

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.

In the arbitration proceeding between

INTEROCEAN OIL DEVELOPMENT COMPANY

and

INTEROCEAN OIL EXPLORATION COMPANY

Claimants

Vs.

FEDERAL REPUBLIC OF NIGERIA

Respondent

ICSID Case No. ARB/13/20

PROCEDURAL ORDER NO. 4

Production of documents

Members of the Tribunal
Professor William Park, President
Professor Julian Lew
Justice Edward Torgbor

Secretary of the Tribunal
Mr. Benjamin Garel

20 April 2016

The Tribunal has carefully considered the Parties' respective arguments concerning Claimants' letter of 8 April 2016 addressing document production, including Respondent's reply of 15 April 2016. In this connection, the Tribunal has continued to be guided by the 2010 IBA Rules on the Taking of Evidence in International Arbitration, which permit the Tribunal to order production of documents relevant to the case and material to its outcome, and not subject to valid objections that include *inter alia* privilege and unreasonable burden.

Although decisions already taken should not be revisited without some showing of good cause, the Tribunal finds no authority for the proposition that its prior directions on document production, contained in the Order of 17 February 2016, bear any *res judicata* effect.

Having taken into account principles of procedural economy and proportionality, the Tribunal decides as follows, with reference to the requests as numbered in Claimants' Redfern Schedule and its Order of 17 February 2016.

1. For **Requests Nos. 4 and 11**, the Tribunal finds no reason to doubt Respondent's confirmation with respect to responsive documents. No modification or adjustment is warranted to the Order of 17 February 2016.
2. For **Requests Nos. 5 and 9**, the Tribunal has been persuaded of the potential pertinence to this case of events in 2006, and thus expands the scope of document search to material created as far back as July 2005.
3. For **Request No. 8**, the Tribunal notes the narrowed scope of the earlier request. The revised Request of 8 April 2016 is hereby granted except that it is further limited to material arising from enquiries made by Mr. Jacques Jones, **not** to include either (i) enquiries by third parties or (ii) "specific interaction" rather than to enquiries.

The Parties shall confer on an appropriate timetable for production, providing the Tribunal with a status report not later than seven (7) calendar days from issuance of this Procedural Order.

For the Tribunal

[SIGNED]

William W. Park

President of the Tribunal

Date: 20 April 2016

Annex 1 to Procedural Order No. 4 - Production of Documents

Claimant’s Redfern Schedule with Tribunal’s Decisions

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Nos	Documents or Category of Documents Requested By Claimants	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Objections to Document Requests	Tribunal’s Decisions
		Relevance and Materiality According to Requesting Party	Comments			
1	All requests for and/or advices given by any/all government legal officers in relation to the disputed ownership of Pan Ocean Oil Corporation Nigeria Ltd and OML98, (including but not restricted to the advice given by NNPC’s then Legal Counsel, Mr Tony Madiche as referred to in the statement of the Claimant’s witness		Written statements of public officers involved in legal advice are relevant to the Respondent’s state of knowledge and /or approach to the Claimant’s ownership claims in relation to Pan Ocean Oil/OML 98 and their response to those claims.	The Respondent objects to this request. The request is overbroad and imposes an unreasonable burden on the Respondent, contrary to Article 9(2)(c) and (g) of the IBA Rules. The Request does not relate to a narrow and specific category of documents as required by Article 3(3)(a)(ii) of the IBA Rules. To the contrary, it extends to “all requests and/or advices given by any/all government legal officers in relation to the disputed ownership of Pan Ocean Oil Corporation Nigeria Ltd and OML98”. Moreover, the request is not limited to a	The objection has no merit. The request sufficiently describes the category of documents requested which the Claimants reasonably believe to exist i.e advices by Respondent’s legal officers. in relation to the disputed ownership of OML 98 only. There are not likely to be many of these. In addition, the Claimants have been specific so far as the one advice that they are aware of is concerned, namely that of one Tony Madiche which the Claimants aver pointedly undermines the Respondent’s case. This advice and any others in the	Request denied on the basis of privilege

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	Mr John Brunner of 2nd June 2015.		specific time period. Nor is the request limited to advice given by any specific governmental body or individual. The Claimants' private dispute for ownership over Pan Ocean commenced 18 years ago. Determining whether there are any documents responsive to this request would require searches of an unreasonably high volume of mailboxes and files archived by any of the Respondent's numerous government agencies during the last 18 years. Furthermore, during that period, the Respondent has been governed by different administrations. As a result, there have been significant changes in the personnel of the Respondent's governmental organs connected with the Claimants' request. It would therefore be extremely burdensome to require the Respondent to track that personnel with a view to obtaining "all requests and/or advices given by any/all government legal officers in relation to the disputed ownership of Pan Ocean Oil	Respondent's possession or control are relevant to the issue of the extent to which the government knew that they were acting unlawfully and/or in denial of the rights of the Claimants. . The changes in government and Respondent's personnel in the relevant instrumentalities cannot justify a failure/refusal to produce the documents requested. Acts of government officials are documented and form part of the record of a specific organ of government. Government (the Respondent in this case) is a continuum with a structured and proper filing and record keeping system. This cannot be affected by changes in personnel in any of the Respondent's instrumentalities as the Respondent wants the tribunal to believe. It is not the practice of the Respondent nor that of any government for retiring or transferred personnel to take with them documents prepared in official capacities. Obtaining documents from Respondent's instrumentalities	

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			<p>Corporation Nigeria Ltd and OML98”, contrary to Article 9(2)(c) and (g) of the IBA Rules. The Respondent also objects to this request because the Claimants’ explanation of the relevance and materiality of this request is insufficient to satisfy Articles 3(3)(b) and 9(2)(a) of the IBA Rules. The “Respondent’s state of knowledge of [...] the Claimants’ ownership claims in relation to Pan Ocean OIL/OML 98” is irrelevant to the present proceedings. As the Respondent explained in its First Memorial, the Respondent has no responsibility for the outcome of that private commercial dispute, nor otherwise for the actions of private actors engaged in it. Regardless of its “state of knowledge”, it would have been inappropriate for the Respondent to intervene in that dispute, which was and still is being litigated before the Nigerian domestic courts. The Claimants also allege that the requested documents are relevant to the Respondent’s “approach to the Claimants’</p>	<p>therefore does not require an input from the official that originally prepared it. The age of the dispute also cannot be an excuse as the Respondent in its First Memorial did not find it too burdensome to produce copies of documents prepared in 1979, 1984 etc; periods longer than 18 years. In fact the Respondent’s response shows that the requested documents exist.</p> <p>The Respondent has also relied on Article 3(3) (b) and Article (9) (2) (a) of the IBA Rules to state that the explanation of the relevance and materiality of this request is insufficient. By Section 15.4 of Procedural Order No. 1, objections to document request are to be with reference to the objections listed in Article 9 (2) of the IBA Rules only. Reference and or reliance on any Article 3 (3) (b) or any other provisions of the IBA rules is clearly not in compliance with Procedural Order No. 1. Notwithstanding this fact, the Claimants have</p>	

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			<p>ownership claims in relation to Pan Ocean OIL/OML 98". Yet the Tribunal does not need the internal advice of the Respondent's governmental officials (if any) to determine the Respondent's approach. That approach is a matter of fact reflected in the Respondent's actions and has been fully explained in the Respondent's First Memorial. As explained in the Respondent's First Memorial, neither the NNPC nor the Respondent had any obligation or authority to intervene in Pan Ocean's internal dispute (see, for example, paragraphs 150 to 152).</p> <p>The Claimants refer in particular to the "advice given by the NNPC's then Legal Counsel, Mr Tony Madiche". The Claimants' witness, Mr John Brunner, refers to that advice in paragraph 8 of his witness statement. According to Mr Brunner, Mr Madiche told him that he had advised against the execution of the 2002 Joint Operating Agreement. Mr Brunner further claims that Mr</p>	<p>fully explained the materiality of these documents.</p> <p>The Claimants repeat that their claim is based on the actions and or inactions of the Respondent (and or its instrumentalities) with respect to (amongst other things) the Respondent's failure and persistent refusal to recognize Claimants' interest in OML 98. The Claimants through one its witnesses have testified that legal advice from one of Respondent's own legal officer is material to this action/inaction of the Respondent. Furthermore, there may be other such advices of equal relevance. On this basis, Claimants maintain that this request is sufficiently relevant to the Claimants' case and also material to its outcome.</p> <p>The portion of the objection premised on Article 9 (2) (g) of the IBA Rules is also without any basis. The Respondent has failed to demonstrate the alleged considerations of</p>	

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			<p>Madiche told him that his advice was overruled by Ms Sena Anthony, the NNPC’s former General Counsel. The Claimants have failed to explain how Mr Madiche’s alleged overruled advice would be relevant to their allegations of expropriation of their investment or otherwise to the outcome of these proceedings. Thus, the request further fails under Articles 3(3)(b) and 9(2)(a) of the IBA Rules.</p> <p>The Claimants have also failed to explain why the documents requested are “reasonably believed to exist”, contrary to Article 3(3)(a)(ii) of the IBA Rules. The Claimants have failed to provide any evidence that the pieces of advice requested exist or any indication of when that advice would have been given. As noted above, in the few requests where they refer to a pleading, witness statement or expert report, they refer to their own submissions. Mr Brunner refers to advice allegedly given by Mr Madiche, but he fails to provide any</p>	<p>procedural economy, proportionality, fairness or equality of the Parties in relation to this request.</p> <p>Article 9 (2) (b) of the IBA Rules cannot apply to the facts and circumstances of this case. The principle of legal professional privilege relied on by the Respondent is misapplied. The legal advice given by Respondent’s legal officer (including Mr. Madiche) does not qualify for the protection contemplated by the principle of legal professional privilege. The principle covers a communication between lawyer and his client. That is not the case here. The legal officers referred to in the request (including Mr. Madiche) are employees of the Respondent and its affected instrumentalities. The relationship is not that of lawyer/client. In any event, the doctrine of legal professional privilege does not apply to each and every document produced by a lawyer without reference</p>	

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			<p>evidence proving its existence. The Claimants have not even presented a witness statement by Mr Madiche, who could have testified on the issue. Requesting documents in the expectation that they will <i>post facto</i> support the Claimants' entirely unsubstantiated allegations is not a proper use of document production. It is not the Respondent's role to make the Claimants' case. The Claimants are clearly on a fishing expedition. The Respondent, therefore, also objects to this request on the basis of compelling "considerations of procedural economy, proportionality, fairness or equality of the Parties" under Article 9(2)(g) of the IBA Rules. In any event, any legal advice (whether Mr Madiche's or under the Claimants' broader request) is subject to legal privilege and cannot be produced. It is the Claimants and not the Respondent that have put at issue legal advice allegedly received by the NNPC regarding the Claimants' allegations. This is not sufficient to defeat the</p>	<p>to the circumstances in which it was produced. For example, there is no suggestion that the advice or other legal advices were produced "in contemplation of legal proceedings" and their importance and materiality to the issues at hand is what is of central importance here.</p> <p>For the reasons stated above, this objection is misplaced and must be dismissed.</p>	

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				privilege that would normally attach to such legal advice. The Respondent therefore objects to this request pursuant to Article 9(2)(b) of the IBA Rules.		
2	All correspondence between the Respondent's NNPC and its joint venture partner and Claimants' investment enterprise- Pan Ocean in relation to the Claimants' claims in relation to its ownership of Pan Ocean Oil Nigeria Ltd/OML 98		This is relevant to what actions the Respondent took, if any, when confronted by the Claimant with its ownership claims in relation to Pan Ocean Oil Nigeria Ltd/OML 98	<p>The Respondent objects to this request.</p> <p>This request is overbroad and does not relate to a narrow and specific category of documents, contrary to Article 3(3)(a)(ii) of the IBA Rules. On the contrary, it extends to "all correspondence" between the NNPC and Pan Ocean with regard to the "Claimants' claims in relation to its ownership of Pan Ocean Oil Nigeria Ltd/OML 98". Moreover, the request is not limited to a specific time period or to specific individuals. The Claimants' request therefore imposes an unreasonable burden on the Respondent, contrary to Article 9(2)(c) of the IBA Rules. As mentioned in relation to Request 1, the Claimants' internal dispute for ownership commenced 18 years ago. Determining whether there is</p>	<p>This objection is misplaced. The request is limited to correspondence in relation to the Claimants' ownership claims with respect to OML 98 only.</p> <p>The Claimants are foreign investors whose investment was through a Nigerian vehicle, Pan Ocean. The Respondent and Pan Ocean are the parties to the Joint venture in respect of OML 98. Part of the Claimants' claim in these proceedings is that the Respondent through its instrumentalities has refused to recognize its 40% participating interest in OML 98. The refusal has been despite all enquiries by the Claimants. The Claimants' claim is also predicated on unfair and inequitable treatment by the Respondent. The Claimants demanded that the Respondent refrain from dealing with and</p>	Request denied as overly broad under the IBA standards.

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			<p>any document responsive to this request would require searches of a high volume of mailboxes as well as corporate archives and individual document repositories over a period of almost two decades.</p> <p>Further, the Claimants' statement as to the relevance and materiality of these documents does not satisfy the requirements of Article 3(3)(b) of the IBA Rules. The Claimants have not even based that statement on specific "Ref[erences] to Pleadings, Exhibits, Witness Statements or Expert Reports", contrary to what the Joint Schedule requires. Further, as explained in the Respondent's First Memorial, neither the NNPC nor the Respondent had any obligation or authority to intervene in Pan Ocean's internal dispute (paragraph 150). The Respondent, therefore, objects to this request under Article 9(2)(a) of the IBA Rules.</p> <p>The Claimants have also failed to explain why the documents requested are "reasonably</p>	<p>recognizing a certain Mr. Festus Fadeyi in matters relating to Claimants' 40% participating interest in OML 98 but the Respondent ignored these reasonable requests.</p> <p>That the request is not limited to a specific period is none to the point. The Respondent is aware of the period from which the Claimants' ownership claim of the 40 % participating interest in OML 98 has been directed to it through the NNPC and the CAC. Having being aware of this period, the Respondent cannot base its objection on Article 9(2) (c).</p> <p>As noted in relation to the objection to Request 1, the Claimants' case is that the Respondent (through NNPC and CAC) did or omitted to do certain things, a combination of which resulted in the loss and of Claimants' investment in OML 98 to a group of individuals led by one Mr. Fadeyi which the Respondent has endorsed. As a consequence, one of the reliefs sought by the Claimants is that</p>	

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			<p>believed to exist”, contrary to Article 3(3)(a)(ii) of the IBA Rules. There is no reference in the Claimants’ request or in its purported justification for the request to either the Claimants’ or the Respondent’s pleadings, witness statements or expert reports, contrary to what the Joint Schedule proposed by the Tribunal requires.</p> <p>In addition, the Claimants have failed to make a statement “that the Documents requested are not in the[ir] possession, custody or control” or “a statement of the reasons why it would be unreasonably burdensome for [them] to produce such Documents”, contrary to Article 3(3)(c)(i) of the IBA Rules. The Claimants claim to be the sole owners of Pan Ocean. Yet, they are now requesting correspondence between Pan Ocean and the Respondent. At the very least, they should have provided the justifications required under Article 3(3)(c)(i) of the IBA Rules.</p>	<p>their nominees be restored in relation to matters concerning the Claimants’ 40% participating interest in OML 98.</p> <p>The request is therefore relevant to the Claimants’ case and its outcome. The requested documents are material to show the Respondent’s reaction to the Claimants’ claim of ownership, which is crucial to the Claimants’ claim of arbitrary and discriminatory treatment against the Respondent.</p> <p>(iii) (iv) (v)</p> <p>The ground of confidentiality alleged by the Respondent is not compelling. Indeed it is irrelevant in that the confidentiality in Article 12 relates to “data and information acquired through joint operations”. The documents requested relate ONLY to correspondence between the Respondent’s NNPC and Pan Ocean in connection with the Claimants’ claims of ownership of Pan Ocean /OML 98. In the</p>	

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			Further, the confidentiality provisions in Article 12 of the 2002 Joint Operating Agreement prevent the Respondent from producing the information requested by the Claimants (Exhibit C-39). The Respondent, therefore, also objects to this request on the basis of Article 9(2)(e) of the IBA Rules. The Respondent otherwise repeats and relies upon its objections set out in Section I(c) above, in particular regarding the application of Articles 9(2)(a), (b), (c), (e) and (g) of the IBA Rules.	same vein, Article 9 (2) (e) is also irrelevant and inapplicable. Again and as stated in reply to objections to document request 1 above, objections not in compliance with Procedural order No. 1 should be disregarded.		
3	Crude Oil Production and lifting records in connection with Oil Mining Lease 98 (OML 98) from 1st January 2000 through to the most recent date of available figures in 2015.		This will give an indication of the losses suffered by the Claimants on their investment in OML 98 owing to the conduct of the Respondent.	The Respondent objects to this request. This request is overbroad and does not relate to a narrow and specific category of documents as required under Article 3(3)(a)(ii) of the IBA Rules. On the contrary, it extends to generic “Crude Oil production and lifting records in connection with Oil Mining Lease 98”. Moreover, the Claimants request all records existing “from 1st January 2000 through to the most recent date of available	This objection has no basis. The document request sufficiently identifies the category of documents requested. The request is not burdensome as it relates only to crude oil production and lifting records as regards OML 98, for a limited and specified period. The Respondent has not stated the nature of the “unreasonable burden” the request has imposed on it. These records	Request granted

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			<p>figures in 2015”. The Claimants’ request for generic crude oil production and lifting records over a period of 15 years imposes an unreasonable burden on the Respondent, contrary to Article 9(2)(c) of the IBA Rules. In addition, the Claimants have not explained in sufficient detail how the documents requested are relevant to the case and material to its outcome, contrary to Article 3(3)(b) of the IBA Rules. As noted above, the Claimants have not based their explanation on specific “Ref[erences] to Pleadings, Exhibits, Witness Statements or Expert Reports”, contrary to what the Joint Schedule requires. The Claimants merely state that “[t]his will give an indication of the losses suffered by the Claimants on their investment in OML 98”. They fail to explain how the requested crude oil production and lifting records are connected to their alleged losses or, in fact, how they plan to calculate those losses. The Respondent therefore objects to this request</p>	<p>ought to be securely stored and readily available.</p> <p>Furthermore, Claimants’ claim is founded on the 40% participating interest in OML 98. OML 98 is the subject matter of the joint venture between the Respondent’s NNPC and Pan Ocean. The Joint Operating Agreement between the Respondent’s NNPC and Pan Ocean governs the relationship of the parties with respect to the rights, benefits and obligations arising from the exploration of OML 98. The objective of oil exploration is production, lifting and sale of crude oil. Essentially therefore, Claimants’ claim is its participating interest share (40%) of crude oil produced which would ordinarily have been available for lifting and disposal pursuant to the Joint Operating Agreement. The losses suffered by the Claimants therefore amount as a minimum to 40% of crude oil produced and lifted from the operation of OML 98 which</p>	

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			<p>pursuant to Article 9(2)(a) of the IBA Rules.</p> <p>Further, the Claimants’ request proves that the Claimants have made allegations regarding the losses they have suffered without having any evidence to support them.</p> <p>In their Points of Claim, the Claimants allege damages in excess of USD 1.5 billion (paragraph 16). As the Respondent explained in its First Memorial, the Claimants entirely failed to prove their alleged damages (Section V.A). The fact that they are now requesting documents that they claim would “give an indication of the[ir] losses” confirms the wholly speculative nature of the Claimants’ case on damages.</p> <p>The Claimants cannot be allowed to use this document production to find out whether their claims have any basis. They cannot shift their burden of proof on the Respondent. The Respondent cannot be expected or required to prove the claims</p>	<p>they have been denied as a result of the actions and inactions of the Respondent. The documents requested are relevant to and will support the Claimants liability and quantum claims.</p> <p>Respondent’s arguments on the merits or otherwise of the damages claimed by the Claimants has no place in an objection to a document request. The Respondent’s reliance on Article 9(2) (g) of the IBA Rules is also without any basis. The Respondent has not shown how the document request falls within the grounds of considerations of procedural economy, proportionality, fairness.</p> <p>The Respondent’s submissions on the alleged failure of the Claimants to establish their rights in the domestic litigation in Nigeria is irrelevant to this stage of the proceedings. Also, success or otherwise of domestic litigation is not a condition for document request</p>	

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			<p>of the Claimants for them or to assist them in fishing for documents. The Respondent, therefore, also objects to this request on the basis of compelling “considerations of procedural economy, proportionality” and “fairness”, under Article 9(2)(g) of the IBA Rules.</p> <p>In addition, the Claimants have failed to make a statement “that the Documents requested are not in the[ir] possession, custody or control” or “a statement of the reasons why it would be unreasonably burdensome for [them] to produce such Documents”, contrary to Article 3(3)(c)(i) of the IBA Rules. The Claimants have not shown, for example, that they had previously applied as shareholders of Pan Ocean for access to these documents and that that application was denied. As the Respondent explained in its First Memorial, Pan Ocean’s internal dispute has been litigated before the Respondent’s courts for almost two decades. The Claimants’</p>	<p>and not a ground for objecting to such document request.</p> <p>Article 12 of the Joint Operating Agreement (“JOA”) for the purpose of the ground contained in Article 9 (2) (e) is not relevant for the following reasons;</p> <ul style="list-style-type: none"> a. The Claimants are foreign investors in Nigeria; b. Claimants’ investment vehicle is Pan Ocean; c. Claimants’ investment is in the bundle of rights described as 40% participating interest in OML 98; d. Claimants’ case is that they are the sole owners of 40% participating interest in OML 98 e. OML 98 is the subject of a Joint venture between the 	

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			<p>representatives have failed to establish their rights in those domestic proceedings (see, for example, Sections II.E.(vi) and (xii) of the Respondent’s First Memorial). They cannot now circumvent the outcome of the domestic proceedings to obtain confidential and potentially privileged information through document production in the present arbitration. Indeed, the confidentiality provisions in Article 12 of the 2002 Joint Operating Agreement (Exhibit C-39) prevent the Respondent from producing the information requested by the Claimants. The Respondent, therefore, also objects to this request on the basis of Article 9(2)(e) of the IBA Rules. To the extent that the Claimants’ request includes documents pre-dating the 2002 Joint Operating Agreement, the inclusion in the 2002 Joint Operating Agreement of an explicit confidentiality clause for this type of documentation shows that such data is considered to be sensitive and confidential commercial</p>	<p>Respondent’s NNPC and Pan Ocean;</p> <p>f. The JOA is in relation to the Joint Venture.</p> <p>From the foregoing, the Claimants are the de jure partner to the Joint Venture. They are entitled to information regarding the operations of OML 98. In view of this, the Respondent’s objection premised on Article 9 (2) (e) is unfounded.</p> <p>The objection on grounds of alleged confidentiality is also misconceived. As the rightful joint venture partners, the Claimants are entitled to these documents. They cannot be confidential from them. The relevance and materiality of the requested documents to these proceedings outweigh the objections advanced by the Respondent. Submissions on objections not in compliance</p>	

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			<p>information by the parties to the joint venture.</p> <p>The Respondent in this regard repeats and relies upon its objections set out in Section I(c) above, in particular regarding the application of Articles 9(2)(a), (b), (c), (e) and (g) of the IBA Rules.</p>	<p>with the Procedural Order No. 1 should be disregarded.</p>		
4	<p>Minutes of all meetings of the Joint Venture’s Joint Operating Committee (“JOC”) from 1st January 2000 through to the most recent meeting in 2015.</p>		<p>The Claimants are foreign investors in the Joint Venture asset i.e. OML 98. The Joint Venture led to the creation of the JOA. The JOC is the medium created by the JOA where issues affecting the Claimants’ interest in OML 98 are discussed.</p>	<p>The Respondent objects to this request.</p> <p>This request is overbroad and does not relate to a narrow and specific category of documents, contrary to Article 3(3)(a)(ii) of the IBA Rules. It extends to “[m]inutes of all meetings of the Joint Venture’s Joint Operating Committee” (the “JOC”) regardless of the issues addressed in those meetings. Moreover, the request spans a 15 year period. The Claimants’ request therefore imposes an unreasonable burden on the Respondent, contrary to Article 9(2)(c) of the IBA Rules. To respond to such a request would require searches of an unreasonably high volume of archived files.</p>	<p>This objection has no merit. The request is specific to a category of documents being minutes of the joint venture JOC meeting and for a specified period. Contrary to the Respondent’s objection, it is a request for portions of minutes of meetings addressing particular issues that may impose unreasonable burden in that resources would be expended in reviewing the minutes to “fish out” those particular issues. Because that is not the case here, this objection is questionable which leads the Claimants to believe that the Respondent in raising the objection is not acting in good faith.</p>	Request granted

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			<p>Further, the Claimants’ explanation of the relevance and materiality of this request is insufficient to satisfy Article 3(3)(b) of the IBA Rules. The Respondent therefore also objects to this request pursuant to Article 9(2)(a) of the IBA Rules. For this request too, the Claimants have not based their explanation on specific “Ref[erences] to Pleadings, Exhibits, Witness Statements or Expert Reports”, contrary to what the Joint Schedule requires. Further, the Claimants’ statement that “[t]he Claimants are foreign investors in the Joint Venture asset i.e. OML 98” is factually incorrect. The Claimants are foreign investors in Pan Ocean, a company incorporated in Nigeria, which, in turn, is a party to a joint venture with the NNPC. The Claimants are not directly involved in the joint venture. Furthermore, the Claimants’ explanation that the requested documents are relevant because the “JOC is the medium created by the JOA [joint operating</p>	<p>Denial of access to information/participation in matters relating to the operations of OML 98 is an integral part of the case presented by the Claimants; hence the requested documents are necessary for the just determination of the Claimants’ case. The documents are relevant and material to the outcome of the Claimants’ case.</p> <p>The merits or otherwise of the Claimants’ case is not for consideration at the document request stage of these proceedings. It is also not a ground for objecting to a document request. What is important is the materiality or relevance of these documents as established by the Claimants.</p> <p>- The Tribunal is therefore urged to reject all Respondent’s arguments in this regard.</p> <p>The Claimants have however described the nature of their interest in OML 98 and consequently the JV, the JOA and JOC in its reply to the</p>	

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			<p>agreement] where issues affecting the Claimants’ interest in OML 98 are discussed” is also incorrect. The Claimants have no interest in OML 98. The Claimants’ interest is in Pan Ocean. The JOC is comprised of Pan Ocean and NNPC representatives. As discussed in detail in the Respondent’s First Memorial there are several reasons why any documents related to the JOC would be irrelevant to this case and immaterial to its outcome (paragraphs 149-151). As in all of their document production requests, the Claimants’ request for the minutes of “all meetings” of the JOC over a period of 15 years is a fishing expedition.</p> <p>Finally, as noted above, the Claimants’ representatives cannot circumvent the outcome of the domestic proceedings to obtain confidential and potentially privileged information through document production in the present arbitration. Further, the confidentiality provisions in Article 12 of the 2002 Joint</p>	<p>objection to document request 3 above hence it is not necessary to repeat it here. Also, domestic proceedings between the parties herein are separate and distinct to the present proceedings and hence have no bearing upon the the document request.</p> <p>With respect to the confidentiality clause in the JOA, Claimants repeat its reply to its objection on the same ground as in document request 2 above.</p> <p>Finally and as already noted above, objections not in compliance with Procedural Order No 1 must be disregarded.</p>	

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			<p>Operating Agreement (Exhibit C-39) prevent the Respondent from producing the information requested by the Claimants. The Respondent, therefore, also objects to this request on the basis of Article 9(2)(e) and (g) of the IBA Rules. To the extent that the Claimants' request includes documents pre-dating the 2002 Joint Operating Agreement, the inclusion in the 2002 Joint Operating Agreement of an explicit confidentiality clause for this type of documentation shows that such data is considered to be sensitive and confidential commercial information by the parties to the joint venture.</p> <p>The Respondent otherwise repeats and relies on the objections set out in Section I(c) above, in particular regarding the application of Articles 9(2)(a), (b), (c), (e) and (g) of the IBA Rules.</p>		

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5	<p>Copies of the documents relating to “Return of allotment of shares” in the prescribed form filed by Pan Ocean Oil Corporation (Nigeria) Limited (“Pan Ocean”) with the Respondent’s Corporate Affairs Commission (“CAC”) between 1st January 1998 and 31st December 2014.</p>	<p>See paragraphs 9.4-9.5 of Claimants’ Point of Claim. Also see Paragraphs 48-64 of the Witness Statement on Oath of Mr. Jacques Jones</p>	<p>This is relevant to establish the unconscionable conduct of Respondent’s CAC.</p>	<p>The Respondent objects to this request.</p> <p>The request is overbroad and does not relate to a narrow and specific category of documents as required under Article 3(3)(a)(ii) of the IBA Rules. Instead, the request refers to “copies of documents relating to ‘Return of allotment of shares’” (emphasis added). The Claimants fail to explain what the documents “relating to ‘Return of allotment of shares’”, in fact, are. Further, the Claimants’ request covers a period of over 15 years.</p> <p>Therefore, the Claimants’ request imposes an unreasonable burden on the Respondent, contrary to Article 9(2)(c) of the IBA Rules.</p> <p>In addition, the Claimants have not explained in sufficient detail how the documents requested are relevant to the case and material to its outcome as required under Article 3(3)(b) of the IBA Rules. The Respondent therefore objects to this request pursuant to Article 9(2)(a) of the</p>	<p>This objection is baseless for the following reasons;</p> <ul style="list-style-type: none"> i. The document request is narrow and specific to return of allotment of shares in the prescribed form; ii. The Respondent’s Corporate Affairs Commission (“CAC”) is statutory custodian of the category of documents requested; iii. The period covered by the document request cannot in itself result in the imposition of unreasonable burden on the Respondent; iv. It is the Claimants’ case that the Respondent’s CAC wrongfully registered a false 	Request granted

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			<p>IBA Rules. The Claimants merely state that “[t]his is relevant to establish the unconscionable conduct of Respondent’s CAC”. The Claimants have failed to provide any details regarding the conduct they refer to or how the documents requested would “establish” that conduct. They instead made reference without particulars to broad sections of their pleadings, without any explanation as to relevance or materiality.</p> <p>Further, the Claimants have failed to make a statement “that the Documents requested are not in the[ir] possession, custody or control” or “a statement of the reasons why it would be unreasonably burdensome for [them] to produce such Documents”, contrary to Article 3(3)(c)(i) of the IBA Rules. As noted above, this is not a mere formality. In accordance with Section 129 of the CAMA, the Respondent’s Corporate Affairs Commission (the “CAC”) receives a record of every allotment of shares made by a</p>	<p>filing of shares that impacted 75% of the Claimants’ 40% participating interest in OML 98;</p> <p>In addition to the foregoing, Section 83 and 87 of CAMA are irrelevant and inapplicable. The requested documents are in the form prescribed by CAC. They are not contained and do not form part of the register of members of a company. They are separate and distinct from the register of members; the contents are different hence cannot achieve the same purpose. The register of members is a (private) document of the affected company while a Return of Allotment of Shares are public documents which by law are filed and kept by the CAC. CAC is the only body authorized under Nigerian law to issue certified true copies of Return of Allotment of Shares.</p>	

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			<p>company. Indeed, the Claimants have in the litigations before Nigerian courts made records of the allotment of shares filed by Pan Ocean and held by the CAC the basis of their claims. In addition, in accordance with Section 83 of the CAMA, every company inclusive of Pan Ocean is required to maintain a register of its members. That register must contain information such as the number and class of shares held by its members. In accordance with Section 87 of the CAMA, this register is open to inspection by any member of the company without charge and to non-members upon payment of a small amount. Similarly, in accordance with Section 87(2) of the CAMA, a member of the company or even a non-member is permitted to make copies of the register.</p> <p>The Claimants have not stated that they have made any attempt to rely on the provisions of Section 87 of the CAMA or that they were denied access to either the register or to copies thereof. In fact, it is undisputed that at</p>	<p>It is therefore not surprising that the Respondent has not referred to the section of CAMA that suggests the contrary.</p> <p>The foregoing further demonstrates that this objection is not made in good faith.</p>	

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			<p>least part of the documents requested by the Claimants are in their possession. For example, the Claimants filed the 9 March 1999 Return of Allotment of Shares in the 2011 Set Aside Case as Annexure 4 to their Statement of Claim in that case.² Further, to the extent that the request includes the 2006 Return of Allotment of Shares (as the Claimants' cross-references to their Points of Claim and Mr Jones's witness statement would indicate), this document is already on the record in these proceedings as Exhibit R-47. Therefore, through this request, the Claimants are again placing an undue burden on the Respondent by requesting documents that are already in their possession, contrary to Articles 3(3)(c)(i) and 9(2)(c) of the IBA Rules.</p> <p>The Respondent otherwise repeats and relies on the objections set out in Section I(c) above, in particular regarding the application of Articles</p>		

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			9(2)(a), (b), (c), (e) and (g) of the IBA Rules.			
6	Copies of all correspondence exchanged between the Respondent's Nigerian National Petroleum Corporation and Pan Ocean in relation to the last renewal of OML 98 commencing in 1998 through to the date of renewal on or about in 1999		This is relevant to the degree of Respondent's acknowledgment of Claimants' interest in OML 98 prior to and immediately after the expiration of the initial grant leading to the renewal of the JOA in 2003.	<p>The Respondent objects to this request.</p> <p>This request is overbroad and does not relate to a narrow and specific category of documents as required under extends to "all correspondence" between the NNPC and Pan Ocean "in relation to the last renewal of OML 98" with no further limitation as to the subject-matter of that correspondence.</p> <p>Therefore, the Claimants' request imposes an unreasonable burden on the Respondent, contrary to Article 9(2)(c) of the IBA Rules.</p> <p>Furthermore, the Claimants' explanation of the relevance and materiality of this request is insufficient to satisfy Article 3(3)(b) of the IBA Rules. The Respondent therefore objects to this request pursuant to Article 9(2)(a) of the IBA Rules. Again,</p>	<p>This objection is baseless.</p> <p>The request sufficiently identifies the category of documents, the subject matter and the period covered.</p> <p>The Claimants' case is that they own and are entitled to 40% participating interest on OML 98. OML 98 was original granted in December 1975 and renewed in July 1998. It is the Claimants' case that prior to the expiration of the initial grant, the Respondent recognized and acknowledged their interest in OML 98. The document request is to establish when the Respondent's started to disregard and deny the Claimants' interest in OML 98. Contrary to the Respondent's view, the Claimants' interest is in the 40% participating interest in OML 98 albeit through Pan Ocean. The Respondent was</p>	Request denied as overly broad under IBA standards

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			<p>the Claimants have failed to base their request on references to pleadings, witness statements or other documents on the record of this arbitration. Further, by requesting “all correspondence” the Claimants betray the true design of their request; they are merely trying to find out whether there is anything in that correspondence that they could potentially use to support their meritless allegations. That is not a proper use of document production, contradicting 9(2)(g) of the IBA Rules.</p> <p>Further, as explained in the Respondent’s First Memorial, the NNPC dealt with Pan Ocean’s representatives in good faith; it was not the NNPC’s role to question the authority of those representatives (Section II.E.(ii)). The Claimants state that the requested documents are relevant to reflect “the degree of the Respondent’s acknowledgement of the Claimants’ interest in OML 98”. To the Respondent’s knowledge, the Claimants’ interest was in Pan Ocean, not in OML 98.</p>	<p>always aware that the Claimants being foreign investors could only have invested through a Nigerian vehicle, in this case Pan Ocean. The reference to Article 9(2) (g) of the IBA Rules is inapplicable in that the Claimants in the request set a limitation of the subject matter; renewal of OML 98. The documents requested relate to the renewal of OML 98. The crux of the Claimants’ claim relates to 40% participating interest in OML 98. The documents requested therefore are relevant to the Claimants’ case and material to its outcome. Objection to document requests in these proceedings are limited to Article 9 (2) of IBA Rules. Objections based on Article 3 (3) (c) (i) must be disregarded. Further, Pan Ocean is not a party to these proceedings and failure to make such request in the domestic court proceedings is not a recognized ground for objecting to the request.</p>	

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			<p>There was no direct relationship between the NNPC and the Claimants. Further, even the Respondent’s “degree of knowledge” of the Claimants’ interest in Pan Ocean would be irrelevant for the purposes of the renewal of OML 98 or the Claimants’ allegations regarding the Respondent’s violations of either national or international law. It was not within the NNPC’s or the Respondent’s power to intervene in Pan Ocean’s internal dispute (see, for example, paragraphs 150 to 152 of the Respondent’s First Memorial).</p> <p>Finally, the Claimants have failed to make a statement “that the Documents requested are not in the[ir] possession, custody or control” or “a statement of the reasons why it would be unreasonably burdensome for [them] to produce such Documents”, contrary to Article 3(3)(c)(i) of the IBA Rules. To the extent that they assert rights as shareholders of Pan Ocean, requests for such documents could and should have been</p>	<p>The confidentiality provision in Article 12 of the JOA is irrelevant. It relates to “data and information acquired through joint operations”. The documents requested relate ONLY to correspondence between the Respondent’s NNPC and Pan Ocean in connection with the renewal of OML 98. The objection based on Article 9 (2) (e) is therefore without merit.</p>	

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			<p>directed by them to the private entity Pan Ocean, or otherwise requested through document production in the over 12 years of domestic court proceedings relating to their ownership and control of that company.</p> <p>Further, the confidentiality provisions in Article 12 of the 2002 Joint Operating Agreement prevent the Respondent from producing the information requested by the Claimants (Exhibit C-39). This indicates that documents of the type requested by the Claimants would be considered by the parties of the joint venture as sensitive commercial information. The Respondent, therefore, also objects to this request on the basis of Article 9(2)(e) of the IBA Rules.</p> <p>The Respondent further repeats and relies on the objections set out in Section I(c) above, in particular regarding the application of Articles 9(2)(a), (b), (c), (e) and (g) of the IBA Rules.</p>		

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7	<p>Copies of the Joint Venture's Operating Agreement and any addendum thereto between the Respondent's NNPC and the Claimants' investment enterprise- Pan Ocean, in respect of the Joint Venture between NNPC and Pan Ocean for the operation of OML 98 ;</p>	<p>The Claimants are foreign investors in the Joint Venture with 40% participating interest in the Joint Venture asset.</p>	<p>The Respondent objects to this request.</p> <p>The Claimants' request is unclear as to which "Joint Operating Agreement and any addendum thereto" they are referring to. The Claimants' request, therefore, imposes an unreasonable burden on the Respondent, contrary to Article 9(2)(c) of the IBA Rules. The Claimants have failed again to base their request on any reference to the record or to their pleadings in this matter, contrary to the requirements of the Joint Schedule included in Procedural Order No 1. To the extent that the Claimants are referring to the 2002 Joint Operating Agreement, this document is already on the record of these proceedings. It was submitted by the Claimants as Exhibit C-39. Furthermore, the Respondent has introduced the 2006 Amendment to the 2002 Joint Operating Agreement as Exhibit R-26. To the Respondent's knowledge, there are no other relevant Joint Operating</p>	<p>On the basis that the Respondent confirms that " to its knowledge, there are no other relevant Joint Operating Agreements or addenda in this case" other than Claimants' Exhibit C-39 and Respondent's Exhibit R-26, Claimants withdraw this document request.</p>	<p>The Tribunal notes that the request has been withdrawn</p>

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				<p>Agreements or addenda in this case.</p> <p>The Respondent otherwise repeats and relies on the objections set out in Section I(c) above.</p>		
8	<p>Copies of all correspondence between the Respondent’s NNPC and Ministry of Petroleum Resources and the Claimants’ investment enterprise- Pan Ocean, in connection with OML 98 between September 1998 and the most recent date of any such correspondence in 2015</p>	<p>See paragraph 6.4 of the Points of Claim</p>	<p>This is relevant to the Claimants’ allegations of collusion by the Respondent and a certain Mr. Festus Fadeyi to deprive them of their investment in OML 98. This request is by Claimants as foreign investors in OML 98 and not shareholders of the Claimants’ enterprise – Pan Ocean</p>	<p>The Respondent objects to this request.</p> <p>This request is overbroad and does not relate to a narrow and specific category of documents as required under Article 3(3)(a)(ii) of the IBA Rules. On the contrary, it extends to “all correspondence” between the NNPC and the Ministry of Petroleum Resources and Pan Ocean “in connection with OML 98”. Moreover, the request spans the entire time period of Pan Ocean’s internal dispute: 18 years. The Claimants’ request therefore imposes an unreasonable burden on the Respondent, contrary to Article 9(2)(c) of the IBA Rules. To respond to such a request would require searches of an unreasonably high volume of mailboxes and archived files of</p>	<p>This objection is without merit.. (ii) The request is limited in time and scope to correspondence between 1998 and 2015 as regards OML 98. It is part of the Claimants’ case that the actions and/or inactions of the Respondent (through its instrumentalities NNPC and CAC) led to the surrender of their interest in OML 98 to other persons led by Mr. Fadeyi. The period covered by the request is the period from which the said Mr. Fadeyi took control of the Claimants’ investment in OML 98 and was recognized by the Respondent. Contrary to the Respondent’s objection, the documents requested are relevant to the Claimants’ case and material to its outcome. Consequently, the importance of the documents requested to the just conclusion of these</p>	<p>Request denied as overly broad under IBA standards</p>

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			<p>two separate governmental bodies.</p> <p>Furthermore, the Claimants’ explanation of the relevance and materiality of this request is insufficient to satisfy Article 3(3)(b) of the IBA Rules. The Respondent objects to this request pursuant to Article 9(2)(a) of the IBA Rules. The Claimants fail to explain how the documents requested are relevant to their allegations of “collusion by the Respondent and a certain Mr. Festus Fadeyi”. Further, they base their request on a reference to their own pleadings. The Claimants are merely asking for as many documents as possible in the hope that they will find something that could support their unsubstantiated allegations of “collusion”. The Tribunal cannot allow the Claimants’ fishing expedition to succeed. In addition, the Claimants have failed to make a statement “that the Documents requested are not in the[ir] possession, custody or control” or “a statement of the reasons why it would be</p>	<p>proceedings outweighs any imagined unreasonable burden imposed on the Respondent to produce them.</p> <p>(v As noted above, failure to request for the documents in the course of the domestic proceedings is not a ground for objection under Article 9 (2) of the IBA Rules. Further, the domestic proceedings referred to by the Respondent did not (?)involve the production of documents. In any event, the Respondent is not absolved of its duty to properly produce material documents in its possession by pointing to domestic proceedings. What is of importance are whether the documents are relevant to the present proceedings. With respect to the confidentiality clause in the JOA, Claimants repeat its reply to its objection on the same ground as in document request 2 above. The Respondent cannot rely upon a confidentiality clause to shut out the party who is the real</p>	

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			<p>unreasonably burdensome for [them] to produce such Documents”, contrary to Article 3(3)(c)(i) of the IBA Rules. Again, as shareholders of Pan Ocean, they have had ample opportunity to request such documents of that company or, in the alternative, could have sought production of such documents in the extensive domestic court proceedings that form the backdrop of this arbitration.</p> <p>The Respondent otherwise repeats and relies on the objections under Articles 9(2)(a), (b), (c), (e) and (g) of the IBA Rules, as set out in Section I(c) above.</p> <p>As the Respondent explained in its First Memorial, Pan Ocean’s internal dispute has been litigated before the Respondent’s courts for almost two decades. The Claimants’ representatives have failed to establish their rights in those domestic proceedings (see, for example, Sections II.E.(vi) and (xii) of the Respondent’s First Memorial). They cannot now</p>	<p>joint venture partner to the Agreement. If permitted to do so the argument becomes entirely circular and self-defeating.</p> <p>As already noted above, objections not in compliance with Procedural Order No 1 should be disregarded.</p>	

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			<p>circumvent the outcome of the domestic proceedings to obtain confidential information through document production in the present arbitration. They are now essentially seeking from the Respondent production of documents regarding the private dealings of Pan Ocean which they failed successfully to assert in private litigation before the Respondent's courts. This is not a proper use of document production, contradicting Articles 3(3)(c)(i) and 9(2)(g) of the IBA Rules.</p> <p>Further, the confidentiality provisions in Article 12 of the 2002 Joint Operating Agreement (Exhibit C-39) prevent the Respondent from producing the information requested by the Claimants. The Respondent, therefore, also objects to this request on the basis of Article 9(2)(e) of the IBA Rules. To the extent that the Claimants' request includes documents pre-dating the 2002 Joint Operating Agreement, the inclusion in the 2002 Joint Operating Agreement of an explicit confidentiality clause for this type of</p>		

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				documentation shows that such data is considered to be sensitive and confidential information by the parties to the joint venture.		
9	Copies of any ministerial approval (s) with respect to the assignment of part of the ownership of Claimants' investment enterprise- Pan Ocean as an owner of an interest in an oil mining lease under Nigerian Petroleum Act		Nigerian law requires such approvals before any substantial change in interest in an oil mining lease can be valid.	<p>The Respondent objects to this request.</p> <p>The Claimants' explanation of the relevance and materiality of this request is insufficient to satisfy Article 3(3)(b) of the IBA Rules. The Respondent therefore objects to this request pursuant to Article 9(2)(a) of the IBA Rules. The Claimants fail to explain how the requested documents could be material to the case and relevant to its outcome. They also fail to link their explanation to any prior pleadings or to the record in this matter, as required by the Joint Schedule included in Procedural Order No 1. They merely state that "Nigerian law requires such approvals before any substantial change in interest in an oil mining lease can be valid". Even assuming that Nigerian law required ministerial consent for</p>	<p>This objection is without merit. Part of the case presented by the Claimants is that the Respondent (through the CAC) is giving effect and recognition to the conversion of the Claimants' 40% participating interest in OML 98 and OPL 275 by third parties in violation of its (i.e Respondent's) laws. It is the Claimants' case that the transfer of any interest in an oil mining lease is invalid without the consent of the Respondent's Minister of Petroleum Resources. The existence (or lack of existence) of that ministerial consent is relevant to the Claimants' allegation and claim that the transfer/acquisition/alienation of any part of the Claimants' 40% participating interest in OML 98 without such consent is unlawful under Nigerian law. On the other hand, if such consent was given in the face of</p>	Request granted

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			<p>the type of assignment described by the Claimants, the existence (or lack of existence) of that ministerial consent would not be relevant to the Respondent's alleged responsibility. It is undisputed among the Parties that Pan Ocean would have been responsible for requesting and obtaining any Ministerial consent.</p> <p>Further, the Respondent has no knowledge of any "assignment of part of the ownership interest of Claimants' investment enterprise", Pan Ocean. As far as the Respondent is aware, there was an allotment of unallotted shares in Pan Ocean in November 2005 but not an assignment as such. At the time of the allotment of the unallotted shares in Pan Ocean, Nigerian law did not require Ministerial consent for the assignment or allotment of shares in a company holding an oil mining lease ("OML"). As set out in the Expert Report of Professor Atsegbua, Paragraph 14 of the First Schedule to the Petroleum</p>	<p>the Claimants bona fide claims and persistent protestations made directly to the Respondent then it is evidence of the Respondent's part in the deliberate alienation and/or indirect expropriation of its rights. .</p> <p>Contrary to the position of the Respondent, the bundle of rights created by the Claimants' 40% participating interest in OML 98 is represented by the shares in Pan Ocean. The allotment/acquisition of those shares is invariably a transfer of an interest in OML 98. That is the law in Nigeria as recently confirmed in the Moni Pulo case. The proposition by the Respondent that there was no requirement for ministerial consent to the assignment/acquisition of shares of a company holding an oil mining lease in 2005 is strange in that the requirement has been in the Petroleum Act since 1969.</p> <p>The state of the law in Nigeria particularly the Petroleum Act</p>	

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				Act “does not refer to the assignment or allotment of shares in the company that holds the OPL or OML”. Rather it “requires the holder of an OPL or an OML to obtain ministerial consent only for the assignment of its license or lease or of any right, power or interest under that license or lease” (paragraph 14). Thus, the Claimants have failed to request a document that is “reasonably believed to exist”, contrary to Article 3(3)(a)(ii) of the IBA Rules.	leads the Claimants to reasonably believe that the ministerial consent to the acquisition/allotment of Pan Ocean shares exists.	
10	Copies of legal and / or other memoranda regarding repayment of Pan Ocean’s debt in relation to the ICC arbitration settlement with NNPC, as well as copy of the debt repayment agreement	See paragraph 1.7 of the Points of Claim	The Claimants allege indirect expropriation -loss of value of their investment.	<p>The Respondent objects to this request.</p> <p>The request is overbroad as no timeframe is specified and it does not relate to a narrow and specific category of documents as required under Article 3(3)(a)(ii) of the IBA Rules.</p> <p>Rather, the request relates to “copies of legal and/or other memoranda regarding repayment of Pan Ocean’s debt”. The request does not specify the parties or which governmental body or</p>	This objection has no basis. The request limits the subject matter and invariably the period. The indebtedness and the manner of making a payment of a part of it are captured at Article 20 of the JOA. The JOA was signed in 2003 and the parties to the JOA are the Respondent (through NNPC) and Pan Ocean. The Claimants have also alleged that the debt is an imposition by the Respondent which amounts to acting in an arbitrary and discriminatory manner.	Request denied on the basis of privilege

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			<p>department created or received such memoranda. The Claimants’ request therefore imposes an unreasonable burden on the Respondent, contrary to Article 9(2)(c) of the IBA Rules. Furthermore, the Claimants’ explanation of the relevance and materiality of this request is insufficient to satisfy Article 3(3)(b) of the IBA Rules. The Respondent objects to this request pursuant to Article 9(2)(a) of the IBA Rules. The Claimants fail to explain how the documents requested are relevant to their allegation of indirect expropriation. They merely state that “[t]he Claimants allege indirect expropriation – loss of value of their investment”. Further, the Claimants base their request on a reference to their own pleadings, without any explanation of the relevance of that pleading in supporting their request.</p> <p>Moreover, “legal memoranda” are subject to legal privilege under Article 9(2)(b) of the IBA Rules, and would not be subject to production on this ground</p>	<p>With respect to the legal privilege, Claimants repeat the reply on the objection to document request 1.</p> <p>The Claimants are only required to state the pleadings upon which their request is based. The materiality of the request has been explained by the Claimants.</p> <p>The requested documents are not documents made for the purpose of settlement negotiations, but the settlement agreement and documents evidencing payment pursuant to the settlement already reached. They are thus not excluded by Article 9 (2) (b) of the IBA Rules.</p> <p>(vi) With respect to the confidentiality clause in the JOA, Claimants repeat its reply to its objection on the same ground as in document request 2 above.</p> <p>(vii) As already noted above, objections not in compliance with Procedural Order No 1 should be disregarded.</p>	

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			<p>alone, even if other requirements were satisfied (which they are not).</p> <p>The information requested also falls within the scope of explicit commercial confidentiality under Article 12 of the 2002 Joint Operating Agreement (Exhibit C-39). The repayment of the debt forms an integral part of the joint venture arrangements between the NNPC and Pan Ocean, as evidenced by the inclusion of a repayment scheme in Article 20 of the 2002 Joint Operating Agreement. For this reason, the Respondent also objects to this request on the basis of Article 9(2)(e) of the IBA Rules. Finally, the Claimants have failed to make a statement “that the Documents requested are not in the[ir] possession, custody or control” or “a statement of the reasons why it would be unreasonably burdensome for [them] to produce such Documents”, contrary to Article 3(3)(c)(i) of the IBA Rules. In fact, to the extent that by the “debt repayment agreement” the</p>		

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				<p>Claimants are requesting the 1989 Settlement Agreement following the ICC arbitration proceedings, this document is already on the record as Exhibit R-24. If the Claimants are referring to the 2002 Joint Operating Agreement and its 2006 Amendment (as their reference to paragraph 1.7 of the Points of Claims would indicate), these documents also are on the record as Exhibit R-11 (resubmitted as Exhibit C-39) and Exhibit R-26 respectively.</p> <p>The Respondent otherwise repeats and relies on the objections set out in Section I(c) above, in particular regarding the application of Articles 9(2)(a), (c), (e) and (g) of the IBA Rules.</p>		
11	Evidence of any and all receipt of payments of principal and or interest by Pan Ocean of its ICC arbitration settlement to the NNPC.	Paragraph 1.7 of the Points of Claim.	The Claimants allege that the arrangement leading to the payments of any settlement sum under the ICC arbitration affects the value of their	The Respondent objects to this request on the basis of lack of sufficient relevance to the case or materiality to its outcome under Article 9(2)(a) of the IBA Rules. The Claimants' bare reference to a paragraph of their Points of Claim, without explanation as to relevance, fails to satisfy Article 3(3)(b) of the	This objection is baseless. Claimants repeat the reply to the objection to document request 10 above and state further that the number and value of the payments made in respect of the debt touch on the return ordinarily accruable on their investment in OML 98.	Request granted

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		investment in OML 98.	<p>IBA Rules. Repayment of the debt is not relevant to the Claimants' allegations against the Respondent in these proceedings. To the extent that the debt has any relevance to the present proceedings (and the Respondent submits that it is not relevant) or to the "value of [the Claimants'] investments", the Tribunal would only need to assess the origin and legitimacy of the debt. If the Tribunal decides that the debt is legitimate, actual repayment is irrelevant to this case and immaterial to its outcome. The Respondent demonstrated in its First Memorial that the debt originated almost 30 years ago from commercial arbitration proceedings between Pan Ocean and the NNPC (paragraph 30). Those proceedings resulted in a settlement agreement concluded between Pan Ocean and the NNPC on 5 May 1989, which established that Pan Ocean was indebted to the NNPC (Exhibit R-24). Therefore, there can be no doubt about the origin and legitimacy of the debt. The number and value of the</p>	<p>Respondent's submissions to the effect that the Claimants did not request the documents in the domestic proceedings before Nigerian courts is of no moment. That is not a ground for objection in Article 9 (2) of the IBA Rules. In the same vein, objections based on Article 3 (3) (3) (c) (i) should be disregarded same having been in non-compliance with Procedural Order No. 1</p> <p>With respect to the confidentiality clause in the JOA, Claimants repeat its reply to its objection on the same ground as in document request 2 above.</p>	

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			<p>payments made to date is irrelevant to the existence and nature of the debt and, therefore, to the outcome of these proceedings.</p> <p>Further, the Claimants have failed to make a statement “that the Documents requested are not in the[ir] possession, custody or control” or “a statement of the reasons why it would be unreasonably burdensome for [them] to produce such Documents”, contrary to Article 3(3)(c)(i) of the IBA Rules. As noted above, to the extent the Claimants had rights as shareholders of Pan Ocean to request the referenced information, they have failed to confirm whether they sought any such information from Pan Ocean, or otherwise sought production of the referenced information in their extensive proceedings before the Nigerian courts.</p> <p>Indeed, as noted above, the Claimants’ representatives cannot circumvent the outcome of the domestic proceedings to obtain confidential information through document production in</p>		

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1	2	3	4	5	6
			<p>the present arbitration. Further, the repayment of the debt forms an integral part of the joint venture arrangements between the NNPC and Pan Ocean, as evidenced by the inclusion of a repayment scheme in Article 20 of the 2002 Joint Operating Agreement. For this reason, the Respondent also objects to this request on the basis of Article 9(2)(e) and (g) of the IBA Rules.</p> <p>The Respondent otherwise repeats and relies upon the objections set out in Section I(c) above, in particular regarding the application of Articles 9(2)(a) and (c) of the IBA Rules.</p>		

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