

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/23/16

KURT HARALD GRÜNINGER, ALEXANDRA GRÜNINGER Y SASCHA SPITTEL

Claimants

– v. –

THE REPUBLIC OF COSTA RICA

Respondent

Jointly, the “**Parties**”

RESPONDENT’S OBJECTIONS TO CLAIMANTS’ REQUESTS FOR PRODUCTION

14 April 2025

ADELL & MERIZALDE

Bogotá • Panamá • Santo Domingo

I. INTRODUCTION

1. In accordance with the Schedule (Annex B) in Procedural Order No. 1, and the extension granted on 19 July 2014, Costa Rica hereby submits its responses and objections to Claimants' Requests for Production of Documents ("**Requests for Production of Documents**") in the modified Redfern Schedule below.
2. Article 16.1 of Procedural Order No. 1 states that the IBA Rules on the Taking of Evidence in International Arbitration (adopted by a resolution of the IBA Council on 17 December 2020) (the "**IBA Rules**") shall be used as a non-binding guidance by the Tribunal and the Parties for any evidentiary question.
3. Respondent has voluntarily produced most of the documents requested by Claimants, except where the requested documents do not exist or are already part of the record in this Arbitration. Costa Rica's indication that documents are already on the record, or have been willingly produced, should not be interpreted as an agreement with or endorsement of the Claimant's comments in support of the corresponding Request.
4. Respondent has objected to six of the Requests for Production of Documents (although it accepted to produce documents for two out of these six requests), as detailed in the modified Redfern Schedule below. In particular, Respondent has raised these objections on the grounds that the Requests for Production of Documents are (i) in Claimants' control; (ii) overly broad; (iii) not relevant or material to the outcome of the dispute; (iv) a fishing expedition; and/or (v) fall under Respondent's burden of proof.
5. To facilitate the Tribunal's decision-making, Respondent has drafted its responses and objections in English, as Claimants have only submitted their Requests for Production of Documents in this language, even though Spanish is the procedural language of this arbitration. This shall not be construed by Claimants as an agreement between the Parties that all submissions may be filed in English without need for a Spanish translation.

II. STATEMENT OF POSSESSION, CUSTODY OR CONTROL OF THE REQUESTING PARTY (ARTICLE 3(3)(C)(I) OF THE IBA RULES)

6. Claimants' Requests Nos. 1 and 2 are within Claimants' control as they are publicly accessible documents pertaining to proceedings in which the Claimants participated. Article 3(3)(c)(i) of the IBA Rules provides that a Request to Produce shall contain "*a statement that the Documents requested are in the possession, custody **or control of the requesting party***".
7. For the purposes of document production, control is defined as "*the legal right, authority or ability to obtain documents upon demand.*"¹ Claimants have both a legal right (having participated in the proceedings) and the ability to obtain the documents requested by requesting them to the corresponding judicial and administrative bodies in Costa Rica.
8. Insofar as Claimants' requests do not comply with Article 3(3)(c)(i) of the IBA Rules, Costa Rica objects to their production as stated in the enclosed Redfern Schedule. This objection is summarized as "**under Claimants' control.**"

III. NARROW AND SPECIFIC CATEGORY OF DOCUMENTS (ARTICLE 3(3)(A)(II) OF THE IBA RULES)

9. Claimants' Requests Nos. 8 and 13 are overly broad and non-specific as they seek wholesale production of vast amounts of documents. This disregards the clear guidelines provided by Article 3(3)(a)(ii) of the IBA Rules.
10. Reto Marghitola provides the following examples of document requests that do not comply with the narrow and specific guidelines in Article 3(3)(a)(ii) of the IBA Rules:

Common-law style document production requests will generally not satisfy the criteria of a narrow and specific requested category. For example, a document production request that begins with 'All memoranda, minutes and correspondence...' is typically considered to be too broad in arbitration. In addition, a request for all documents relating to a

¹ **CRL-128-ENG**, Reto Marghitola, Document Production in International Arbitration (International Arbitration Law Library, Volume 33, Kluwer Law International, 2015), p. 14 of the PDF.

specific contract or for all minutes of the board meetings for the past three years generally does not satisfy the requirement of specificity.²

11. Insofar as Claimants' requests do not comply with Article 3(3)(a) of the IBA Rules, Costa Rica objects to the requests as further stated below. This objection is summarized as **"overly broad."**

IV. STATEMENT OF RELEVANCE AND MATERIALITY (ARTICLE 3(3)(B) OF THE IBA RULES)

12. Claimants' Requests Nos. 11 and 13 also fail to comply with the relevance and materiality rule in the IBA Rules. Article 3(3)(b) of the IBA Rules provides as follows: "*a statement as to how the Documents requested are **relevant to the case and material to its outcome***" (emphasis added).
13. Generally, a "*document is material to the outcome of the case if it is needed to allow complete consideration of the factual issues from which legal conclusions are drawn.*"³
14. Insofar as Claimants' requests do not comply with Article 3(3)(b) of the IBA Rules, Costa Rica objects to their production as stated in the enclosed Redfern Schedule. This objection is summarized as **"not relevant and material."**

V. PROHIBITION OF FISHING EXPEDITIONS

15. Claimant's Request No. 11 is a fishing expedition and, as such, is inadmissible.⁴ Reto Marghitola recalls that "[s]cholars almost unanimously agree that fishing expeditions are not admissible in international arbitration."⁵

² CRL-128-ENG, Reto Marghitola, Document Production in International Arbitration (International Arbitration Law Library, Volume 33, Kluwer Law International, 2015), p. 4 of the PDF.

³ CRL-128-ENG, Reto Marghitola, Document Production in International Arbitration (International Arbitration Law Library, Volume 33, Kluwer Law International, 2015), p. 9 of the PDF.

⁴ CRL-128-ENG, Reto Marghitola, Document Production in International Arbitration (International Arbitration Law Library, Volume 33, Kluwer Law International, 2015), p. 12 of the PDF.

⁵ CRL-128-ENG, Reto Marghitola, Document Production in International Arbitration (International Arbitration Law Library, Volume 33, Kluwer Law International, 2015), p. 12 of the PDF.

16. To that end, Gary Born explains that “[t]ribunals are usually unwilling to permit ‘fishing expeditions’ aimed at identifying possible claims or sources of further inquiry, rather than at adducing evidence in support of existing claims.”⁶
17. Insofar as Claimants’ requests are fishing expeditions, Costa Rica objects to their production as stated in the enclosed Redfern Schedule. This objection is summarized as **“fishing expedition.”**

VI. DOCUMENTS FALLING UNDER RESPONDENT’S BURDEN OF PROOF

18. Claimants’ Request No. 10 seeks a category of documents pertaining to Respondent’s burden of proof and, as such, should not be granted.
19. It is well-established in international arbitration practice that the onus of proof is on the one who affirms and not the one who denies. Accordingly, evidence intended to support Costa Rica’s claims should not be requested by Claimants through document production. As explained by Luttrell and Harris, *“in this situation, the appropriate weapon is not DPR, it is submissions: if the other party has failed to produce the documents supporting its case, it has failed to prove its case.”*⁷
20. Insofar as Claimants’ requests seek documents falling under Respondent’s burden of proof, Costa Rica objects to their production as stated in the enclosed Redfern Schedule. This objection is summarized as **“Respondent’s burden of proof.”**

Adell & Merizalde
Counsel to the Republic of Costa Rica

⁶ **CRL-128-ENG**, Reto Marghitola, Document Production in International Arbitration (International Arbitration Law Library, Volume 33, Kluwer Law International, 2015), p. 13 of the PDF, citing Gary B. Born, International Arbitration: Law and Practice (Kluwer Law International 2012) p. 186.

⁷ **CRL-129-ENG**, Sam Luttrell, Peter Harris, ‘Reinventing the Redfern’ (2016) Volume 33, Journal of International Arbitration, Issue 4, p. 363.

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CLAIMANTS,

v.

THE REPUBLIC OF COSTA RICA

RESPONDENT.

**CLAIMANTS' REQUESTS FOR PRODUCTION OF DOCUMENTS (REDFERN
SCHEDULE) – ENG**

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March 24, 2025

Redfern Schedule for Claimants' Document Requests

No.	Document(s) or Category of Documents Requested	Relevance and Materiality according to Requesting Party		Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decision
		Ref. to submissions	Comments			
1	Certified and full copies of the judicial files of each and every one of the expropriations related to the Lancaster Property as defined in the SoC (including for expropriations of property owned by Rana Verde) in the possession, custody, or control of ICE, and which memorialize or relate to the assessment of the land owned by the Claimants, the land expropriated from the Claimants, the amount paid for the same, and/or full copies of any and all dockets related to complaints filed by the Claimants in Costa Rican courts regarding the Lancaster Property as defined in the SoC, including but not limited to the		These documents are relevant to the Claimants' claims in that the Claimants' rights in the Lancaster Property, including but not limited to the three lots Costa Rica admits to having expropriated, were breached as a result of Costa Rica's failure to provide an impartial and not arbitrary process, as well as its failure to provide just compensation for the expropriated land. SoC ¶¶ 181; 184-185; 358; 364; 396; 400-407; 423(a)-(d); 427; 434. These files memorialize Costa Rica's actions that together amount to the Treaty breaches	Notwithstanding Respondent's objection below, as a gesture of cooperation, Respondent voluntarily produces full copies of files 15-000585-1028-CA, 15-000956-1028-CA, 17-004856-0007-CO (listed twice), and 16-0001679-1027-CA. Respondent, however, does not have an obligation to produce certified copies of these judicial files. Respondent objects to this Request on the ground that the requested documents are under Claimants' control: The requested documents are publicly accessible and could have been secured by requesting them to the corresponding	Respondent must produce certified and complete copies of the requested judicial files, and Claimants demand a more definite and clear response as to Respondent's objections to this RFP. As a key and non-exhaustive example of the relevant and material issues at hand, Claimants were able to determine that, with regard to file no. 15-000585-1028-CA (Lower Court of the Contentious Administrative Jurisdiction), <i>see</i> RFP 1(a), among the missing documents in the judicial file are the minutes of the hearing held on October 20, 2021 (<i>see</i> SoC ¶ 192), and the appeal filed by Rana Verde on April 6, 2021. <i>See</i> Notarial Deed of Legal Assistant/Paralegal Eugenia	The Tribunal grants the Claimants' Request in part. The Respondent is ordered to provide full copies of the files referred to in the Request. In this regard, the Tribunal takes note that the Respondent has agreed to produce full copies of files 15-000585-1028-CA, 15-000956-1028-CA, 17-004856-0007-CO, and 16-0001679-1027-CA. Regarding the Claimants' request that the Respondent provide certified

following certified and complete judicial files:		complained of by Claimants in their SoC.	Costa Rican courts. Therefore, contrary to Claimants' assertions, these documents are under their control, and it would not be unreasonably burdensome for Claimants to produce such documents (<i>see the IBA Rules, Article 3(3)(c)(i)</i>). In fact, it is noteworthy that, while Claimants have initiated this arbitration alleging breaches of the Treaty related to the proceedings underlying the judicial files at issue, they have not previously requested and obtained those complete files, even though some of the Claimants have participated in those proceedings.	Monge Ivankovich of Aria Law, dated March 13, 2025, discussing the same ("Notarial Deed"). These two missing documents are relevant and material to this case and otherwise important to highlight as Mr. Gamboa, Respondent's Expert, cites to and relies upon these missing documents in his analysis supporting Respondent's defense. <i>See</i> Mr. Gamboa's Report, FGC-24-SPA, FGC-25-SPA. Concerningly, upon a recent visit by Claimants' local Costa Rican counsel to the local court to request the complete files, local counsel was advised that these very documents <i>do not exist</i> as part of this judicial file. <i>See, e.g.,</i> Notarial Deed.	copies of the files, the request is rejected. However, the Respondent must confirm, in writing: (i) whether the files produced under this Request are complete; and (ii) if they are not complete, a description of the search efforts undertaken by the Respondent which it considers to be reasonable.
a. File no. 15-000585-1028-CA (Lower Court of the Contentious Administrative Jurisdiction).		The materiality of this evidence is underscored by the fact that Costa Rica bases most of their arguments in their SoD upon having provided due process to Claimants, having paid just compensation and having appropriately assessed the land of the Lancaster Property, as defined in the SoC. SoD ¶¶ 15(a); 10; 14; 16; 299; 311; 318; 334; 337; 344; 350; 353; 360; 361; 364; 368; 383; 384; Gamboa Expert, ¶¶ 10-11; Acosta Expert, ¶ 41.			
b. File no. 15-000956-1028-CA (Lower Court of the Contentious Administrative Jurisdiction).					
c. File no. 17-004856-0007-CO (Constitutional Chamber of the Supreme Court of Justice).					
d. File no. 17-004856-0007-CO (Constitutional Chamber of the Supreme Court of Justice).		Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein. Claimants only have partial files.	Furthermore, the documents requested by Claimants have already been submitted to the record in this arbitration (<i>see C-108-SPA, C-109-SPA, CR-179-SPA, C-106-SPA, C-103-SPA</i>).	Additional discrepancies concerning missing key documents exist. For example, without limitation, regarding file no. 15-000956-1028-CA (Lower Court of the Contentious Administrative Jurisdiction), <i>see</i> RFP 1(b), an earlier retained copy of the file and a copy thereafter directly requested from the court via Claimants' local Costa Rican	
e. File no. 16-0001679-1027-CA (Lower			Respondent rejects Claimants' assertion that		

	<p>Court of the Contentious Administrative Jurisdiction).</p>		<p>Costa Rica failed to provide an impartial and non-arbitrary process, and just compensation for the expropriated land, as established in the Counter-Memorial (¶¶ 489-575, 710-745, 827-832, 903-909). Costa Rica's expropriation of Lots 1X, 2X and 3X was executed in compliance with its obligations under Costa Rican law and the Treaty.</p>	<p>counsel on June 10, 2024, consisted only of 61 images. <i>See</i> Declaration of Claimants' local counsel Mr. Carlos Ubico of Aria Law, dated March 21, 2025 ("Declaration of Mr. Ubico"); and Declaration of Ms. Monge of Aria Law, dated April 30, 2025 ("Declaration of Ms. Monge").</p> <p>In further efforts to clarify this discrepancy, Claimants' local counsel attempted in March of 2025 to, once again, request a comprehensive copy of the file from the local court and was this time given a copy consisting of 333 images (instead of the previously identified 61 images). <i>See</i> Declaration of Mr. Ubico, and Declaration of Ms. Monge.</p> <p>For these purposes, including the importance, relevancy, and materiality of the judicial files, as set forth in the Comments to this RFP, and due to the discrepancies among the different judicial files as compared to the administrative files, Respondent carries the burden of producing the requested, relevant and material documents at this stage,</p>	
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					<p>particularly given that it was Respondent's duty and burden to, in the first instance, satisfy the complete submission of pertinent documents to the various local tribunals, whether judicial or administrative, at the time that the local actions were ongoing.</p> <p>More specifically, ICE had the duty and burden to provide the local courts with all documents generated in connection with the fair price determination of the Lancaster Property during the administrative probe spearheaded by ICE. This Request is further both relevant and material because without Respondent's production, Claimants have no certainty on whether ICE, in the first instance, complied with its duty to send to the national courts the entirety of the administrative files. This RFP should not, in any manner whatsoever, pose an unreasonable burden on Respondent and the entirety of the files are unequivocally within Respondent's custody, possession, or control. Moreover, this Request is safeguarded by principles of fairness in line with</p>	
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					<p>¶ 16.6 of Procedural Order No. 1, issued on February 7, 2024, as Claimants have exercised more than due diligence in attempting to gain access to the full files.</p> <p>Lastly, Claimants attached to their SoC the related documents that are in their possession, custody, or control. For the avoidance of doubt, Claimants highlighted and confirmed in the Comments to their Request that the requested documents are not in their possession, custody or control, thereby mooted Respondent's objection in this regard.</p> <p>Nothing in this reply with reference to Claimants' local counsel's best (and repeated) efforts to locally retrieve complete copies of files (i.e. the Declaration of Mr. Ubico, the Declaration of Ms. Monge, and the Notarial Deed) should be used to argue a breach or waiver of any privileges between Claimants and local counsel, including without limitation, that of attorney-client.</p>	
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2	<p>Certified and full copies of the administrative files and dockets (“<i>antecedentes administrativos</i>”) of each and every one of the expropriations related to the Lancaster Property as defined in the SoC (including for expropriations of property owned by Rana Verde) in the possession, custody, or control of ICE, and which memorialize or relate to the assessment of the land expropriated from the Claimants, and the amount paid for the same, including but not limited to the following certified and complete administrative files:</p> <p>a. File no. 15-00956-1028-CA (Lower Court of the Contentious Administrative Jurisdiction).</p> <p>b. File no. 15-000585-1028-CA (Lower Court of the Contentious</p>	<p>These documents are relevant to the Claimants’ claims in that the Claimants’ rights in the Lancaster Property, including but not limited to the three lots Costa Rica admits to having expropriated, were breached as a result of Costa Rica’s failure to provide an impartial and not arbitrary process, as well as its failure to provide just compensation for the expropriated land. SoC ¶¶ 181; 184; 185; 358; 364; 396; 400-407; 423(a)-(d); 427; 434. These files memorialize Costa Rica’s actions that together amount to the Treaty breaches complained of by Claimants in their SoC.</p> <p>Importantly, these files are different from the judicial files requested in RFP No. 1 above (as reflected by, <i>inter alia</i>, their different case numbers).</p>	<p>Notwithstanding Respondent’s objection below, as a gesture of cooperation, Respondent voluntarily produces full copies of files 15-00956-1028-CA, 15-000585-1028-CA, 15-0000955-1028-CA, 16-006528-1027-CA, 16-001679-1027-CA, D1-331-2008-SETENA, 151-15-01-TA, 17-015962-0007-CO, and 17-04856-0007-CO. Respondent, however, does not have an obligation to produce certified copies of these judicial and administrative files.</p> <p>Respondent objects to this Request on the ground that the requested documents are under Claimants’ control: The requested documents are publicly accessible and could have been secured by requesting them to the corresponding Costa Rican courts and SETENA. Therefore, contrary to Claimants’ assertion, these documents are under their control, and</p>	<p>Claimants incorporate their reply to RFP No. 1, as if fully set forth herein, with regard to their RFP No. 2 for the full production of the certified administrative files corresponding to all judicial files requested in RFP No. 1.</p>	<p>The Tribunal grants the Claimants’ Request in part.</p> <p>The Respondent is ordered to provide full copies of the files referred to in the Request. In this regard, the Tribunal takes note that the Respondent has agreed to produce full copies of files 15-00956-1028-CA, 15-000585-1028-CA, 15-0000955-1028-CA, 16-006528-1027-CA, 16-001679-1027-CA, D1-331-2008-SETENA, 151-15-01-TA, 17-015962-0007-CO, and 17-04856-0007-CO. Regarding the Claimants’ request that the Respondent provide certified copies of the files, the request is rejected. However, the Respondent must</p>
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	Administrative Jurisdiction).		The materiality of this evidence is underscored by the fact that Costa Rica bases most of their arguments in their SoD upon having provided due process to Claimants, having paid just compensation and having appropriately assessed the land of the Lancaster Property, as defined in the SoC. SoD ¶¶ 15(a); 10; 14; 16; 299; 311; 318; 334; 337; 344; 350; 353; 360; 361; 364; 368; 383; 384; Gamboa Expert, ¶¶ 10-11; Acosta Expert, ¶¶ 41.	it would not be unreasonably burdensome for Claimants to produce such documents (<i>see</i> the IBA Rules, Article 3(3)(c)(i)). In fact, it is noteworthy that, while Claimants have initiated this arbitration alleging breaches of the Treaty related to the proceedings underlying the judicial and administrative files at issue, they have not previously requested and obtained those complete files, even though some of the Claimants have participated in those proceedings.		confirm, in writing: (i) whether the files produced under this Request are complete; and (ii) if they are not complete, a description of the search efforts undertaken by the Respondent which it considers to be reasonable.
c.	File no. 15-0000955-1028-CA (Lower Court of the Contentious Administrative Jurisdiction).					
d.	File no. 16-006528-1027-CA (Lower Court of the Contentious Administrative Jurisdiction).					
e.	File no. 16-001679-1027-CA (Lower Court of the Contentious Administrative Jurisdiction).		Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein. Claimants only have partial files.	Furthermore, files 15-00956-1028-CA, 15-000585-1028-CA, 15-0000955-1028-CA, 16-006528-1027-CA, 16-001679-1027-CA, 17-015962-0007-CO, and 17-04856-0007-CO requested by Claimants have already been submitted to the record in this arbitration (<i>see</i> CR-179-SPA, C-108-SPA, C-109-SPA, CR-212-SPA,		
f.	File no. D1-331-2008-SETENA (SETENA).					
g.	File no. 151-15-01-TA (Administrative Environmental Tribunal).					

	<p>h. File no. 17-015962-0007-CO (Constitutional Chamber of the Supreme Court of Justice).</p> <p>i. File no. 17-04856-0007-CO (Constitutional Chamber of the Supreme Court of Justice).</p>			<p>CR-213-SPA, CR-214-SPA, CR-216-SPA, C-111-SPA, C-102-SPA, CR-219-SPA, C-103-SPA, CR-211-SPA, C-107-SPA, C-106-SPA).</p> <p>Respondent rejects Claimants' assertion that Costa Rica failed to provide an impartial and non-arbitrary process, and just compensation for the expropriated land, as established in the Counter-Memorial (<i>see</i> ¶¶ 489-575, 710-745, 827-832, 903-909). Costa Rica's expropriation of Lots 1X, 2X and 3X was executed in compliance with its obligations under Costa Rican law and the Treaty.</p>		
3	Full copies of written documents, including but not limited to internal communications of ICE, showing ICE's efforts to communicate with Claimant Mr. Kurt Grüninger for purposes of serving him with process of the local actions at issue (including but not		These documents are relevant to the Claimants' claims that Claimant Mr. Kurt Grüninger did not receive service of process, and therefore no due process was afforded to Claimants, in connection with certain actions in Costa Rica. SoC ¶ 353; K.	Without accepting the premise of Claimants' request, Costa Rica confirms that the requested documents have already been submitted to the record in this arbitration (<i>e.g.</i> , C-109-SPA, CR-179-SPA, C-111-SPA). Costa Rica confirms that,	Claimants do not have further comments concerning this RFP, and will present related legal arguments to the Tribunal at the appropriate procedural juncture, reserving all rights to address Respondent's improper insertions and assertions of substantive	No decision needed.

<p>limited to the actions referred in RFP 1 and 2 above) in connection with the partial expropriations of parts of the Lancaster Property, as defined in the SoC.</p>		<p>Grüninger Statement, ¶¶ 113; 135; 136; 152; Ubico Report, ¶ 25. These documents will show that Mr. Grüninger was not in fact served, and that efforts to do so were, at best, minimal and in any event not in compliance with applicable law. SoC ¶ 353; K. Grüninger Statement, ¶¶ 113; 135; 136; 152.</p> <p>The materiality of this evidence is highlighted by the fact that Costa Rica admits its failure to perfect service of process upon Mr. Grüninger in a key local action and, at the same time, bases important arguments in their SoD upon having <i>attempted</i> to serve Mr. Grüninger, or on excuses about why he was ultimately not served. SoD, ¶¶ 16; 385; 386; 387; 396; 405; 408; 409.</p> <p>Claimants confirm that they do not have in their possession, custody, or</p>	<p>upon a reasonable search, no additional responsive documents exist beyond those already on the record.</p> <p>Claimants refer to the local actions listed at Requests 1 and 2. With respect to judicial files 15-000585-1028-CA (C-109-SPA) and 15-00956-1028-CA (CR-179-SPA) pertaining to the expropriation of Lot 2X and Lot 1X, respectively, Rana Verde (mostly owned by Mr. Grüninger) and Mr. Grüninger were served with process.</p> <p>File 15-00956-1028-CA (CR-179-SPA) shows how ICE served Mr. Grüninger with process during the judicial recognition of Lot 3, given the difficulty in locating Mr. Grüninger in Costa Rica.</p> <p>Judicial file 15-00955-1028-CA pertaining to the expropriation of Lot 3X (C-111-SPA) shows how ICE obtained and submitted evidence of border entry</p>	<p>arguments in this RFP, to which Claimants object.</p>	
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			<p>control the documents being requested herein.</p> <p>records (<i>movimientos migratorios</i>) to and from Costa Rica, as certified by the <i>Dirección General de Migración y Extranjería</i>, and the information on whether Mr. Grüninger had registered representatives with power of attorney certified by the <i>Registro Nacional</i> (he did not), before the local courts.</p> <p>The documents listed above for each local action reflect the necessary efforts for purposes of serving Mr. Grüninger with process under Costa Rican law (<i>see</i> Dr. Gamboa’s Expert Report ¶¶ 328-330, 339-344).</p> <p>The other local actions referred to in Requests 1 and 2 were initiated by Claimants themselves and, as such, no service with process from ICE was required.</p> <p>Respondent rejects Claimants’ assertion that “<i>no due process was</i></p>		
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				<p><i>afforded to Claimants, in connection with certain actions in Costa Rica” and that “Costa Rica admits its failure to perfect service of process upon Mr. Grüninger.”</i></p> <p>In its Counter-Memorial, Costa Rica has argued that, under Costa Rican law, when it is not possible to locate the expropriated party through the legally authorized means, the judiciary must designate a special representative to safeguard the expropriated party’s procedural rights (see Counter-Memorial ¶¶ 563-575, 770-784; Dr. Gamboa’s Expert Report ¶¶ 328-330, 339-344).</p> <p>ICE fully complied with this standard under Costa Rican law, and demonstrated to the local courts that it was not possible to serve notice of the proceedings given that Mr. Grüninger was not in Costa Rica, and he had not registered a representative</p>		
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				with power of attorney to receive such notices (<i>see</i> Counter-Memorial ¶¶ 563-575, 770-784; Dr. Gamboa’s Expert Report ¶¶ 328-330, 339-344).		
4	<p>Full copies of the geological studies completed by ICE, or at ICE’s request, which revealed, assessed, or discussed in any manner:</p> <p>a. The impact of the extraction of any material along the Reventazon River and in or around the Lancaster Property as defined in the SoC (regardless of whether the subject property is defined as having 8 lots, as argued by the Claimants at SoC, ¶¶ 26-34, or three expropriated lots as argued by Costa Rica at SoD, ¶¶ 53; 298).</p> <p>b. The results of studies of the material from the slope (i.e. the</p>		<p>These studies are relevant to the Claimants’ claims that they suffered damages due to the environmental damage caused by the extraction of materials from parts of the Lancaster Property on the Reventazon River and the resulting impact on the natural wall of the Laguna Lancaster Wetlands, and that the “partial” expropriations were improper and arbitrary, among other issues. SoC, ¶¶ 43; 180; 182; 196; 201-212; Expert Astorga, pg. 8. <i>See also</i> SoD, ¶ 650; 653; 654; 673.</p> <p>These documents are material to the outcome of the case because they will serve to rebut Costa Rica’s allegations that</p>	<p>Without accepting the premise of Claimant’s request, Costa Rica voluntarily produces documents in response to this request. However, upon a reasonable search, Costa Rica confirms that most of the requested documents do not exist.</p> <p>Costa Rica understands the terms “<i>revealed, assessed, or discussed</i>” in the chapeau as implying that documents pertaining to Request 4(a) refer to documents created in preparation for extraction activities “<i>along the Reventazon River</i>”, or more specifically, within concession area 2M-2012—the only one near the non-existent the “Lancaster Property”— and in the period immediately</p>	<p>Claimants object to Respondent narrowing Claimants’ request, and to the confusing and unclear response and objections provided by Respondent. Respondent purports to “voluntarily” produce documents, only to claw it back in the next sentence by stating that the documents either do not exist or have already been produced.</p> <p>Claimants demand a more definite and clear response as to Respondent’s response to this RFP, and the full production of its RFP, as requested (not as narrowed by Respondent). Additionally, Claimants request the full production of the “studies that analyzed the potential impacts of extractions” that were “general in nature,” as revealed by Respondent in their response.</p> <p>Claimants will present related legal arguments to the Tribunal at</p>	<p>The Tribunal takes note that the Respondent has agreed to produce “report CSD-ID-2013-249 dated December 2013, which addresses the geological model of the Laguna Lancaster sector.” The Tribunal further takes note of the Respondent’s assertion that other responsive documents are either already on the record or do not exist. Accordingly, no further decision from the Tribunal is needed.</p>

	<p>“<i>ladera</i>”) and the riverbed or wall, showing the type and quality of the material extracted (or to be extracted).</p> <p>c. The technical criterion or criteria applied geologically and geographically to the partition or expropriation process of the Lancaster Property (as defined in the SoC).</p>		<p>Costa Rica did not, in fact, extract materials from the riverbed wall belonging to the Lancaster Property, activities which Claimants have memorialized via photos included in their SoC, and that, in any event, Costa Rica did not cause any damage to the Lancaster Property in connection with said extraction (or that the material extracted was subpar). SoD, ¶¶ 649; 650; 651; 654; 665; 670; 673; 874; 875; 234-261. Moreover, these documents will prove that ICE did, among other actions resulting in damage to the Claimants, change the course of the Reventazon River, which had negative environmental impacts and rendered the Lancaster Property not fit for its intended purpose.</p> <p>In addition, this evidence is material to the outcome</p>	<p>following such activities. As such, Costa Rica has narrowed its search under Request 4(a) to Concession 2M-2012.</p> <p>The documents requested under the first portion of Request 4(a) have already been submitted to the record in this arbitration (<i>e.g.</i>, CR-11-SPA, CR-34-SPA, and CR-42-SPA). Costa Rica confirms that, upon a reasonable search, no additional responsive documents exist beyond those already on the record.</p> <p>As for the second portion of Request 4(a), Costa Rica confirms that no documents exist as to “[t]he impact of the extraction of any material” in or around the non-existent “Lancaster Property.” Any studies that analyzed the potential impacts of extractions were general in nature and did not specifically address the non-existent “Lancaster Property.” As shown in the Counter-Memorial (¶¶ 234-</p>	<p>the appropriate procedural juncture, reserving all rights to address Respondent’s improper insertions and assertions of substantive arguments in this RFP, to which Claimants object.</p>	
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		<p>of the case because Claimants’ allegations in the SoC stem from an improper evaluation by ICE of the Lancaster Property, as defined in the SoC, and of the parts that Costa Rica admits to have taken. In other words, Claimants allege that the “partitioning” of the Lancaster Property lacked any geographical or geological purpose and were thus arbitrary. <i>See generally</i> SoC.</p> <p>Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein.</p>	<p>261, 649-680, 746-753), material was extracted exclusively from the public domain riverbed (and not the non-existent “Lancaster Property”).</p> <p>Claimants’ assertions that ICE’s actions “<i>had negative environmental impacts and rendered the Lancaster Property not fit for its intended purpose</i>” are factually incorrect and unsupported by the evidence submitted in this arbitration.</p> <p>With respect to Request 4(b), Costa Rica confirms that no studies exist which reveal, assess, or discuss “[t]he results of studies of the material from the slope (i.e. the “ladera”) and the [...] wall, showing the type and quality of the material extracted (or to be extracted).” As set forth in the Counter-Memorial (¶¶ 234-261, 649-680), ICE never extracted, nor contemplated extracting, material from the slope or</p>	
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			<p>the natural wall. All extraction activities took place, as anticipated since the Project's inception, from the public domain riverbed. ICE never considered the slope or natural wall as a source of extractable material.</p> <p>Since this portion of Request 4(b) is expressly limited to studies addressing material "<i>extracted or to be extracted</i>" from the slope or natural wall—a scenario that never occurred—, there are no responsive documents to this portion of the request.</p> <p>Without prejudice to the above, and although the document falls outside the scope of the request as framed by Claimants, Costa Rica produces report CSD-ID-2013-249 dated December 2013, which addresses the geological model of the Laguna Lancaster sector. While this document does</p>		
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			<p>not relate to material “<i>extracted (or to be extracted)</i>,” it reflects a geological assessment of the Laguna Lancaster sector in the context of ICE’s monitoring of the slope’s instability (<i>see</i> Witness Statement of Jorge Bonilla ¶¶ 13-19 and CR-12-SPA). The production of this document does not imply any acceptance of Claimants’ assertions in connection with this request.</p> <p>With respect to the portion of Request 4(b) concerning “[t]he results of studies of the material from [...] the riverbed [...] showing the type and quality of the material extracted (or to be extracted)”, Costa Rica confirms that the requested documents have already been submitted to the record in this arbitration (<i>e.g.</i>, CR-11-SPA, CR-33-SPA, CR-34-SPA, CR-42-SPA, CR-44-SPA, CR-49-SPA and CR-50-SPA).</p>		
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				<p>Costa Rica confirms that, upon a reasonable search, no additional responsive documents exist beyond those already on the record.</p> <p>For the sake of clarity, and for the reasons set forth in connection with Request 4(a) above, Costa Rica has narrowed its search under Request 4(b) to documents related to Concession Area 2M-2012.</p> <p>Finally, with respect to Request 4(c), Costa Rica understands the phrase <i>“applied to the partition or expropriation process of the Lancaster Property”</i> as suggesting that Claimants are seeking documents that, through technical criteria, justify the partial expropriation of Lots 1, 2 and 3.</p> <p>As to the Expropriated Lots (Lots 1X, 2X and 3X), Costa Rica confirms that the requested documents have already been submitted to the record in</p>		
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			<p>this arbitration (<i>e.g.</i>, CR-161-SPA and CR-171-SPA). Costa Rica confirms that, upon a reasonable search, no additional responsive documents exist beyond those already on the record.</p> <p>As Costa Rica has not expropriated other lots in the remainder of the non-existent “Lancaster Property”, no responsive documents exist in this regard.</p> <p>In any event, Respondent rejects Claimants’ assertion that (i) it extracted material from the non-existent “Lancaster Property”; (ii) the extraction of material from the public domain riverbed had an impact on the natural wall of the Laguna Lancaster Wetlands; (iii) the extraction caused environmental damage; and (iv) Claimants suffered damages from the extraction (<i>see</i> Counter-</p>		
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				<p>Memorial ¶¶ 234-261, 649-680, 873-883).</p> <p>Respondent also rejects Claimants’ assertions that Costa Rica’s expropriation of Lots 1X, 2X and 3X was improper and arbitrary. As established in the Counter-Memorial, Costa Rica’s expropriation of Lots 1X, 2X and 3X was executed in compliance with its obligations under Costa Rican law and the Treaty (<i>see</i> Counter-Memorial ¶¶ 489-575, 710-745, 827-832) and was justified under technical criteria (Counter-Memorial ¶¶ 262-296).</p> <p>The temporary deviation of the Reventazón River’s course did not have negative environmental impacts, nor did it render the non-existent “<i>Lancaster Property</i>” unfit for its “<i>intended purpose.</i>” (<i>See</i> Counter-Memorial ¶¶ 234-261, 435-444, 873-883). Respondent recalls that Claimants have not</p>		
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				satisfied their burden of proof as to what they claim to have been the “ <i>intended purpose</i> ” behind the non-existent “ <i>Lancaster Property</i> .”		
5	Full copies of the geological studies completed by ICE that address the site of extraction (at or near the Lancaster Property, as defined in the SoC), whereby ICE sought to confirm that extracting material at this location was viable, and safe.		<p>These studies are relevant to the Claimants’ claims that they suffered damages due to the environmental damage caused by the extraction of materials from parts of the Lancaster Property on the Reventazon River and the resulting impact on the natural wall of the Laguna Lancaster Wetlands. SoC, ¶¶ 43; 196; 201-212; Expert Astorga, pg. 8.</p> <p>These documents are material to the outcome of the case because they will serve to rebut Costa Rica’s allegations that Costa Rica did not, in fact, extract materials from the riverbed wall belonging to the Lancaster Property, activities which</p>	<p>Without accepting the premise of Claimants’ request, Costa Rica confirms that the requested documents have already been submitted to the record in this arbitration (e.g., CR-11-SPA, CR-33-SPA, CR-34-SPA, CR-38-SPA, CR-42-SPA, CR-44-SPA). Costa Rica confirms that, upon a reasonable search, no additional responsive documents exist beyond those already on the record.</p> <p>Costa Rica understands that the phrase “<i>near the Lancaster Property</i>” when used to qualify the phrase “<i>site of extraction</i>” suggests that Claimants are referring only to ICE’s extraction of materials from <i>Isla 20</i> — located on the public domain riverbed—,</p>	Claimants do not have further comments concerning this RFP and will present related legal arguments to the Tribunal at the appropriate procedural juncture, reserving all rights to address Respondent’s improper insertions and assertions of substantive arguments in this RFP, to which Claimants object.	No decision needed.

		<p>Claimants have memorialized via photos included in their SoC, and that, in any event, Costa Rica did not cause any damage to the Lancaster Property, as defined in the SoC, in connection with said extraction. SoD, ¶¶ 649; 650; 651; 665; 670; 874; 875. Furthermore, this evidence will help to rebut Costa Rica’s claims that geological studies showed that extraction at the extraction site was, among other related allegations, viable. SoD, ¶¶ 238; 239; 240; 241; 242; 243; 244; 245; 246; 247; 248; 249-296. Expert Garita, ¶ 24.</p> <p>Moreover, these documents will prove that ICE did, among other actions resulting in damage to the Claimants, change the course of the Reventazon River, which had negative environmental impacts and rendered the</p>	<p>as this is the only extraction site <i>near</i> the non-existent “Lancaster Property” (see Counter-Memorial ¶¶ 250-251; Witness Statement of Edwin Garita ¶¶ 25-27). As no extraction occurred “<i>at</i>” the non-existent “Lancaster Property”, no documents exist that would fit that part of the description.</p> <p>Furthermore, while Claimants fail to narrow their request in terms of timeframe, Costa Rica understands the use of the phrase “<i>sought to confirm</i>” as referring to documents <i>predating</i> the actual extractions on <i>Isla 20</i>. Logically, these documents would have originated <i>after</i> that site of extraction was identified.</p> <p>Respondent rejects Claimants’ assertion that (i) it extracted material from the non-existent “Lancaster Property”; (ii) the extraction of material from the public domain riverbed</p>	
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			<p>Lancaster Property, as defined in the SoC, unfit for its intended purpose.</p> <p>Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein. Claimants only have partial documents from third parties.</p>	<p>had an impact on the natural wall of the Laguna Lancaster Wetlands; (iii) the extraction activities in the public domain riverbed caused environmental damage; and (iv) Claimant suffered damages from the extraction (<i>see</i> Counter-Memorial ¶¶ 234-261, 649-680, 873-883).</p> <p>The temporary deviation of the Reventazón River’s course did not have negative environmental impacts, nor did it render the non-existent “<i>Lancaster Property</i>” unfit for its “<i>intended purpose</i>.” (<i>See</i> Counter-Memorial ¶¶ 234-261, 435-444, 873-883.) Respondent recalls that Claimants have not satisfied their burden of proof as to what they claim to have been the “<i>intended purpose</i>” behind the non-existent “<i>Lancaster Property</i>.”</p>		
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6	<p>Full copies of the environmental impact studies commissioned by ICE that address the Lancaster Property, as defined in the SoC, (regardless of whether the subject property is defined as having 8 lots, as argued by the Claimants at SoC, ¶¶ 26-34, or three expropriated lots as argued by Costa Rica at SoD, ¶¶ 53; 298), and all of the neighboring properties.</p>	<p>These documents are relevant to Claimants’ arguments that neighbors of the Lancaster Property, as defined in the SoC, received preferential and different treatment than did Claimants under the same set of circumstances, and that Costa Rica did not follow standard procedure in this matter. SoC, ¶¶ 6; 10; 33; 43; 168; 178; 194; 202; 204; 225; 250; 450. These studies are further relevant to the Claimants’ claims that they suffered damages due to the environmental damage caused by the extraction of materials from parts of the Lancaster Property on the Reventazon River and the resulting impact on the natural wall of the Laguna Lancaster Wetlands. SoC, ¶¶ 43; 196; 201-212; Expert Astorga, pg. 8.</p> <p>These documents are material to the outcome of</p>	<p>Without accepting the premise of Claimants’ request, Costa Rica confirms that the requested documents have already been submitted to the record in this arbitration (<i>e.g.</i>, CR-42-SPA, CR-87-SPA, CR-89-SPA, CR-95-SPA, CR-101-SPA, CR-102-SPA, CR-103-SPA and CR-104-SPA). Costa Rica confirms that, upon a reasonable search, no additional responsive documents exist beyond those already on the record.</p> <p>Respondent rejects Claimants’ assertion that neighbors of the non-existent “<i>Lancaster Property</i>” in like circumstances received preferential and/or different treatment than Claimants and that Costa Rica did not follow standard procedure. As detailed in the Counter-Memorial (¶¶ 489-589, 768-806, 826-840), Eng. Acosta’s Witness Statement (¶¶ 101-108) and Dr.</p>	<p>Claimants do not have further comments concerning this RFP and will present related legal arguments to the Tribunal at the appropriate procedural juncture, reserving all rights to address Respondent’s improper insertions and assertions of substantive arguments in this RFP, to which Claimants object.</p>	<p>No decision needed.</p>
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		<p>the case because they will serve to rebut Costa Rica’s allegations that Costa Rica did not, in fact, extract materials from the riverbed wall belonging to the Lancaster Property, activities which Claimants have memorialized via photos included in their SoC , and that, in any event, they did not cause any damage to the Lancaster Property in connection with said extraction. SoD, ¶¶ 649; 650-651; 653; 654; 665; 670; 673; 874; 875. Moreover, these documents will prove that ICE did change the course of the Reventazon River, which had negative environmental impacts. In addition, these documents are material to the outcome of the case because, as stated above with regard to relevancy, this evidence will underscore the</p>	<p>Gamboa’s Expert Report (¶¶ 215-372), Costa Rica did not discriminate against Claimants, and it followed standard procedure during the expropriation.</p> <p>Respondent also rejects Claimants’ assertion that (i) it extracted material from the non-existent “Lancaster Property” or the riverbed wall therein; (ii) the extraction of material from the public domain riverbed had an impact on the natural wall of the Laguna Lancaster Wetlands; (iii) the extraction caused environmental damage; and (iv) Claimants suffered damages from the extraction activities (<i>see</i> Counter-Memorial ¶¶ 234-261, 649-680, 873-883).</p> <p>Respondent further rejects Claimants’ assertion that Costa Rica failed to provide an impartial and non-arbitrary process, as established in the Counter-Memorial (<i>see</i> ¶¶ 489-575, 710-745, 827-832). Costa</p>	
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			<p>arbitrariness that has plagued the Claimants as related to Costa Rica and the Lancaster Property, as defined in the SoC. SoC, ¶¶ 6; 10; 33; 43; 168; 178; 194; 202; 204; 225; 250; 450.</p> <p>In addition, these studies will support Claimants' claims that neighbors of the Lancaster Property received different (and nondiscriminatory) treatment as compared to Claimants in the expropriation processes under the same set of operative facts and circumstances. SoC, ¶¶ 6; 10; 33; 225; 250; 396; 399; 504; 507; 517; Ubico Report, ¶ 26.</p> <p>Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein.</p>	Rica's expropriation of Lots 1X, 2X and 3X was executed in compliance with its obligations under Costa Rican law and the Treaty.		
7	Full copies of the geological studies completed by ICE that address the type of risk		These studies are relevant to the Claimants' claims that they suffered	Without accepting the premise of Claimants' request, Costa Rica	Claimants do not have further comments concerning this RFP and will present related legal	No decision needed.

<p>associated with extracting material from or around the Lancaster Property, as defined in the SoC, including the geographical and topographical maps illustrating the assessment on the stability of the area specifically with regard to the “right margin” as described in the SoC and the SoD.</p>		<p>damages due to the environmental damage caused by the extraction of materials from parts of the Lancaster Property on the Reventazon River and the resulting impact on the natural wall of the Laguna Lancaster Wetlands. SoC, ¶¶ 43; 196; 201-212; Expert Astorga, pg. 8.</p> <p>These documents are material to the outcome of the case because they will serve to rebut Costa Rica’s allegations that Costa Rica did not, in fact, extract materials from the riverbed wall belonging to the Lancaster Property, as defined in the SoC, activities which Claimants have memorialized via photos included in their SoC, and that, in any event, Costa Rica did not cause any damage to the Lancaster Property in connection with said extraction.</p>	<p>confirms that the requested documents have already been submitted to the record in this arbitration (e.g., CR-12-SPA, CR-30-SPA, CR-25-SPA, CR-33-SPA, CR-44-SPA). These exhibits correspond to the geotechnical studies on the stability of the natural wall of the Laguna Lancaster Wetlands, and the geological studies on the extraction of materials from the public domain riverbed. As such, these exhibits are responsive to this request. The document produced in response to Request 4(b) (Report CSD-ID-2013-249) is also responsive to this request, in the terms outlined above. Costa Rica confirms that, upon a reasonable search, no additional responsive documents exist beyond those already on the record.</p> <p>Costa Rica understands Claimants’ reference to “<i>around the Lancaster Property</i>” as referring to</p>	<p>arguments to the Tribunal at the appropriate procedural juncture, reserving all rights to address Respondent’s improper insertions and assertions of substantive arguments in this RFP, to which Claimants object.</p>	
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		<p>SoD, ¶¶ 649; 650-651; 653; 654; 665; 670; 673; 874; 875. Moreover, these documents will prove that ICE did change the course of the Reventazon River, which had negative environmental impacts.</p> <p>In addition, these studies will support Claimants’ claims that neighbors of the Lancaster Property received different (and nondiscriminatory) treatment than Claimants in the expropriation processes under the same set of operative facts and circumstances. SoC, ¶¶ 6; 10; 33; 225; 250; 396; 399; 504; 507; 517; Ubico Report, ¶ 26.</p> <p>Furthermore, these documents are material because they will allow the Claimants to further rebut Costa Rica’s allegations regarding the level of risk assessed in connection with the location of the extraction</p>	<p>the public domain riverbed within Concession 2M-2012 —the one near the non-existent “Lancaster Property.” As such, Costa Rica has narrowed its search under this request to Concession 2M-2012.</p> <p>Costa Rica incorporates by reference its response to Claimants’ Request 4, as ICE never contemplated extracting material “<i>from</i>” the Lancaster Property. All extraction took place within the public domain riverbed, and strictly within the limits of the concession granted.</p> <p>Respondent rejects Claimants’ assertion that (i) it extracted material from the non-existent “Lancaster Property”; (ii) the extraction of material from the public domain riverbed had an impact on the natural wall of the Laguna Lancaster Wetlands; (iii) the extraction caused environmental damage; and (iv) the Claimants suffered</p>	
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			<p>(i.e. “<i>la margen derecha</i>” del “<i>área de Protección del Proyecto Hidroeléctrico Reventazón.</i>”). SoD, ¶¶ 319; 335; 351; 660; 664; 670; 672; 674; 875; 876; and Expert Report Bonilla Morales.</p> <p>Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein. Claimants only have partial documents.</p>	<p>damages from the extraction (<i>see</i> Counter-Memorial ¶¶ 234-261, 649-680, 873-883).</p> <p>The temporary deviation of the Reventazón River’s course did not have negative environmental impacts.</p> <p>Respondent rejects Claimants’ assertion that neighbors of the non-existent “<i>Lancaster Property</i>” in like circumstances received preferential and different treatment than Claimants and that Costa Rica did not follow standard procedure (<i>see</i> Counter-Memorial (¶¶ 489-589, 768-806, 826-840), Eng. Acosta’s Witness Statement (¶¶ 101-108) and Dr. Gamboa’s Expert Report (¶¶ 215-372).</p>		
8	The communications and related documents whereby ICE or an associated individual or entity discussed the landslides in connection		These documents are relevant to Claimants’ claims because the landslides were caused by ICE’s intervention on the	Respondent objects to this request on the grounds that it is overly broad . (<i>See</i>	Claimants demand a more clear and definitive statement concerning Respondent’s response to this RFP, and the	The Tribunal grants the Claimants’ Request. The Respondent’s objection that the

<p>with ICE's intervention in the Reventazon River.</p>		<p>Reventazon River, as alleged by Claimants and as ascertained by certain geological studies done by, for example, CAO. SoC, ¶¶ 4; 60; 64; 196; 202; 208; 211; 240; 250; 257; 324; 339; 474; 475; 476; 535. This evidence proves that ICE's actions were intentional and knowing, and caused damage that was foreseeable, tangible, and quantifiable. Moreover, this evidence is relevant to this dispute because it proves that Costa Rica, in effect, needed to have expropriated the entirety of the Lancaster Property to fully implement the required buffer zone to mitigate the increased geological risk of landslides caused by the dam's water reservoir. SoC, ¶¶ 324; 325; 326; 327; Expert Astorga, ¶ 8.2, pg. 127.</p> <p>The materiality of this evidence is underscored</p>	<p>IBA Rules, Article 3(3)(a)(ii)).</p> <p>The request does not identify to which landslides the requested documents should refer, nor does it refer to any documentary evidence showing that landslides took place in connection with "<i>ICE's intervention in the Reventazon River.</i>"</p> <p>The request also fails to narrow the documents requested to a reasonable timeframe and identify the specific and relevant intervening parties or public officials who would have exchanged the requested communications and related documents. (See IBA Rules, Article 3(3)(a)(ii)).</p> <p>In any event, Respondent rejects Claimants' assertion that ICE's intervention on the Reventazón River caused landslides (see Counter-Memorial ¶¶ 234-261, 435-444, 873-883;</p>	<p>production of the documents sought.</p> <p>Claimants' RFP No. 8 is, as stated, directed at specific communications/documents in the possession, custody, or control of ICE addressing the landslides occurring in connection with the Reventazon Project and is therefore, <i>not</i> overly broad. See, e.g., SoC ¶¶ 4, 196, 202, 208, 211, 240, 250, 257, 324, 325, 326, 327, 339, 474, 475, 476, 535.</p> <p>It follows from Claimants' Request that the responsive timeframe includes the timeframe encompassing the planning period for the Reventazon Project, and the execution of the Reventazon Project itself.</p> <p>Claimants will present related legal arguments to the Tribunal at the appropriate procedural juncture, reserving all rights to address Respondent's improper insertions and assertions of substantive arguments in this RFP, to which Claimants object.</p>	<p>Request is overly broad and unspecific is rejected.</p>
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		<p>by the fact that these landslides have caused further damage to the Lancaster Property, and by the fact that Costa Rica argues in its SoD, <i>inter alia</i>, that their intervention on the Reventazon River did not occur in the location identified (and photographed) by Claimants; that the landslides did not cause the damage alleged; and that all intervention was done in compliance with expert recommendations and in compliance with other related studies. SoD, ¶¶ 650; 653; 654; 673.</p> <p>Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein.</p>	<p>Geol. Bonilla’s Witness Statement ¶¶ 22-33; 34-52). As discussed in Costa Rica’s Counter-Memorial ¶¶ 234-261, 435-444, 873-883 and Geol. Bonilla’s Witness Statement ¶¶ 30-33; 47, ICE’s extraction of material from the public domain riverbed did not increase the risk of landslides in the area. Likewise, the construction of the dam and its reservoir did not cause an increased risk of landslides (<i>see</i> Counter-Memorial ¶¶ 444, 873-883).</p> <p>Furthermore, Respondent rejects Claimants’ assertion that it ought to have expropriated the entirety of the non-existent “Lancaster Property” to mitigate the risk of landslides. As explained in ¶¶ 489-535, 637-646, 770-806, 827-829 of the Counter-Memorial, ICE was neither legally able nor needed to expropriate the remainder of the non-existent</p>	
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				“Lancaster Property”, as no technical or legal criteria would have justified it.		
9	The documents reflecting how ICE valued the top portion of the Lancaster Property (as defined in Claimants’ SoC) as “ranch and cattle” land.		<p>These documents are relevant to the Claimants’ dispute because, at the time of the partial expropriations that Costa Rica admits to, ICE improperly ranked the Lancaster Property as “ranch and cattle” land, improperly disregarding its own expert’s recommendations and reports (and the value of the Lancaster Property itself, as defined in the SoC). SoC, ¶¶ 303; 304.</p> <p>This evidence is material to Claimants’ outcome of this matter because it proves not only that ICE and Costa Rica disregarded the recommendations and expert opinions of the very experts they hired to provide opinions regarding the valuation of the Lancaster Property, as defined in the SoC, but</p>	<p>Without accepting the premise of Claimants’ request, Costa Rica confirms that the requested documents have already been submitted to the record in this arbitration (e.g., CR-2-SPA, pp. 4-5, 59-70, CR-3-SPA, pp. 4-5, 55-67 and CR-4-SPA, pp. 4-5). Costa Rica confirms that, upon a reasonable search, no additional responsive documents exist beyond those already on the record.</p> <p>Respondent rejects Claimants’ assertion that ICE and Costa Rica disregarded expert recommendations or failed to afford Claimants just compensation for the expropriation of Lots 1X, 2X and 3X.</p> <p>As explained in Costa Rica’s Counter-Memorial (¶¶ 267-283, 302-363, 502-</p>	Claimants do not have further comments concerning this RFP and will present related legal arguments to the Tribunal at the appropriate procedural juncture, reserving all rights to address Respondent’s improper insertions and assertions of substantive arguments in this RFP, to which Claimants object.	No decision needed.

			<p>also that Costa Rica failed to afford Claimants just compensation for the improper and partial expropriations of the Lancaster Property, as defined in the SoC.</p> <p>Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein. Claimants only have partial documents.</p>	<p>504, 559-562, 580-586) and Eng. Laurent's Expert Report (¶ 42), Lots 1X, 2X and 3X were used for agricultural purposes at best.</p> <p>Furthermore, Claimants concede that the land was used for ranching and cattle herding when they allegedly acquired it (<i>see</i> Memorial on the Merits ¶¶ 60-61).</p> <p>Costa Rica paid just compensation for the expropriation of Lots 1X, 2X and 3X (<i>see</i> Counter-Memorial ¶¶ 547-562, 903-909). The expropriations were executed in full compliance with Costa Rican law and Costa Rica's obligations under the Treaty (<i>see</i> Counter-Memorial ¶¶ 485-585, 637-646, 710-745, 768-806, 827-832, 884-909).</p>		
10	The documents supporting Costa Rica's allegation that Mr. Grüninger acquired four out of the eight lots		These documents are relevant to Claimants' dispute. Although Claimants <i>never</i> allege in	Respondent objects to this Request on the following grounds:	Claimants object to Respondent's response on various grounds. First, in the Comments related to their Request, Claimants	The Tribunal grants the Claimants' Request insofar as it relates to documents

<p>comprising the Lancaster Property, as defined in the SoC, by adverse possession.</p>		<p>their SoC that Mr. Grüninger acquired any of the lots comprising the Lancaster Property, as defined in the SoC, by adverse possession, Costa Rica implies that this is the case. SoC, ¶¶ 26-34; SoD, ¶¶ 64; 99.</p> <p>These documents are also material to the outcome of this case as this allegation is intertwined in Costa Rica’s jurisdictional objections. SoD, ¶¶ 64; 99. Costa Rica’s attacks on rightful or complete title as related to the definition of investment under the Treaty and the ICSID Convention are both relevant and material to this matter. Moreover, given that one of Costa Rica’s experts also discusses this allegation of adverse possession, these documents are material to the credibility of said expert, and therefore, to the outcome of the case insofar as said</p>	<p>1) The documents requested are under Claimants’ control: The documents requested by Claimants are publicly accessible and part of the record in this arbitration (<i>see</i> C-25-SPA, C-29-SPA, C-112-SPA, C-113-SPA, C-94-SPA, C-97-SPA).</p> <p>Furthermore, having allegedly made the “purchase” of the referenced four lots (Memorial on the Merits, ¶¶ 27-31), Mr. Grüninger should be in possession of all documents showing how he acquired those lots. Therefore, contrary to Claimants’ assertion, these documents are under their possession, custody or control, and it would not be unreasonably burdensome for Claimants to produce such documents (<i>see</i> the IBA Rules Article 3 (c)(i)).</p> <p>2) The documents requested fall under Respondent’s Burden of Proof: Claimants are not</p>	<p>confirmed that the documents sought were not in their possession, custody, or control thereby mooted Respondent’s response in this regard. Second, Claimants have included, at a minimum, <i>prima facie</i> evidence of ownership of the Lancaster Property in their SoC and in the discovery phase. Because Respondent rebuts this claim of ownership in their SoD, the burden has shifted to Respondent to prove their counterclaim that Claimants are not owners of the Lancaster Property (or that certain parts of the Lancaster Property were acquired by adverse possession).</p> <p>Claimants demand a more clear and definitive statement regarding Respondent’s response to this Request, including confirmation and production of complete files as to any local proceedings addressing the alleged acquisition of parts of the Lancaster Property by Claimants vis-à-vis adverse possession.</p>	<p>related to the alleged acquisition by the Claimants of the lots through adverse possession.</p>
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			expert report is to be taken into account by the Tribunal. Expert Gamboa, ¶ 33. Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein.	entitled to request the production of documents that support Respondent's allegations, as intended. It is for Respondent to meet its burden of proof by submitting its own evidence, as may be needed. ⁸		
11	The documents and communications memorializing the visits perfected by ICE upon Mr. Grüninger on the Lancaster Property, as defined in the SoC, including the documents that should have been made available to Mr. Grüninger for his review and signature, and which addressed the level of socioeconomic and environmental impact of the Reventazon Project upon the Lancaster Property, as defined in the SoC, and the methodology for the same tied to the Reventazon		These documents are relevant to Claimants' claims because part of the allegations in the SoC are regarding a failure of due process, and are related to: ICE not appropriately disclosing the risks of the Reventazon Project to Claimants; ICE not proceeding as originally communicated to Mr. Grüninger with regard to the impact of the Reventazon Project; and ICE not offering Claimants the same treatment offered to neighbors of the Lancaster Property, as	Respondent objects to this request on the following grounds: 1) The requested documents are not relevant and material to the dispute : Claimants have not claimed breaches to the Treaty based on ICE's visits to Mr. Grüninger, his socioeconomic status, nor the methodology implemented during the interviews. Thus, the Tribunal does not require the production of any potential documents responsive to this request to	Claimants' request is relevant to the dispute because of Claimants' allegations surrounding breach of their due process, as stated in more detail <i>infra</i> . For Mr. Grüninger to have knowingly and willingly engaged with ICE concerning the sale of parts of the Lancaster Property, key information and materials needed to have been communicated to him by ICE. These facts form the foundation of various of Claimants' causes of action, including without limitation the allegations about failure to be afforded due process. For the foregoing reasons, this evidence is also material to the outcome of the case as the facts will be	The Tribunal denies the Request for being overly broad and lacking particularity.

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CRL-129-ENG, Sam Luttrell, Peter Harris, 'Reinventing the Redfern' (2016) Volume 33, Journal of International Arbitration, Issue 4, p. 363 (p. 6 of the PDF).

<p>Project, as explained by ICE to Mr. Grüninger.</p>		<p>defined in the SoC. These documents are further relevant because such documents were provided to the neighbors of the Lancaster Property, as defined in the SoC, in their expropriation proceedings based upon the same set of operative facts and circumstances, but were never provided to Mr. Grüninger, showing a failure to afford Claimants the same treatment as the neighbors. <i>See, e.g.</i>, SoC, ¶¶ 6; 10; 33; 43; 168; 178; 194; 202; 204; 225; 250; 450; 477.</p> <p>In addition, Claimants claim that the landslides were caused by ICE's intervention on the Reventazon River, and this was ascertained by certain geologic studies done by, for example, CAO. SoC, ¶¶ 4; 60; 64; 166; 167; 196; 202; 208; 211; 240; 250; 257; 324; 339; 474; 475; 476; 535.</p>	<p>decide on Claimants' claims. (<i>See</i> IBA Rules, Article 3(3)(b).)</p> <p>2) The Request is a fishing expedition: As explained at (1), the Claimants have not claimed breaches to the Treaty based on ICE's visits to Mr. Grüninger, his socioeconomic status, nor the methodology implemented during the interviews. Additionally, while stating that they "<i>only have partial documents</i>," Claimants have not explained which alleged documents were not made available to Mr. Grüninger that allegedly should have been made available. Therefore, the Claimants are attempting to use the document production phase to identify possible new claims or documents of unknown existence, which is not the intended purpose of the document production phase.</p>	<p>determinative of, <i>inter alia</i>, whether or not fair and equitable treatment and due process were afforded to Claimants.</p> <p>Claimants demand a more clear and definitive statement concerning Respondent's response to this Request, along with full production of the Request. This production is necessary to satisfy fairness-related considerations as contemplated by Procedural Order No. 1 because these documents are relevant and material to Claimants' causes of action, including without limitation, those addressing breaches of due process.</p> <p>Claimants will present related legal arguments to the Tribunal at the appropriate procedural juncture, reserving all rights to address Respondent's improper insertions and assertions of substantive arguments in this RFP, to which Claimants object.</p>	
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			<p>Property, as defined in the SoC, were tangible and known early on in the process of the Reventazon Project; that the landslides have caused further damage to the Lancaster Property, as defined in the SoC; and by Costa Rica's arguments in its SoD, <i>inter alia</i>, that the intervention did not occur in the location identified (and photographed) by Claimants; that the landslides did not cause the damage alleged; and that all intervention was done in compliance with expert recommendations and in compliance with other related studies. SoD, ¶¶ 650; 653; 654; 673.</p> <p>Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein. Claimants only have partial documents.</p>	<p>caused damage to the non-existent "Lancaster Property" (<i>see</i> Counter-Memorial ¶¶ 485-585, 786-806, 826-840, 873-910).</p>		
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12	<p>The documents or studies reflecting the inventory and assessment by ICE of the forest trees located on the Lancaster Property (as defined in the SoC), which value should have been paid to Claimants or otherwise given to the Claimants in accordance with what ICE foresters had previously offered Claimants.</p>	<p>These documents are relevant to Claimants' claims because part of the allegations in the SoC are regarding a failure of due process, and are related to, <i>inter alia</i>, Costa Rica not paying just compensation for partially expropriated property belonging to the Grüningers or otherwise not appropriately evaluating the Lancaster Property, as defined in the SoC. SoC, ¶¶ 4, 13; 60; 61; 62; 63; 64; 65; 70; 76; 77; 78; 166; 196; 209; 217-237; 384. This evidence proves that ICE's actions were intentional and knowing, and caused damage that was foreseeable, tangible, and quantifiable. Moreover, this evidence is relevant to this dispute because it proves that Costa Rica, in effect, needed to have expropriated the entirety of the Lancaster Property, as defined in the SoC.</p>	<p>Without accepting the premise of Claimants' request, Costa Rica confirms that the requested documents have already been submitted to the record in this arbitration (e.g., CR-2-SPA, pp. 4-5, 76-100, CR-3-SPA, pp. 4-5, 72-92, and CR-4-SPA, pp. 4-5, 37). Costa Rica confirms that, upon a reasonable search, no additional responsive documents exist beyond those already on the record.</p> <p>The aforementioned documents refer only to the Expropriated Lots. No such studies or inventories were made in connection with the areas of the non-existent "Lancaster Property" that were not subject to expropriation by ICE.</p> <p>Moreover, Respondent rejects Claimants' assertion that ICE and Costa Rica failed to provide due process or afford Claimants just compensation for the</p>	<p>Claimants do not have further comments concerning this RFP and will present related legal arguments to the Tribunal at the appropriate procedural juncture, reserving all rights to address Respondent's improper insertions and assertions of substantive arguments in this RFP, to which Claimants object.</p>	<p>No decision needed.</p>
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			<p><i>See, e.g.,</i> SoC, ¶¶ 324; 325; 326; 327; Expert Astorga, ¶ 8.2, pg. 127.</p> <p>The materiality of this evidence is underscored by the fact that Costa Rica’s failure to remit just compensation for the trees on the Lancaster Property, as defined in the SoC, in line with what the Claimants had been offered, further damaged the Claimants. This evidence will help to further quantify these damages suffered by Claimants. SoD, ¶¶ 557; 631.</p> <p>Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein.</p>	<p>expropriation of Lots 1X, 2X and 3X.</p> <p>Costa Rica executed the expropriations in full compliance with Costa Rican law and its obligations under the Treaty and paid just compensation for the expropriation of Lots 1X, 2X and 3X (<i>see</i> Counter-Memorial ¶¶ 489-575, 710-745, 827-832, 903-909). This included the value of forestry identified in Lots 2X and 3X.</p>		
13	The communications between ICE representatives and any other member of the Costa Rican government that reflects the type of relationship between Claimants and ICE		<p>These documents are relevant to the Claimants’ claims because, among other reasons, that Claimant Mr. Kurt Grüninger did not receive service of process, and</p>	<p>Respondent objects to this request on the following grounds:</p> <p>1) The Request is overly broad: the request fails to narrow the requested</p>	<p>Claimants’ request cannot be overly broad given that it is a narrow request seeking only communications between ICE and other public authorities which address the Lancaster Property in connection with the</p>	<p>The Tribunal denies the Request for being overly broad and lacking particularity.</p>

<p>representatives and which discusses the issues raised by Claimants in the SoC.</p>		<p>therefore no due process was afforded, in connection with certain actions in Costa Rica. SoC ¶ 353; K. Grüninger Statement, ¶¶ 113; 135; 136; 152; Ubico Report, ¶ 25. These documents will show that Mr. Grüninger was not in fact served, and that efforts to do so were, at best, minimal and in any event not in compliance with applicable law. SoC ¶ 353; K. Grüninger Statement, ¶¶ 113; 135; 136; 152.</p> <p>The materiality of this evidence is highlighted by the fact that Costa Rica admits its failure to perfect service of process upon Mr. Grüninger in a key local action and, at the same time, bases important arguments in their SoD upon having <i>attempted</i> to serve Mr. Grüninger, or on excuses about why he was ultimately not served.</p>	<p>documents to a reasonable timeframe and identify the specific and relevant intervening parties or public officials who would have exchanged the requested communications. (<i>See</i> IBA Rules, Article 3(3)(a)(ii)).</p> <p>2) The requested documents are not relevant and material to the dispute: the Tribunal is not called to decide that “<i>the Claimants were not hostile towards ICE.</i>” In any case, Claimants have not shown how the requested documents relate to the issue of serving notice to Mr. Grüninger and are thus relevant and material to the dispute. (<i>See</i> IBA Rules, Article 3(3)(b).)</p> <p>Respondent rejects Claimants’ assertion that ICE and Costa Rica failed to provide due process. Costa Rica executed the expropriations in full compliance with Costa Rican law and its</p>	<p>Reventazon Project (amounting to a timeframe tracking the planning, development, and execution of the Reventazon Project). The production sought in this Request is relevant and material to Claimants’ claims, including those concerning breaches of due process.</p> <p>Claimants demand full production of responsive documents in Respondent’s custody, possession, or control.</p>	
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		<p>SoD, ¶¶ 16; 385; 386; 387; 396; 405; 408; 409.</p> <p>Moreover, this evidence is material in that it will show that the Claimants were not hostile towards ICE, and that Costa Rica could have reached Claimants with any communications because they knew how to contact them (including how to contact Mr. Grüninger), and did so when they wanted to.</p> <p>Claimants confirm that they do not have in their possession, custody, or control the documents being requested herein.</p>	<p>obligations under the Treaty (<i>see</i> Counter-Memorial ¶¶ 489-575, 710-745, 827-832, 903-909).</p>		
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