to the complexity of the case."[124] A similar approach was adopted in *Kimberly-Clark v. Venezuela*, where the tribunal evaluated the reasonableness of the costs considering the complexity, procedural steps and the extension of the pleadings and evidence filed.[125]

114. Applying these factors, Nicaragua's costs detailed in the table of costs attached as **Annex A** are entirely reasonable. In total, Nicaragua seeks:

Item	Amount (US$)
BakerHostetler Fees and Expenses	$6,753,533.46
Expert Fees and Expenses	$494,185
Arbitration Costs	$649,900
Additional Expenses	$342,827.40
TOTAL FEES & COSTS	**$8,240,445.86**

[123] *Hulley Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No 2005-03/AA226, Award, July 18, 2014, ¶¶ 1876-1881 (**RL-0232**).

[124] *Kornikom EOOD v. Republic of Serbia*, ICSID Case No. ARB/19/12, Award, September 20, 2023, ¶¶ 755-756 (**RL-0230**).

[125] *Kimberly-Clark Dutch Holdings, B.V., Kimberly-Clark S.L.U., and Kimberly-Clark BVBA v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/18/3, Award, November 5, 2021, ¶ 253 (**RL-0233**).

115. Nicaragua's legal costs and fees were commensurate to the scale of the claims brought by Riverside, especially as compounded by the abusive manner in which Riverside pursued its case. Riverside initiated this case demanding Nicaragua the payment of US$689,098,011 plus interest, which is equivalent to approximately ***four percent*** of Nicaragua's 2022 GDP.

116. Even after Riverside's downward revision of its damages claim in its Reply by 58.5%, for a total amount of US$285,995,140 plus interest, Riverside still sought damages equal to about ***two percent*** of Nicaragua's GDP.

117. In these circumstances, Nicaragua had no alternative than to vigorously defend the interests of the citizens of Nicaragua against the threat of a crippling international liability. Nicaragua thus incurred substantial costs for this purpose but in defense of a case that should have never been brought.

118. Moreover, tribunals have found that Respondent States' costs of more than $5,000,000 are reasonable.[126] For example, in *Kornikom EOOD v. Republic of Serbia*, the tribunal found that "[a]s for the reasonableness of Respondent's other costs and expenses, the Tribunal does not find the sum of USD 5,418,328 to be unreasonable. As Claimant has rightly pointed out,

[126] *Kornikom EOOD v. Republic of Serbia*, ICSID Case No. ARB/19/12, Award, September 20, 2023, ¶ 755 (**RL-0230**) (Tribunal ordered "[c]laimant to reimburse Respondent the sum of USD 5,816,446.42 towards the costs of the arbitration and other costs and expenses incurred by Respondent"); *Plama Consortium Ltd. v. Republic of Bulgaria,* ICSID Case No. ARB/03/24, Award, August 27, 2008, ¶ 324 (**RL-0225**) (awarding costs of US$ 7,460,000) ("Claimant is ordered to pay Respondent USD 460,000 on account of Respondent's advance on costs as well as USD 7,000,000 on account of Respondent's legal fees and other costs"); *Spyridon Roussalis v. Romania,* ICSID Case No. ARB/06/1, Award, December 7, 2011, ¶ 882 (**RL-0241**) (awarding costs of € 6,053,443.78 and US$ 217,290) ("That Claimant shall pay to the Respondent USD 217,290 in reimbursement of 60% of the expended portion of the Respondent's advance on the costs of the arbitration and EUR 6,053,443.78 representing 60% of the Respondent's legal fees and expenses").

the reasonableness of a party's costs depends on several factors including but not limited to the complexity of the case."

119. As explained above, Riverside's conduct substantially and unnecessarily increased Nicaragua's legal costs and fees during the arbitration in its effort to defend against a baseless, futile claim. Based upon the stakes involved and compensation demanded, Nicaragua was compelled to expend extensive resources to defend this case. All of that makes Nicaragua's costs entirely reasonable.

V. PRAYER FOR RELIEF

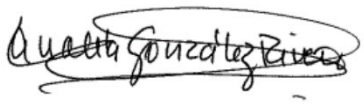
120. For the foregoing reasons, Nicaragua respectfully requests that the Tribunal:

a. ORDER Riverside to pay the costs of these arbitral proceeding, including the costs of the Tribunal and the legal and other costs incurred by Nicaragua, on a full indemnity basis, in the total amount of $8,240,445.86;

b. ORDER interest on any cost awarded to Nicaragua, in the amount to be determined by the Tribunal.

November 8, 2024

Respectfully submitted,



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