

PCA Case No. 2016-17

**IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN REPUBLIC-  
CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT,  
SIGNED ON AUGUST 5, 2004 (“CAFTA-DR”)**

– and –

**THE UNCITRAL ARBITRATION RULES (AS ADOPTED IN 2013)  
(the “UNCITRAL Rules”)**

– between –

**MICHAEL BALLANTINE AND LISA BALLANTINE**

**(the “Claimants”)**

– and –

**THE DOMINICAN REPUBLIC**

**(the “Respondent”, and together with the Claimants, the “Parties”)**

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**PROCEDURAL ORDER NO. 9**

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*Tribunal*

Prof. Ricardo Ramírez Hernández (Presiding Arbitrator)  
Ms. Marney L. Cheek  
Prof. Raúl Emilio Vinuesa

**April 20, 2018**

## A. PROCEDURAL HISTORY

1. On March 4, 2018, the Tribunal issued Procedural Order No. 8, by which it granted the Respondent's Emergency Application,<sup>1</sup> under certain conditions. Among those, the Tribunal stated that "inasmuch as the Tribunal allows the Respondent to have access to the Claimants' premises, it also orders the Respondent to facilitate the visits of the Claimants' experts to the various other properties and developments at issue in this case"<sup>2</sup>
2. On March 13, 2018, after Respondent accessed Claimants' premises pursuant to Procedural Order No. 8, the Respondent wrote to the Tribunal requesting that the Tribunal rescind certain directives contained in Procedural Order No. 8 and maintain the procedural schedule ("**the Respondent's Request**") because not doing so would, *inter alia*, contradict previous Procedural Orders issued by the Tribunal and "would end up denying the Dominican Republic the right to procedural equality and to a reasonable opportunity to present its case."<sup>3</sup>
3. On March 21, 2018, the Claimants submitted their response to the Respondent's letter. The Claimants requested the Tribunal to reject the Respondent's Request, because, *inter alia*, granting it would cause an "unequal and unfair footing in this arbitration and would deny the Ballantines the ability to fairly and equally present their case."<sup>4</sup>
4. On March 23, 2018, the Respondent requested leave to submit a response to the Claimants' letter. On the same day, the Tribunal granted such leave before March 26, 2018; and, allowed for the Claimants to submit their comments before March 28, 2018.
5. On March 26, 2018, the Respondent submitted its response to the Claimants' letter, dated March 21, 2018.
6. On March 28, 2018, the Claimants filed their response to the Respondent's letter, dated March 26, 2018.

## B. POSITION OF THE PARTIES

### 1. The Respondent's Position

7. The Respondent submits that, by ordering (1) that the Dominican Republic facilitate the visits of the Ballantines' experts to the various other properties and developments at issue, and (2) that the Ballantines have an opportunity to present and address any findings of such visits at the hearing (the "**Challenged Portions of PO8**"), the Tribunal would be contradicting earlier procedural orders in

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<sup>1</sup> As defined in Procedural Order No. 8.

<sup>2</sup> Procedural Order No. 8, para. 25.

<sup>3</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, p. 2.

<sup>4</sup> Claimants' Letter to the Tribunal, dated March 21, 2018.

this arbitration, and would end up denying the Dominican Republic the right to procedural equality and to a reasonable opportunity to present its case.<sup>5</sup> According to the Respondent, the Challenged Portions of PO8 suggest that the Tribunal is under the impression that the Dominican Republic has previously refused requests from the Ballantines to visit other projects at issue in this case, which would not be true, and would contradict certain provisions of Procedural Order No. 1.<sup>6</sup>

8. The Respondent's March 13, 2018 Letter then goes over certain procedural history which the Respondent considers relevant.<sup>7</sup> Among others, it cites Section 6.2 of Procedural Order No. 1, which states the following:

The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, exhibits, legal authorities, and all other evidence and authority in whatever form.

9. The Respondent also cites Section 6.4 and 9.6 of Procedural Order No. 1. Section 6.4 sets:

Following submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave, after consultation between the Parties, on the basis of a reasoned request justifying why such documents were not submitted earlier together with the Parties' written submissions or showing other exceptional circumstances. Should such leave be granted to one side, the other side shall have an opportunity to submit counter-evidence.

10. In turn, Section 9.6 provides the following:

No new evidence may be presented at the hearing except with leave of the Tribunal (following a request by the Party seeking to introduce new evidence, and an opportunity for the opposing Party to be heard on the request). [...] Should the Tribunal grant leave to a Party to present new evidence in the course of the hearing, it should grant the other Party the opportunity to introduce new evidence to rebut it.

11. The Respondent then addresses those facts which it considers relevant.<sup>8</sup> For that, the Respondent recalls that in preparation for the Statement of Defense, access to the Ballantines' property, Jamaca de Dios, was granted for expert Sixto Inchaustegui and witness Eleuterio Martínez.<sup>9</sup>

12. The Respondent further contends that, when the Ballantines' submitted their Reply on November 9, 2017 (the last submission on the merits), enclosed were the first expert reports of Messrs. Luis Fernando Potes and Jens Richter and the second expert reports of Messrs. Eric Kay and Graviel Peña. The Respondent relies on those expert reports to underscore that the Ballantines and these experts "*visited other projects and/or allegedly relied on evidence to make observations concerning*

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<sup>5</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, p. 2.

<sup>6</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, pp. 2, and 3.

<sup>7</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, Section I entitled "Relevant Procedural History", pp. 2 and 3.

<sup>8</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, Section II entitled "Relevant Facts", pp. 3 to 5.

<sup>9</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, p. 3.

*projects privately owned by third parties.”*<sup>10</sup> According to these expert reports, Mr. Richter visited “*Aloma Mountain; the property of Victor Mendez Capellán; the property of Felucho Jiménez; Quintas del Bosque; La Montaña; Mirador del Pino; Los Auquelles; Paso Alto; and Rancho Guaraguao*”.<sup>11</sup> Similarly, the rest of the experts visited other third-party projects.<sup>12</sup> Accordingly, the Respondent points out that the Claimants’ experts have in fact been able to visit “*at least nine other projects, and that they managed to obtain (and rely upon) evidence concerning several other projects*”.<sup>13</sup>

13. The Respondent alleges that, until the Claimants’ Reply, submitted in November 9, 2017, the Ballantines complained for the first time in this arbitration that they and their experts had been excluded from the roads of other projects by the owners of such projects. The Respondent further contends that by “excluded” it is apparent that the Ballantines really mean that they were not allowed to enter privately-owned projects or to transit in the internal roads of those projects.<sup>14</sup> Moreover, the Respondent claims that the Ballantines never asked for the Dominican Republic’s help in obtaining access to any properties.<sup>15</sup> However, according to the Respondent, because the properties are privately owned, in the Dominican Republic, the State cannot arbitrarily impose the access of the Claimants to the third-parties’ properties but only request it - in the same way that the Dominican Republic requested permission to the Ballantines. At the end, the access will depend on the third-parties’ discretion.<sup>16</sup> Also, the Respondent corrects the Claimants’ interpretation of the Respondent’s Statement of Defense by stating that the Respondent:

has never suggested that *all roads*—including all internal roads of privately owned property—are public. Rather, it was referring only to private property roads which—like the Project 2 road—are located within developments that were formally submitted to a “Parcel Urbanization” process.<sup>17</sup>

14. Thereupon, the Respondent considers the Claimants’ arguments that they are being unfairly deprived of their right to visit other properties and present their findings at the Oral Hearing, baseless and misleading.<sup>18</sup>

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<sup>10</sup> Respondent’s Letter to the Tribunal, dated March 13, 2018, p. 4.

<sup>11</sup> Respondent’s Letter to the Tribunal, dated March 13, 2018, p. 4; Richter Expert Report Rejoinder, Attachment 1.

<sup>12</sup> See Peña Expert Report Rejoinder, paras. 3, 4, 5, 10, 20; Kay Expert Report Rejoinder, para. 9; Potes Expert Report Rejoinder, paras. 16, 17, 20, 42, 71, 78-79, 82, 85, 88-92, 98.

<sup>13</sup> Respondent’s Letter to the Tribunal, dated March 26, 2018, p. 1.

<sup>14</sup> Respondent’s Letter to the Tribunal, dated March 13, 2018, p. 4.

<sup>15</sup> Respondent’s Letter to the Tribunal, dated March 13, 2018, p. 4.

<sup>16</sup> Respondent’s Letter to the Tribunal, dated March 13, 2018, pp. 4 and 5; Respondent’s Letter to the Tribunal, dated March 26, 2018, p. 2.

<sup>17</sup> Respondent’s Letter to the Tribunal, dated March 26, 2018, p. 2.

<sup>18</sup> Respondent’s Letter to the Tribunal, dated March 26, 2018, p. 1.

15. The Respondent compares the timing of its Emergency Application to that of the Claimants' Request and points out what it calls "a fundamental difference" between both.<sup>19</sup> The Respondent explains that it submitted its request to the Claimants' counsel and its Emergency Application 20 days before the submission of the Rejoinder (thus in compliance with Section 6.2 of Procedural Order No. 1). In contrast, the Ballantines never requested any assistance from the Respondent, nor submitted a request to the Tribunal, seeking access to the comparators.<sup>20</sup> The Ballantines' request came "*more than 100 days after*"<sup>21</sup> the Claimants' final written submission, and as a reaction to the Emergency Application. According to the Respondent, the Tribunal should reject the Claimants' request, as they are now trying to "*elide the untimeliness of their own access request by diverting the Tribunal's attention to the timing of the Dominican Republic's objection to such untimeliness*".<sup>22</sup>
16. The Respondent contends that the principle of equality of arms would not be violated if the Challenged Portions of PO8 are rescinded because the Claimants have had ample opportunities request access to other privately-owned projects; to request the Dominican Republic's cooperation in case such access was denied; and to seek the Tribunal's intervention if such cooperation had been refused.<sup>23</sup> However, as it did not – a fact that the Claimant does not deny –,<sup>24</sup> the Respondent considers that it should not be held responsible for the Claimants' decisions. According to the Respondent, if the Tribunal granted the Claimants' request, it would breach the principle of equality of arms, in detriment of the Respondent.<sup>25</sup>
17. Regarding the Claimants' allegations that the Dominican Republic engaged in "fundamental unfairness" by "purposefully" waiting to challenge Procedural Order No. 8, the Respondent replies that during those five days it acted as diligently as it could, given that it was focused on organizing the site visit to Jamaca de Dios and finishing the Rejoinder. Therefore, it condemns the Claimants' allegations that the tardiness of the letter was purposeful in order to enjoy the part of the Procedural Order No. 8 that concerned it.<sup>26</sup> Per the Respondent, no party to an arbitration should be allowed to make harmful accusations without having absolute certainty that they are well-founded; indeed, the Respondent contends that it could be said that it is rather the act of leveling accusations of bad faith—without an adequate basis for doing so—that constitutes bad faith.<sup>27</sup>

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<sup>19</sup> Respondent's Letter to the Tribunal, dated March 26, 2018, p. 1.

<sup>20</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, pp. 5, and 6.

<sup>21</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, p. 6 (emphasis added by the Respondent).

<sup>22</sup> Respondent's Letter to the Tribunal, dated March 26, 2018, p. 1.

<sup>23</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, p. 6.

<sup>24</sup> Respondent's Letter to the Tribunal, dated March 26, 2018, p. 1.

<sup>25</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, p. 6.

<sup>26</sup> Respondent's Letter to the Tribunal, dated March 26, 2018, p. 1.

<sup>27</sup> Respondent's Letter to the Tribunal, dated March 26, 2018, p. 1.

18. Additionally, the Respondent complains about the Claimants' serious and unjustified accusations over the professional conduct of the Respondent's party representatives and counsel. Thus, it requests the Tribunal to "*not countenance such conduct, and should bear it in mind at the time of allocating costs for this proceeding*".<sup>28</sup>
19. The Respondent further contends that the Challenged Portions of PO8 would breach its procedural rights for three reasons. First, because as a result of the Claimants' conscious decision not to seek the Dominican Republic's or the Tribunal's cooperation to access other projects prior to the filing of their Reply, the Ballantines waived the right to complain about lack of access to those properties and to present new evidence at this stage of the proceedings.<sup>29</sup>
20. Second, because if the Ballantines are allowed to submit new evidence at the hearing, the Respondent would no longer have an opportunity "*to respond to such evidence in the context of a formal written submission, or to obtain and submit "counter-evidence" as explicitly contemplated in Procedural Order No. 1*".<sup>30</sup>
21. Third, the Respondent argues that it is evident that the Ballantines are seeking preemptively to develop new evidence on the merits. According to the Respondent, doing so is not allowed under the procedural rules established by the Tribunal, and would violate basic principles of due process, procedural equality, and the opportunity to be heard. As a result, the Respondent concludes that there is no justification for the Ballantines to be granted at this late stage the possibility to present new evidence, especially since this would amount to an ambush at the hearing.<sup>31</sup>
22. Therefore, the Respondent respectfully requests the Tribunal to:
- (1) Rescind the directives contained in Procedural Order No. 8 that "[the Dominican Republic] facilitate the visits of the Claimants' experts to the various other properties and developments at issue in this case" and that "the Claimants will have an opportunity to address any findings they may have while delivering its arguments during the September Oral Hearing and their cross-examination of the Respondent's expert witnesses"; and
  - (2) Maintain the procedural schedule established in Procedural Orders No. 1, 3 and 6, without granting the Ballantines a third and additional opportunity to submit substantive evidence on the merits.<sup>32</sup>
23. Additionally, in its letter dated March 26, 2018, the Respondent also requests: "*(2) Order that the Ballantines refrain from making further unfounded accusations in this proceeding*".<sup>33</sup>

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<sup>28</sup> Respondent's Letter to the Tribunal, dated March 26, 2018, p. 2.

<sup>29</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, p. 7.

<sup>30</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, p. 7.

<sup>31</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, pp. 7, and 8.

<sup>32</sup> Respondent's Letter to the Tribunal, dated March 13, 2018, p. 8.

<sup>33</sup> Respondent's Letter to the Tribunal, dated March 26, 2018, p. 2.

## 2. The Claimants' Position

24. The Claimants do not seek additional relief but the rejection of the Respondent's Request and, therefore, to leave the Procedural Order No. 8 as it is. In the Claimants' opinion:

To allow for a site visit by Respondent's experts of the Ballantines' property while denying the Ballantines the ability to examine the similarly situated properties would put the parties on a completely unequal and unfair footing in this arbitration and would deny the Ballantines the ability to fairly and equally present their case.<sup>34</sup>

25. The Claimants contend that the Respondent has only raised its objections after it had enjoyed its advantages under Procedural Order No. 8 before objecting to the portions that protected the Ballantines' interest.<sup>35</sup> The Claimants explain that very shortly after Procedural Order No. 8 had been issued, the Parties arranged the site visit to occur five days later. The Claimants underscore that during those five days, the Respondent never mentioned that it would oppose the portion of the Procedural Order that required the Respondent to facilitate the visit of the Ballantines' experts to the other properties and that which have "*allowed for the Ballantines to have a limited ability to counter this 11th hour site visit.*"<sup>36</sup> Instead, the Claimants maintain that the Respondent stayed silent even though it "*had plenty of time and opportunity to ask for reconsideration from the Tribunal before it took advantage of the relief the Tribunal ordered in its favor.*"<sup>37</sup> Therefore, the Claimants request that Respondent should not be granted its request to have the benefits to the Ballantines under the Procedural Order be rescinded.<sup>38</sup>

26. The Ballantines further contend that the reason why the Respondent waited until it reaped the benefits of PO 8 until asserting that the Ballantines should be deprived of the benefits of PO 8 are not important.<sup>39</sup> In any case, it does not excuse the unfairness that results from it. Depriving the Claimants of the benefits that Procedural Order No. 8 granted them, would go against the principles of fairness and equality of arms.<sup>40</sup>

27. The Ballantines argue that it would be

a violation of the equality of arms to have the Respondent be given full access to the Ballantines' property (in exchange for the Ballantines to have access to other properties) and then to alter the situation after Respondent was given this unfettered access.<sup>41</sup>

28. In this sense, the Claimants explain that their arguments on the violation of national treatment (Article 10.3 DR-CAFTA), minimum standard (Article 10.5) and discriminatory treatment cannot

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<sup>34</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 6.

<sup>35</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 1.

<sup>36</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 2.

<sup>37</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 2.

<sup>38</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 2.

<sup>39</sup> Claimants' Letter to the Tribunal, dated March 28, 2018, p. 1.

<sup>40</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 2.

<sup>41</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 3.

be divorced from the treatment of comparators, such as Dominican-owned projects and properties immediately adjacent to Jamaca de Dios.<sup>42</sup> The Claimants argue that this case is not just about the Ballantines' property in a vacuum. In this regard, the Claimants maintain that, had the Dominican Republic denied the Ballantines the right to develop based on slopes and likewise denied everyone else similarly situated, this would be a different arbitration. But the Claimants allege that the Respondent has allowed development on similarly-situated properties owned by Dominicans.<sup>43</sup> For the Claimants, “[t]hese claims require that the Tribunal examine the Respondent’s treatment of the Ballantines in connection (and in contrast) with the treatment of Dominican-owned projects.”<sup>44</sup>

29. The Ballantines maintain that

this balancing (that information regarding various projects would be useful to the Tribunal) was behind Procedural Order No. 8, which provided for Respondent to have access to the Ballantines' property while also allowing the Ballantines to have access to similarly situated Dominican-owned properties that have either been permitted or allowed to build despite not having a permit.<sup>45</sup>

30. The Claimants further remark that the Respondent’s 13 March letter raises a new argument – *i.e.*, that the Respondent is powerless to facilitate access to the comparator properties. According to the Claimants, “[t]his assertion flies in the face of Respondent’s argument that roads in projects such as the Ballantines’ Jamaca de Dios are public roads.”<sup>46</sup> The Claimants contend that in the Respondent’s Statement of Defense, the Respondent maintained that common roads between residential communities are public domain and therefore of open access to anyone.<sup>47</sup> However, when the Ballantines’ experts tried to access these roads, in preparation for the Claimants’ Reply, they were not allowed to do so. The Claimants therefore requesting the Respondent to facilitate access to, at least, the main roads considered public domain in the other projects.<sup>48</sup>

31. In response that the Ballantines are seeking “untimely” access to the other properties, the Claimants argue that it is

an odd assertion because “the Ballantines were only responding to Respondent’s 11<sup>th</sup> hour request for access to the Ballantines’ property. The Ballantines did not independently seek access to the other properties. The Ballantines simply pointed out that they should have access to the other properties if Respondent was given access (again) to the Ballantines’ property given the nature of this dispute.”<sup>49</sup>

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<sup>42</sup> Claimants’ Letter to the Tribunal, dated March 21, 2018, pp. 2 and 3.

<sup>43</sup> Claimants’ Letter to the Tribunal, dated March 28, 2018, p. 1.

<sup>44</sup> Claimants’ Letter to the Tribunal, dated March 21, 2018, p. 3.

<sup>45</sup> Claimants’ Letter to the Tribunal, dated March 21, 2018, p. 3.

<sup>46</sup> Claimants’ Letter to the Tribunal, dated March 21, 2018, p. 3.

<sup>47</sup> Claimants’ Letter to the Tribunal, dated March 21, 2018, p. 3; Claimants’ Letter to the Tribunal, dated March 28, 2018, p. 2. See also, Respondent’s Statement of Defense, dated May 25, 2017, para. 295.

<sup>48</sup> Claimants’ Letter to the Tribunal, dated March 28, 2018, p. 2.

<sup>49</sup> Claimants’ Letter to the Tribunal, dated March 28, 2018, p. 2.



32. Lastly, the Claimants complain that the Respondent has in its Rejoinder raised issues that it could have done so earlier. Moreover, per the Claimants, what remained unaddressed is the fact that Respondent's site visit of 9 March 2018 was for issues that were briefed in the Notice of Arbitration and Statement of Claim.<sup>50</sup> The expert reports of Messrs. Peter Deming and Pieter Booth focus on environmental conditions in Phase 1 and 2 of Jamaca de Dios.<sup>51</sup>

33. Mr. Deming was asked by Arnold and Porter to:

determine the extent and scope of the intervention that would be required to build the luxury real estate development and road that the Ballantines planned to build in the upper part of Jamaca de Dios...<sup>52</sup>

34. According to the Claimants, the extent and scope of Phase 2 project was not an issue addressed by the Claimants' Reply. The Claimants consider it improper the fact that it was addressed at this stage of the proceedings and that they should be given an opportunity to respond to the issues raised.<sup>53</sup>

35. In turn, Mr. Booth was asked to:

prepare an expert report that (i) **explains and analyses criteria applicable to environmental impacts associated with real estate development projects, including the construction of roads, in undeveloped natural landscapes;** and (ii) **considers the facts in the arbitration Ballantines v. Dominican Republic** by applying the criteria to the contested real estate development.<sup>54</sup>

36. The Claimants note that the issues that were assigned to Mr. Booth had been already raised at the Claimants' Notice of Arbitration. Therefore, the Claimants cannot entirely believe that the Respondent's counsel did not know at the time of the drafting of the Rejoinder that they would need to address the environmental impact of real estate development projects and their extent and scope.<sup>55</sup> Also, the Claimants point out that in its letter dated March 26, 2018, the Respondent did not address these issues.<sup>56</sup> The Claimants therefore conclude that:

What is interesting is that Respondent's counsel did not even *try* to pretend that these two reports were responsive to issues raised in the Ballantines' Reply for the first time. The issues that the experts admit to being asked to examine are ones that have been at issue since the Ballantines filed their notice of intent to submit this arbitration, well before the Ballantines' counsel of the Tribunal were even involved in this case.<sup>57</sup>

37. Additionally, the Claimants point out that the Respondent seems to take issue with the fact that the Ballantines have raised the Odebrecht issue in their Reply (and mentioned an Odebrecht bridge in the 21 March letter). The Claimants add that, as they will set out in their Rejoinder on Jurisdiction,

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<sup>50</sup> Claimants' Letter to the Tribunal, dated March 28, 2018, p. 1.

<sup>51</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 4.

<sup>52</sup> Deming Report, para. 3.

<sup>53</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 4.

<sup>54</sup> Booth Report, para. 10 (emphasis added by Claimants).

<sup>55</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 5.

<sup>56</sup> Claimants' Letter to the Tribunal, dated March 26, 2018, p. 1.

<sup>57</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 5.

the Odebrecht issue would be directly relevant to the manner in which Respondent views foreigners (like the Ballantines) versus the manner in which it protects Dominican wrongdoers and that the Respondent is taking every step to prevent the facts about the enormous Odebrecht scandal from being realized.<sup>58</sup> Furthermore, the Claimants contend that the Respondent's officials are seeking to enrich Dominican politicians and favored sons while denying others the right to develop on the same basis, which would be why fundamental fairness would require that the Ballantines' experts have access to these other properties.<sup>59</sup>

38. For all the above reasons, the Claimants request the Tribunal to:

not disturb Procedural Order No. 8, which by all accounts appears to be an effort by the Tribunal to balance the interests, fairness, and equality of the parties. The Tribunal should reject the Respondent's request to rescind the Respondent's Obligations and to eliminate the limited Ballantines' Response.<sup>60</sup>

**C. THE TRIBUNAL'S ANALYSIS AND DECISION**

39. After considering carefully the arguments of both Parties, the Tribunal finds no justification to disturb its previous ruling.

40. The Tribunal takes this opportunity to order:

- a. the Parties to agree on a time frame for the visits and inform the Tribunal by no later than April 30, 2018.
- b. that the visits be finalized by no later than June 15, 2018.
- c. that any new evidence derived from these visits should be submitted in accordance with Rule 6.4 of our Procedural Order No.1 and by no later than July 15, 2018.

41. Finally, the Tribunal reserves the right to elaborate further on its reasoning related to this Order in the final award.

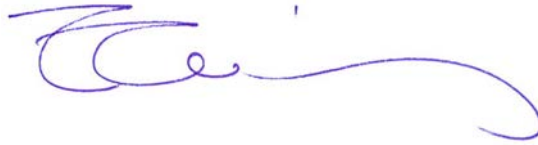
**Place of Arbitration: Washington, D.C., United States of America**

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<sup>58</sup> Claimants' Letter to the Tribunal, dated March 28, 2018, p. 2.

<sup>59</sup> Claimants' Letter to the Tribunal, dated March 28, 2018, p. 2.

<sup>60</sup> Claimants' Letter to the Tribunal, dated March 21, 2018, p. 6. Similarly, in p. 2 of its March 28 Letter, the Claimants have requested that "*the Tribunal should maintain PO 8 as written and not allow Respondent to game the system.*"



**Ricardo Ramirez Hernandez**  
(Presiding Arbitrator)

On behalf of the Tribunal