BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/19/6

In the Matter of Arbitration Between:	
ANGEL SAMUEL SEDA AND OTHERS,	
Claimants,	
and	
REPUBLIC OF COLOMBIA,	
Respondent.	Volume 1

VIDEOCONFERENCE: HEARING ON JURISDICTION AND MERITS

Monday, May 2, 2022

The World Bank Group
1225 Connecticut Avenue, N.W.
Conference Room C 3-100
Washington, D.C.

The Hearing in the above-entitled matter came on at 9:30 a.m. before:

PROF. DR. KLAUS SACHS
President of the Tribunal

PROF. HUGO PEREZCANO DÍAZ
Co-Arbitrator

DR. CHARLES PONCET,
Co-Arbitrator

ALSO PRESENT:

MS. SARA MARZAL YETANO
Secretary to the Tribunal

Realtime Stenographers:

MR. DAVID A. KASDAN
Registered Merit Reporter (RMR)
Certified Realtime Reporter (CRR)
B&B Reporting/Worldwide Reporting, LLP
529 14th Street, S.E.
Washington, D.C. 20003
United States of America

MR. LEANDRO IEZZI
MR. RODOLFO VALERIO RINALDI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina

Interpreters:

MR. CHARLES H. ROBERTS

MS. SILVIA COLLA

MR. DANIEL GIGLIO

APPEARANCES:

On behalf of the Claimants:

MR. RAHIM MOLOO
MS. ANNE CHAMPION
MS. MARRYUM KAHLOON
MR. BEN HARRIS
MS. NIKA MADYOON
Gibson, Dunn & Crutcher, LLP
200 Park Avenue
New York, New York 10166-0193
United States of America

MR. PEDRO G. SOTO
MS. ANKITA RITWIK
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Ave N.W.
Washington, D.C. 20036
United States of America

MR. ALEJANDRO MEJÍA
MR. JUAN PABLO PANTOJA RUIZ
Cáez Muñoz Mejía Abogados
Cra. 17 ##89-31
Bogotá, Colombia

Party Representatives:

MR. ANGEL SEDA
MR. JUSTIN ENBODY
MR. STEPHEN BOBECK
MR. JUSTIN CARUSO
MR. MONTE ADCOCK
MR. PIERRE AMARILGLIO

APPEARANCES: (Continued)

Attending on behalf of the Respondent:

MR. CAMILO GÓMEZ ALZATE
MS. ANA MARÍA ORDÓÑEZ PUENTES
MR. GIOVANNY VEGA-BARBOSA
MR. CÉSAR RODRÍGUEZ
MS. ELIZABETH PRADO LÓPEZ
MS. YADIRA CASTILLO MENESES
MR. ANDRES FELIPE REINA ARANGO
MS. MARCELA MARÍA SILVA ZAMBRANO
Agencia Nacional de Defensa
Jurídica del Estado
Carrera 7 No. 75-66 - 2do y 3er piso
Bogotá
Colombia

MS. LAURA MARÍA MARÍN MORENO
Fiscalía General de la Nación

MR. CARLOS SABOYÁ
Director de Asuntos Jurídicos, Fiscalía General de la Nación

MS. SANDRA MARTÍNEZ
Asesora de la Dirección de Asuntos Jurídicos, Fiscalía General de la Nación

MS. SANDRA MONTEZUMA
Asesora en el Despacho del Vicefiscal, Fiscalía General de la Nación

MS. TATIANA GARCÍA
Directora de Asuntos Internacionales, Fiscalía General de la Nación

MS. LILIA ROSA MENDOZA
Asesora de la Directora de Asuntos Internacionales, Fiscalía General de la Nación

APPEARANCES: (Continued)

MR. ANDRES FELIPE TINOCO
Asesor en el Despacho del Vicefiscal,
Fiscalía General de la Nación

DR. YAS BANIFATEMI
MS. YAEL RIBCO BORMAN
MS. PILAR ALVAREZ
MS. CAROLINA BARROS
MR. YOUSSEF DAOUD
Gaillard Banifatemi Shelbaya Disputes
22 rue de Londres, 75009 Paris
France

MS. XIMENA HERRERA BERNAL
Gaillard Banifatemi Shelbaya Disputes
165 Fleet Street
London EC4A 2AE
United Kingdom

C O N T E N T S

P R O C E E D I N G S

PRESIDENT SACHS: Good morning, ladies and gentlemen. It's 9:30. We can begin our Hearing in the case of Mr. Seda and others versus the Republic of Colombia.

We received the consolidated List of Participants. It's very long, so I would propose that we do not spend too much time on it, but I would invite lead counsel to introduce those who are physically present here today, shortly, so Mr. Moloo, would you please start.

MR. MOLOO: To see if this is working.

Thank you, Mr. President, and good morning to you all. With me here today on behalf of Claimants I have my partner, Ms. Champion. We have Ms. Kahloom, Ms. Ankita Ritwik, Mr. Pedro Soto. Next to him is Mr. Ángel Seda. We have our local counsel, Mr. Alejandro Mejía. I believe also Juan Pablo Ruiz is not in the room, okay. We have Ms. Nika Madyoon and next to her we have Mr. Pierre Amariglio, and at the back we have Mr. Ben Harris.

PRESIDENT SACHS: Thank you.

And the other participants that are on the list are connected online, and could you confirm that the list is all--that the list reflects all those who actually participate?

MR. MOLOO: Yes. That is my understanding. I believe the only one that has not yet joined is Mr. Justin Enbody, and to confirm, the other Claimants have signed the confidentiality undertaking, and we will share that with you.

And Mr. Enbody will be joining slightly late, given that he's on the West Coast.

PRESIDENT SACHS: Good. Thank you very much.

Now we turn to the Respondent.

MS. BANIFATEMI: Good morning, Mr. President, Members of the Tribunal. I'm Yas Banifatemi. I act here on behalf of the Republic of Colombia, from Gaillard Banifatemi Shelbaya Disputes. To my left, you have my partner Ximena Herrera Bernal, also from Gaillard Banifatemi Shelbaya Disputes. Next to Ms. Ximena Herrera Bernal, we have Mr. Giovanny Vega-Barbosa from the Agencia Nacional de Defensa

Jurídica del Estado (ANDJE). Next to him, we have Ms. Pilar Alvarez, from Gaillard Banifatemi Shelbaya Disputes. Then we have the Director of ANDJE, Mr. Camilo Gómez Alzate with us, and then we have Ms. Ana María Ordoñez, also from ANDJE, and then we have Yael Ribco Borman from Gaillard Banifatemi Shelbaya Disputes.

PRESIDENT SACHS: Thank you.

And the same question to you, the Respondent, the other participants are connected and—

MS. BANIFATEMI: To my understanding, yes. They are or will be connected. Thank you.

PRESIDENT SACHS: Very good. Thank you.

And as far as the Non-Disputing Party, the U.S. is concerned, is there somebody in the room. Could you shortly give us your name please.

(Inaudible.)

PRESIDENT SACHS: You must press the button.

MR. PERALTA: There we go. This is Alvaro Peralta with the United States.

PRESIDENT SACHS: Thank you.

MR. PERALTA: Thank you very much.

PRESIDENT SACHS: All right.

Now, there are a few pending procedural issues that need to be resolved. Our idea was to postpone a discussion of the pending issues to the end of today and to start with the oral argument, unless there is any point that you would make against this order.

Mr. Moloo.

MR. MOLOO: Not from Claimants.

PRESIDENT SACHS: Mrs. Banifatemi?

MS. BANIFATEMI: Thank you, Mr. President.

We have not been able to introduce any new documents into our opening statement and it's already too late anyhow, so we are happy to postpone that until the end of today, but we would ask the Tribunal to make a decision fairly soon because that will have an impact on the remainder of the case. These are documents that we were hoping to allow in—and starting today.

(Overlapping speakers.)

PRESIDENT SACHS: Yes. If we understand correctly, documents that you would like to use in the

cross-examination of Mr. Seda or...

MS. BANIFATEMI: That may include these.

PRESIDENT SACHS: Okay. Okay, we will get back to this in the afternoon.

MS. BANIFATEMI: Thank you.

PRESIDENT SACHS: Okay. So, we will then invite the Claimant to deliver its Opening, please.

OPENING STATEMENT BY COUNSEL FOR CLAIMANTS

MR. MOLOO: Thank you very much, Mr. President and Members of the Tribunal. It's an honor to be here on behalf of the Claimants representing them in this case.

And what I hope to do for you over the next three hours, along with my colleagues, is to summarize, not go through in extensive detail. I'm just trying to see if the slides have been put up.

THE INTERPRETER: Is it possible to ask him to speak closer to the mic?

(Discussion off the record.)

MR. MOLOO: Can put the slides up, if you don't mind? Hopefully we can--okay.

Now that the technical difficulties have

been resolved, I would now like to commence our Opening Statement, and what I hope to do, Members of the Tribunal, over the next few hours is to take you--my slides have disappeared, and now I'm on the screen. Okay. Let's keep it to the screen. Let's keep it to the slides.

What I hope to do over the next few hours is to take you through the following issues along with my colleagues.

First, I will present a brief overview of the case. My partner, Ms. Champion, will provide factual background on the case.

I'll come back to you on Items 3, 4, and 5.

My colleague, Ms. Kahloom, will address you on jurisdictional issues; and, time permitting, I will briefly conclude.

But let's start with, by way of background, what this case is about.

PRESIDENT SACHS: I'm sorry to intervene.

MR. MOLOO: Please.

PRESIDENT SACHS: But we still have not yet received the confidentiality undertaking of Mr.

Amariglio, so we need that before we proceed.

MR. MOLOO: It's been provided to Respondent's counsel. We'll provide it to ICSID now.

PRESIDENT SACHS: Okay, great. Sorry for that.

MR. MOLOO: No problem. It's better to get them all, all the issues addressed before we dive in too deep.

So, on the screen here, we have a picture of Mr. Ángel Seda, who is obviously here in the room, and we will hear a lot about Mr. Seda. Obviously, we will hear from him directly, but that's because the U.S. investors, all of them, got behind him as the principal investor, and this case is, unfortunately, a sad story about Mr. Seda, who moved to Colombia about 15 years ago, in the prime of his career, to invest not just capital but his time, his effort, his expertise, his energy, his capital to help develop the Colombian real-estate market and, in particular, the hospitality industry.

And he chose Colombia, as you'll hear shortly, because he believed in the country, he

believed in the future of the country. He saw its potential, he saw its opportunity, and he immersed himself in Colombian culture and Colombian society and lived there for many years. His family is there, his friends were there, and all of his employees were there.

And the first investment that he made was to establish the Royal Property Group, which you've heard about, and the Royal Property Group, their first major project was The Charlee Hotel. If you have been to Medellín, Colombia, there is a good chance you stayed at The Charlee Hotel because it's one of the top hotels in the city. Here is a picture of it. That's an actual picture of the hotel. I have stayed there myself. I have been to the roof deck that you see on the bottom left, which has a beautiful view of all of Medellín, which is in a valley. It's a beautiful city. And in a few short years, he established The Charlee Hotel as one of the leading hotels and brands in Medellín and Colombia.

It was met with not just domestic but worldwide acclaim. In 2012, it was listed as one of

the top 120 hotels in the world by Condé Nast, one of the 120 new hotels of that year. The New York Times has featured The Charlee Hotel, Vogue Travel has featured The Charlee Hotel. It is by all measures a huge success.

It wasn't the only project. In as early as 2009, before The Charlee was even fully built, Mr. Seda began on his next venture, The Luxé by The Charlee, which is a 59-acre property just outside of Medellín. It was a resort town on a beautiful lake, on Guatapé lake. Again, these are actual pictures. These are not renderings. This is parts of the resort that was built, a beautiful resort, again having been there, and it came to represent the brand that Mr. Seda was creating in Colombia.

Several houses are complete. There is a restaurant on the lake that's operational. Unfortunately, the hotel is only about 70 percent done and has been in that state since about 2016.

Then, of course, there is the Meritage Project. These are renderings of the Meritage Project that you see in the picture here. It's just outside

of Medellín. It's in between the airport and the main city. It's 56 hectares. That's a lot of land just outside of a major city. It's like a subdivision. It was meant to be over 20 apartment towers, several of which were under construction at the time of the seizure, approximately 20 commercial units, and over 90 houses. At the time of the seizure, there were over 500 people working on-site. It was--the best way I can describe it is a subdivision of Medellín.

And there were several other projects that were in the pipeline: Tierra Bomba, 450 Heights, Sante Fé. Again, these are renderings of those projects that were all being worked upon by the Royal Property Group.

But all of this came to a surprising, shocking, and unfortunate halt on August 3rd, 2016, when one prosecutor, Ms. Ardila Polo, who you will hear from, that is Special Prosecutor 44--and you can see that the office issuing this order is just her--no court supervision--nothing--her administrative decision to, on that day, deliver this: "Certificate of Real Property Seizure." She appeared on-site, and

on August 3rd, 2016, put the padlock on the door and told everybody to go home, and said, "That's it." "That's it." The decision of one person brought all of this to a grinding halt, and you will hear from her this week.

And this is pictures, actual pictures, of the Meritage in its current state, mid-construction, everyone sent home. And since 2016, everybody who drives from the airport to Medellín drives by this. For the last six years, everybody in the country, everybody in Medellín has been witness to this unfortunate story.

And it was widely publicized in all of the major newspapers in Colombia. It's gone beyond that. It's been in The Wall Street Journal. This is a story that has been widely, unfortunately read about.

"Seizure of land where an exclusive project is being built in Medellín"; "The narco-property"--is what it was called--"in Antioquia that entangles a model"; "Complaint uncovered problems at the Meritage plot"--those were the headlines that Mr. Seda had to face the next day.

And the nail in the coffin was January 25, 2017, when the Determination of Claim was submitted to the Court, and the Royal Realty Property Group was effectively dead as a going concern.

You know, there are moments in one's life that you look back on and you say, you know, "That was a turning point. That was a fork in the road in my life." Maybe you moved to a new city, maybe you got married, you had a child. And you look back on August 3rd, 2016, and you realize that that was a fork in the road in Mr. Seda's life. He may not have known it at the time because I think he--at that time he thought, "It will be a few weeks," you know, "The courts will take care of this", I will get my property back." But that day fundamentally changed his life.

And it's sad because you see all of these people that were employed there. You see how it was contributing to the benefit of Colombia. And, unfortunately, since that day, he has to turn his full attention to this case, to try to get it back, to try and revive his reputation but, unfortunately, to no avail.

You will hear from Mr. Seda, obviously, tomorrow. You won't hear from Mr. López, who did submit testimony into the record. He was the Vice President of Construction. He had experience working with several renowned real estate developers in Colombia, and he was there on August 3rd, when that certificate was delivered.

You hear from Mr. Wilson Martínez, who has more than 20 years of practicing law. He served with the Attorney General. He was the lead author of the Asset Forfeiture Law that is the subject of this dispute.

You will not hear from Mr. Medellín, who was a former Minister of Justice. He's known to be the father of the Asset Forfeiture Law in Colombia. He was the Legal Adviser to the Attorney General in the implementation of this Asset Forfeiture Law. He was Ambassador to the United Kingdom, truly one of the leading lawyers and true experts on Asset Forfeiture Law in Colombia.

You will hear from world-renowned real estate experts JLL, Mr. Clay Dickinson and Mr. Ruiz,

who's focused specifically on the Colombian market.

And you will hear from our quantum experts, Mr. Santiago Dellepiane and Ms. Daniela Bambaci, on the damage that has been suffered as a result of the measures that we will discuss today.

I will return to you to address you on the breaches, but before I do, I will turn the floor over to my partner, Ms. Champion, who will take you through some the background facts.

MS. CHAMPION: Good morning, Mr. President and the Tribunal.

So I'm going to give you a little bit about the factual background of what happened here. You've heard about Mr. Seda's real estate development career. Well, in 2006, he decided to sell his successful real estate development company in Los Angeles and head to Latin America. He was in search of a new market. He wanted to find the perfect place to start a new real estate development firm and lifestyle brand.

After checking out multiple countries--Costa Rica, Nicaragua, Panamá--Mr. Seda thought he had found the perfect spot in Medellín. As he described it here

in his Witness Statement, the newfound peace in Colombia was generating new economic opportunities. The President of Colombia at the time, Alvaro Uribe, was prioritizing economic recovery, and that was evident in Medellín, which was attracting a growing array of multinational companies. It had good infrastructure and was replete with natural beauty. To Mr. Seda, it seemed like the perfect place to build lifestyle properties and a brand.

Respondent tries to turn Mr. Seda's optimistic nature into a negative but it is not. Contrary to Respondent's cynical view that by choosing Medellín as the place to embark on this adventure, Mr. Seda somehow knew exactly what he was getting into. In fact, Mr. Seda fell in love with Colombia. He believed that he could help Medellín turn the page on a violent and tragic past, by attracting foreign investment, building beautiful buildings, hotels and housing to support tourism, business travel, and Medellín's growing middle class.

Mr. Seda set out to do this in a way that fully complied with the law and contributed to the

community, even when people told him it would be easier to cheat. Indeed, Colombia's argument that Mr. Seda and the other Claimants, who invested in Colombia, are somehow not entitled to the protections of international law because they assumed the risk by doing business in Colombia, would deprive the trade protection agreement of all meaning.

Mr. Seda was motivated to realize his vision. So, in 2007, he created Royal Realty Property Group, a real estate development firm, and purchased office space. He obtained a foreign investor visa and set about identifying potential opportunities. At its peak, Royal Realty had over 50 employees, many of them Colombian.

Moreover, the projects and hotels in its pipeline would have employed thousands in construction and once operational. As Mr. Moloo already mentioned, the Meritage alone had 500 people working on-site the day that it was seized.

As Mr. Moloo has also explained, The Charlee Hotel was his first project. Mr. Seda came up with the idea for The Charlee Hotel by studying the

hospitality industry in Medellín and looking for gaps in the market. He identified Lleras Park, which was a trendy neighborhood with good nightlife but no hotels. He found a suitable lot, hired a law firm to conduct the title study and check the OFAC list and hired a fiduciary to administer the funds for the Project as required by Colombian law.

As you have already heard, The Charlee gained international acclaim and its occupancy rates have remained well above industry standards since it opened its doors in January 2011. These pictures show the beautiful finished products. The Charlee employs over a hundred people.

Mr. Seda next conceived of a luxury resort and residential complex close to nature but also close enough to Medellín to provide a weekend escape for people in the city. He found a 59-acre property in Guatapé on a large lake, 6,000 feet above sea level and just two hours from Medellín. Capitalizing on the "Charlee" brand, Mr. Seda called it Luxé by The Charlee. It was planned to consist of 43 privately owned, lodge-style cabins, 18 apartments, and 17 lots

for custom-designed and built homes. All of this would be anchored by a luxury hotel with 116 rooms, wellness facilities, meeting and banquet spaces, an aquatic center, and a beach on the lake.

Mr. Seda again ensured that all diligence was done on the property and hired a fiduciary to administer the funds for the Project.

The concept proved to be so attractive that the 17 residential lots sold out on the first weekend of marketing, and all of the lots, apartments, and first-phase residential units were sold within a few months. Construction began in September of 2010. It was substantially advanced when the Meritage seizure happened.

I'm going to show you some drone footage of the site. It's beautiful. I just want to note that--you know, I had visited and I can tell you from personal experience how beautiful it is and how hard it is to see this vision cut short and unfinished, but this drone footage is actual, and we will show you completed construction on the property.

(Video played.)

MS. CHAMPION: By this time, Royal Realty had additional projects in its pipeline. There was Tierra Bomba. This was a mixed-use development seven minutes from Cartagena. On this project, Royal Realty had already entered into a Promise to Purchase Agreement for the land. It had completed initial designs, and it had negotiated with the local indigenous community for their approval for the Project as well as with the municipality. Engineering and topography studies were complete.

There was also Sante Fé de Antioquia. This was a waterfront development along the Cauca River whose central feature was to be a blue lagoon. The land for this project had been purchased and paid for outright, and they had obtained approval in the entitlement process with the municipality. The urbanism design was complete, and the engineering and topography studies were also complete.

There was also 450 heights, another mixed-use development substantially through the planning phases. Royal Realty had negotiated purchase of the land with the sellers. It had completed the

initial designs, was halfway through the entitlement process, and they had also socialized and negotiated the Project with the local municipality. Engineering and topography plans were complete.

So, as you can see, Royal Realty had a number of projects in its pipeline. It was a very ambitious and serious company, constantly working, constantly coming up with new ideas.

Another project in the pipeline was, of course, the Meritage. Envisioned as a large planned community with single-family homes, a luxury hotel with long-term-stay suites for business travelers, residential apartments and retail frontage. The Meritage was intended to take advantage of Medellín's beautiful surroundings but also remained within commuting distance from the City.

Mr. Seda contacted a number of real estate brokers and started touring around Medellín, looking for an appropriate piece of land. He looked at about a dozen properties before he found one that seemed perfect. It was a site between the airport and the city center. It was bucolic and underdeveloped. It

had been used for cattle grazing for a number of years. There was one issue, though, which was a toll booth between the property and the center of Medellín.

But Mr. Seda learned that there had been discussion of moving the toll booth that had been tangled up in bureaucracy. So, by interfacing with the toll booth operator--

ARBITRATOR PONCET: Sorry to interrupt.

MS. CHAMPION: No problem.

ARBITRATOR PONCET: Did you say Mr. Medellín contacted a number of real estate brokers?

MS. CHAMPION: Mr. Seda, yes, apologies, yeah.

ARBITRATOR PONCET: It goes without saying that, you know, once it's on the record, it's--

MS. CHAMPION: No, I appreciate the correction.

The toll booth--Mr. Seda interfaced with the toll booth operator and the municipality of Envigado and helped facilitate actually getting that toll booth moved, which was a hindrance to the development of the Project that Mr. Seda managed to overcome.

Royal Realty entered into a Sales-Purchase Agreement to purchase the property on November 1st, 2012.

Mr. Seda then contacted Corporación Financiera Colombiana, known as "Corficolombiana," to serve as the fiduciary for the Project. Corficolombiana is one of the largest fiduciaries in Colombia. It operates under the Grupo Aval umbrella, which owns a number of banks including Banco del Bogotá. Grupo Aval is the largest financial institution in Colombia.

Newport, Mr. Seda's development company for the Meritage, hired Otero & Palacio, a very well-regarded local law firm, to conduct a title study and a study of the seller, La Palma Argentina, including checking the names of prior owners and La Palma against the OFAC and UN lists. The title study and study of the seller identified no defect in title and no impediments to sale. As you can see, the company studies states, in the opinion section, "favorable to alienate the real property identified with Real Property Registration Sheet

Number 001-930485".

Corficolombiana, through its outside counsel, Francisco Sintura, himself a former Deputy Attorney General for Colombia, took yet another precaution. Mr. Sintura petitioned the Anti-Money-Laundering and Asset Forfeiture Unit of the Attorney General's Office, the same Unit that later seized the property to ensure that the property and its owners had no criminal associations. Corficolombiana's petition was extensive, 61 pages, and included the names of owners of the property going back nearly 60 years.

Corficolombiana asked the Head of the Anti-Money-Laundering and Asset Forfeiture Unit at the time to check whether the property or any of its owners were the subject of an investigation.

In compliance with its obligation to provide a truthful, pertinent and timely answer to this petition request, the Head of the Unit, Danny Julian Quintana, confirmed that there was no record that any of these persons or entities or the property were the subject of an investigation.

As you can see from the Reports of Claimants' legal experts in this case, Wilson Martínez, one of the designers and drafters of Colombia's Asset Forfeiture Law, Corficolombiana went above and beyond by securing this certification from the Attorney General's office. All Corficolombiana was required to do was to confirm that the prior owners were not included on the UN Security Council list and use its government approved SARLAFT procedures for the seller, which there is no dispute that it did.

Newport then set about creating the necessary contractual structures to execute the Project and comply with Colombian law.

As you can see from this chart, in this Trust structure, as money comes in from the Unit Buyers, it is sent to the Administration and Payment Trust--this is kind of weird, huh--whose documents require that the funds be used to pay construction and other necessary project expenses. As construction starts, and money is drawn from the Administration and Payment Trust to complete the Project, title passes

from the seller of the land to the buyer, Newport through the Parqueo Trust, phase by phase. No money is paid out of the Administration and Payment Trust until the point of equilibrium is reached. The point of equilibrium is reached when the developer has all necessary licenses, has sold enough units or obtained enough financing to ensure the viability of the Project. The ultimate goal here is to protect the Unit Buyers and Investors.

As Mr. Seda explains in his Witness Statement, because of Colombia's relatively underdeveloped long-term commercial financing markets, Parties use these fiduciaries to mitigate risks and ensure that the assets and funds are used only for their intended purposes. Moreover, it is a requirement under Colombian law whenever you have more than 20 investors to use this type of fiduciary structure.

PRESIDENT SACHS: May I ask a question?

MS. CHAMPION: Sure.

PRESIDENT SACHS: Could you turn back to Slide No. 34.

At the time of the visit on the site in August 2016-'17--

MS. CHAMPION: Um-hmm.

PRESIDENT SACHS: --which was the situation of the titles?

MS. CHAMPION: By the time of the seizure, I believe title to Phases 1 and 6 had passed. I'm going to get to that actually. It's on a slide here.

Oh, I'm going backwards. Sorry.

So, you can see here the phases. This is the phase map of the Project--

PRESIDENT SACHS: Um-hmm.

MS. CHAMPION: --kind of starts with the retail frontage hotel and condominium and works backwards.

And so, they had reached the point of equilibrium for Phase I, and, but Phase VI was associated with Phase I, so title to both passed to Newport at that time.

PRESIDENT SACHS: So passed from--

MS. CHAMPION: In this deed, 361.

(Overlapping speakers.)

PRESIDENT SACHS: --Parqueo Trust to, if I follow the line here, the blue line, could you explain this to us? I see Parqueo Trust. It's Slide 34.

MS. CHAMPION: Yes.

PRESIDENT SACHS: Then, title to Phase I and VI, and then this blue arrow, which goes to Administration and Payment Trust.

MS. CHAMPION: And then to Newport.

PRESIDENT SACHS: So, you're saying in August 2016, title to Phase I and VI was with Newport?

MS. CHAMPION: Correct.

PRESIDENT SACHS: Okay. Please go ahead.

MS. CHAMPION: No problem.

There was very strong demand for the Meritage units. The units sold very quickly. Monthly sales averaged 12 units a month at a pretty high price tag for Colombia, $440,000 back in 2013. These were the highest recorded monthly sales of any project in Antioquia at this time.

We talked about the phase map already. As you can see, development kind of starts with the frontage and moves back.

So, on December 4th, 2015, the Project reached the milestone by obtaining an urbanism license for all phases of the Project.

As Mr. López Montoya explains in his Witness Statement, an urbanism license is granted only after the municipality approves the Project, that it meets all requirements and is desirable for the community. It is more holistic and involves a very rigorous process.

They had also obtained construction permits, and so at this point, construction begins in earnest.

As you can see from this investor update in April of 2016, by mid-2016, construction was substantially advanced with foundations for seven of the eight towers complete, and structural construction for five of the towers was almost complete. Significant work had also been completed on the other structures.

In addition, in May of 2016, Newport was approved for a loan of up to $11 million from Banco de Bogotá after passing the bank's own rigorous diligence process.

The Meritage Project was humming along on all cylinders in the summer of 2016 when things took a detour and the Meritage found itself seized on August 3rd, 2016.

To understand the seizure, we need to take a step backwards. Just as just Daniel Hernández, a high level prosecutor who will be testifying for Colombia in this proceeding, has had trouble pinning down a corruption case against Ms. Malagón and Ms. Ardila after years of investigation, some of the facts here remain elusive. But the coincidences and the timeline of the extortion scheme that Mr. López Vanegas engaged against Mr. Seda and events in the asset forfeiture case are remarkable.

Specifically, a gentleman names Iván López Vanegas first approached Mr. Seda in 2014, long after diligence had been completed and the Contract to purchase the land was signed. Pre-sales for the Project had started, and the Project was gaining publicity as a run away success. I think this is important because it's likely what drew Mr. Vanegas--Mr. López Vanegas' attention to Mr. Seda

and the Project.

Mr. López Vanegas started leaving phone messages at Royal Realty, claiming to be the rightful owner of the property and demanding a pay-off of USD 660,000, or he said he would go to the media.

Unfortunately, as a real estate developer, Mr. Seda was accustomed to extortion demands. He asked his in-house counsel to take a look into the matter, and he noted that Mr. López had never been a titleholder for the property and that he appeared to be a drug trafficker.

Mr. Seda reported the threats to the relevant stakeholders, including Corficolombiana, and countered Mr. López Vanegas' false statements to the media to control reputational risk to the Project. He then moved on from what he viewed as a baseless extortion demand, confident in the diligence that had been done.

As had been Mr. Seda's experience with other similar extortion demands, once Mr. López Vanegas realized that Mr. Seda was not going to pay him, he went away. But unbeknownst to Mr. Seda around that

time, Mr. López Vanegas filed a criminal complaint on July 3rd, 2014, before the organized crime unit of the Attorney General's Office.

So that's--this thing is hard to control. Oh, really? There, there we go. There we go.

(Pause.)

MS. CHAMPION: I will figure this out.

There we go.

July 3rd is when Mr. López Vanegas files his complaint.

The organized crime prosecutor who took the complaint, referred it to the Money Laundering and Asset Forfeiture unit where it was assigned to prosecutor Number 37. Mr. López Vanegas's complaint tells a convoluted story about his son, Sebastian López Betancur, supposedly being kidnapped in 2004 when Mr. López Vanegas was in jail in Florida. And according to Mr. López Vanegas, his son is forced to sign over his interest in land in Colombia by being kidnapped by members of the Oficina de Envigado.

Mr. López Vanegas did not tell the Organized Crime Unit that when he filed the complaint, he was

simultaneously trying to extort the developer of the Project. In fact, he doesn't mention the Meritage or Mr. Seda at all.

The kidnapping story has since been discredited, but given the timing, it seems likely that it was a convenient ruse to try to use a criminal investigation as leverage against the Project.

In other words, Mr. López Vanegas saw an opportunity to create trouble for the Project and get paid off to go away.

It seems that the Attorney General's Office didn't take Mr. López Vanegas's complaint in 2014 very seriously, either. The organized crime prosecutor who took the complaint referred it to the Money Laundering and Asset Forfeiture unit and the judicial police did some preliminary investigations. The criminal case remained quiet for nearly two years, and so did Mr. López. But he resurfaced again in April 2016, with a new strategy.

This time, Mr. López Vanegas had a lawyer, Victor Mosquera Marín, who contacted Mr. Seda on April 7th, 2016, claiming to have proof that Mr. López

continues to be the legitimate owner of the Meritage Lot. Mr. Mosquera demanded that Mr. Seda meet with him in Washington, D.C. on May 2nd, "with the aim of exploring an alternative resolution to the dispute by means of direct negotiation."

Mr. Mosquera made unspecified legal threats. He warned Mr. Seda that in case you are not present or if there is no agreement regarding our aims, we are advising you that my principal is willing to begin the appropriate domestic or international legal actions.

Meanwhile, back at the Asset Forfeiture Unit just a day after Mr. Mosquera's letter to Mr. Seda on August 8th, 2016, the Head of the unit, Ms. Andrea Malagón, suddenly assigns the López Vanegas Case to prosecutor Number 44, Alejandra Ardila Polo.
Ms. Malagón disregarded that the case had already been assigned to another prosecutor for nearly two years.

Once she was assigned to the case,
Ms. Ardila moved quickly. From the moment she is assigned, she has in hand a memo from the judicial police dated April 8th, 2016, noting that there are 47 properties in Colombia associated with Mr. López

Vanegas, but she immediately zeros in on the Meritage Property.

In the meantime, Mr. Mosquera is persistent. He contacts Mr. Seda again on April 27th, demanding confirmation that Mr. Seda will attend this May 2nd meeting in Washington to reach a "brokered solution." Otherwise, Mr. Mosquera threatens he will commence unspecified legal proceedings.

Mr. Seda was understandably concerned about this threat of legal proceedings against the Project, so he told Mr. Mosquera that he was willing to meet in Colombia, but Mr. Mosquera responded that it was too late. His client would pursue his legal proceedings. That turned out to be a tutela filed on May 6th, 2016. In the tutela, Mr. López sought a seizure of the property under the Colombian Criminal Code and sought to enjoin Royal Realty from proceeding with the Project. The Court denied that relief quickly but instructed the Organized Crime Unit to make a decision within 15 days whether to investigate or dismiss Mr. López Vanegas's criminal complaint.

Mr. Seda was disturbed by the aggressive

nature of the tutela, and Mr. Mosquera and Mr. López Vanegas did not simply disappear after they basically lost it, far from it. They reengaged with Mr. Seda in June, this time in a far more threatening manner.

It is at these meetings in June of 2016, before Mr. Seda is even aware that there is an active Asset Forfeiture Proceeding implicating the Meritage, that Mr. Mosquera tells Mr. Seda that he has connections in the Asset Forfeiture Unit and in particular with its Director, Andrea Malagón and prosecutor Ms. Ardila.

Mr. Mosquera brags to Mr. Seda that he talks to Ms. Malagón on a weekly basis, and that she will seize the Lot if he asks her to. They demand that Mr. Seda pay Mr. López Vanegas's USD 19 million. You can see the escalating nature of the demands from $660,000 to 19 million.

At that meeting, Mr. López and his henchmen show Mr. Seda pictures of his children, in an obviously threatening gesture.

Mr. Seda flees the meeting--and I'm going to show you the text messages sent to him--oh, I'm going

backwards--by Mr. Valderrama. As he flees the meeting, Mr. Valderrama sends these conciliatory messages: Come back, let's restart the conversation. Forgive me, I appreciate your presence and your position was made clear. I'll be available if you want to restart the conversation.

But ominously, there are other signs that someone in the Attorney General's Office may, indeed, be supporting Mr. López Vanegas's scheme. Shortly after meeting with Mr. Mosquera and Mr. López Vanegas in mid-June 2016, someone approaches Mr. Seda outside The Charlee Hotel. This person claims to be coming from the Attorney General's Office and tells Mr. Seda to pay because the Attorney General's Office is trying to help him.

After six weeks of silence, Mr. Seda suddenly hears from Mr. Valderrama again on July 25th, 2016.

Mr. Valderrama asked to speak urgently with Mr. Seda. Mr. Seda replies that he is not interested, and that he will call the police, and that is these messages here: "I'm not interested. Thank you. If

you contact me or threaten me, I will call the team that is already aware. Both Army and National Police."

Mr. Valderrama responds: "Angel, warm greetings. Understood. The negotiation chapter is closed."

What was so urgent about Mr. Valderrama's entreaties on this particular date? Why did he reach out to Mr. Seda six weeks after the Parties had last spoken, demanding a call?

Well, if we go back to the timeline, we see that back at the Asset Forfeiture Unit, just three days before that, on July 22nd, 2016, Ms. Ardila had signed the Precautionary Measures Resolution to seize the Meritage Property. Did Mr. Valderrama know this? It would explain the coincidence in timing and the urgency of his entreaties.

Days later on August 3rd, 2016, Ms. Ardila imposes Precautionary Measures on the Meritage Lot, seizing the property, and stopping all construction and development of the Project.

I will focus on the seizure in a moment, but

needless to say, Mr. Seda was shocked that Mr. López Vanegas and Mr. Mosquera had made good on what seemed to be wild threats.

And he was also shocked that the Asset Forfeiture Unit would take such drastic action on the word of a drug dealer without even trying to discuss the issues of good faith and other key things with Newport or Corficolombiana.

And ominously, just weeks after the seizure, once again, a man approaches Mr. Seda outside The Charlee Hotel and tells him the Fiscalía advises Mr. Seda to do what is good for him and pay to keep the situation under control. Mr. Seda decides to report this scheme to U.S. Authorities, given the potential involvement of Colombian officials. So, he arranged to meet with Mr. Mosquera, hoping to get evidence of the extortionate demand in writing. Mr. Mosquera had been careful about keeping specific monetary demands out of his correspondence, so Mr. Seda wanted to get evidence that there was a monetary demand here. So, he meets with Mr. Mosquera again in Bogotá on October 27th, 2016. Mr. Mosquera

tells Mr. Seda again that if he pays $18 million to Mr. López Vanegas, Ms. Malagón and Ms. Ardila would declare Newport a good-faith buyer and end the Asset Forfeiture Proceedings.

Colombia may try to argue that even if Mr. Mosquera did say this, he was bluffing, that he didn't really have contacts or influence within the Asset Forfeiture Unit, but there is every reason to think it was not entirely a bluff. Because at another meeting with Mr. Mosquera and Mr. López Vanegas just two days later, Mr. Mosquera even told Mr. Seda that he could pay the money into a fiduciary account and only release it once the Asset Forfeiture Proceeding had been lifted. Why would Mr. Mosquera propose such an arrangement if he was bluffing about being able to influence the Asset Forfeiture process?

On November 9th, 2016, Mr. Mosquera put his cash demand in writing. Mr. Seda refused to pay it, and the Asset Forfeiture Proceedings against the Meritage have continued to this day.

These communications are all laid out in detail in these slides, which we include for your

reference, but I will now turn to the seizure and its aftermath.

There is Mr. Mosquera's email with the cash demand.

What's that?

That's Slide No. 62. On the morning of August 3rd, 2016, Mr. López Montoya, the Vice President of Construction for Royal Realty, was driving to Royal Realty's offices to go to work when he got a call from someone on-site at the Meritage Property. The person informed him that police trucks from the technical investigation team, CTI, sort of the Colombian FBI, had shown up at the Meritage Lot. The CTI agents were accompanied by prosecutors from the Fiscalía who were asserting that they had authority to seize the land.

Mr. López Montoya immediately drove to the site, and when he got out of the car, he was greeted by armed agents. There were multiple cars and agents walking around the property, attempting to map it.

A senior CTI agent told Mr. López Montoya the Prosecutors will arrive soon and will explain what

is happening.

He reassured him saying: Prosecutor Alejandra Ardila Polo is very nice, you should talk to her and you'll see how quickly the situation can be resolved.

Ms. Ardila entered the on-site sales office shortly thereafter, and told Mr. López Montoya that she was executing a seizure, that the Government was taking over the Lot, that all construction would have to cease immediately, and no further sales would be permitted.

The team remained there for hours mapping the property, posting signs, and Ms. Ardila Polo gave Mr. López Montoya a certificate of seizure signed by her. She told him she was implementing a resolution to seize the Lot due to a complaint received "a few months ago" about a kidnapping of one of the former owners of the Lot. Although she provided the certificate of seizure, she refused to provide Mr. López Montoya with the resolution that was supposed to accompany it. She told him that Corficolombiana, as the fiduciary, would have to

request a copy.

She also rejected Mr. López Montoya's attempts to show her evidence of the due-diligence that had been done before the Lot was acquired.

As Mr. Moloo has already alluded to, the impact on the Project was obviously immediate. The seizure began reverberating through Royal Realty's entire business and portfolio like dominoes falling. The seizure was widely publicized with the press, grasping on to the most tawdry aspects of the story. The narco-property in Antioquia that engages a model, seizure of land where an exclusive project is being built.

As Mr. Seda sets forth in his statement, he immediately began receiving calls from contractors, investors and unhappy Unit Buyers.

The construction companies had to be told to stop work, Banco de Bogotá withdrew its financing and accelerated the loan. Unit Buyers began to demand their money back. And the seizure also brought construction of Luxé to a halt.

Colpatria withdrew its financing for Luxé,

and as noted, the Project remains in a state of half completion with no one willing to finance a project that's associated with a company that's involved in an Asset Forfeiture Case.

These photos show the unfinished hotel, building materials that will probably now never be usable.

Investors also withdrew their support. And as I said, the dominoes began to fall.

Tierra Bomba, which was on the verge of commencing pre-sales, the sellers of the land said they could no longer work with Royal Realty because of the reputational risks, and they canceled the Contract to purchase the land. Royal Realty also lost out a lucrative hotel management Contract.

The sellers of the land for 450 Heights also pulled out of the deal due to reputational issues.

And in Sante Fé de Antioquia, where sales were scheduled to start the following year, Royal Realty was no longer able to obtain any financing and its investment partners were no longer willing to move forward due to reputational risk.

In the meantime, Newport and Corficolombiana were doing everything they could to challenge the seizure. They knew that the Asset Forfeiture Law was supposed to protect good faith Third Parties without fault. They knew that they had done substantial diligence on the property. Even obtaining the certification from the very same unit of the Attorney General's Office that did the seizure.

As set forth in the Expert Report of Wilson Martínez, one of the drafters of the law, one of the objectives, even in the investigative stage of the Asset Forfeiture Proceeding, is to determine if there are affected parties who are acting in good faith without fault. In particular, this analysis must be done before implementing Precautionary Measures because of the harm such third parties would suffer if they were wrongly imposed.

But before Corficolombiana and Newport could challenge the imposition of the Precautionary Measures, they needed a copy of the resolution which the Attorney General's Office was wrongfully withholding.

Francisco Sintura, who it was, as I've already noted was Corficolombiana's outside counsel and a former Vice-Fiscal Deputy Attorney General himself, repeatedly went to and wrote the Asset Forfeiture Unit to request a copy of the resolution. It was denied or ignored. When a Prosecutor in the unit finally gave him a copy, she was referred for discipline by Ms. Malagón, though later exonerated.

Corficolombiana immediately filed a petition for control of legality regarding the seizure. Corficolombiana pointed to the substantial evidence of diligence, the questionable credibility of Mr. López Vanegas's complaint, and the complete lack of analysis of good faith in the Precautionary Measures Resolution.

The Court inexplicably rejected Corficolombiana's challenge, however, finding that this is not the venue to discuss whether Fiduciaria Corficolombiana actually is a third party in good faith without fault. But it was exactly the venue to do that.

This chart provides a summary, an overview

of asset forfeiture procedures under Colombian law. In fact, Colombian law is supposed to protect third parties acting in good faith without fault at every stage of the process. It is one of the significant changes made to the law when it was revised in 2014.

As you can see from this chart, it must be considered at every stage, and prosecutors can dismiss the proceeding at any time if they find evidence of a third party acting in good faith without fault who is affected by the asset seizure.

Unfortunately, these safeguards failed here. On January 25th, 2017, Colombia proceeded with filing the determination of claim. Once this happened, it was clear that the asset seizure would likely remain in place for the foreseeable future and possibly permanently, completely depriving the Project of all prospects of completion or value.

In proceeding with the determination of claim, Colombia completely misapplied the standard of good faith, effectively determining that, because there were alleged problems with land transfers, Corficolombiana must have not used appropriate means

in its due diligence. This kind of retrospective analysis is simply not how the good-faith standard works, as you will hear from our experts.

Colombia also pivoted rationales for the proceeding rather than relying on Mr. López Vanegas's discredited kidnapping story. The determination of claim relies more on his criminal background and asserting that the Lot was tainted and therefore, subject to asset forfeiture, seemingly regardless of who held the land currently. And Colombia refused to consider Newport's rights at all.

As you can see from this chart, this plays out some of the key dates and filings and decisions in the Asset Forfeiture Proceeding. Notably, just about 10 days ago, the Superior Court in Bogotá overturned the Decision of the Specialized Asset Forfeiture Court finding that Newport was not an affected Party. That decision was overturned and Newport has now been recognized as an affected party in the proceeding. So, it's not entirely clear what's next. Newport will still have to--it will at least have the opportunity to prove its good faith.

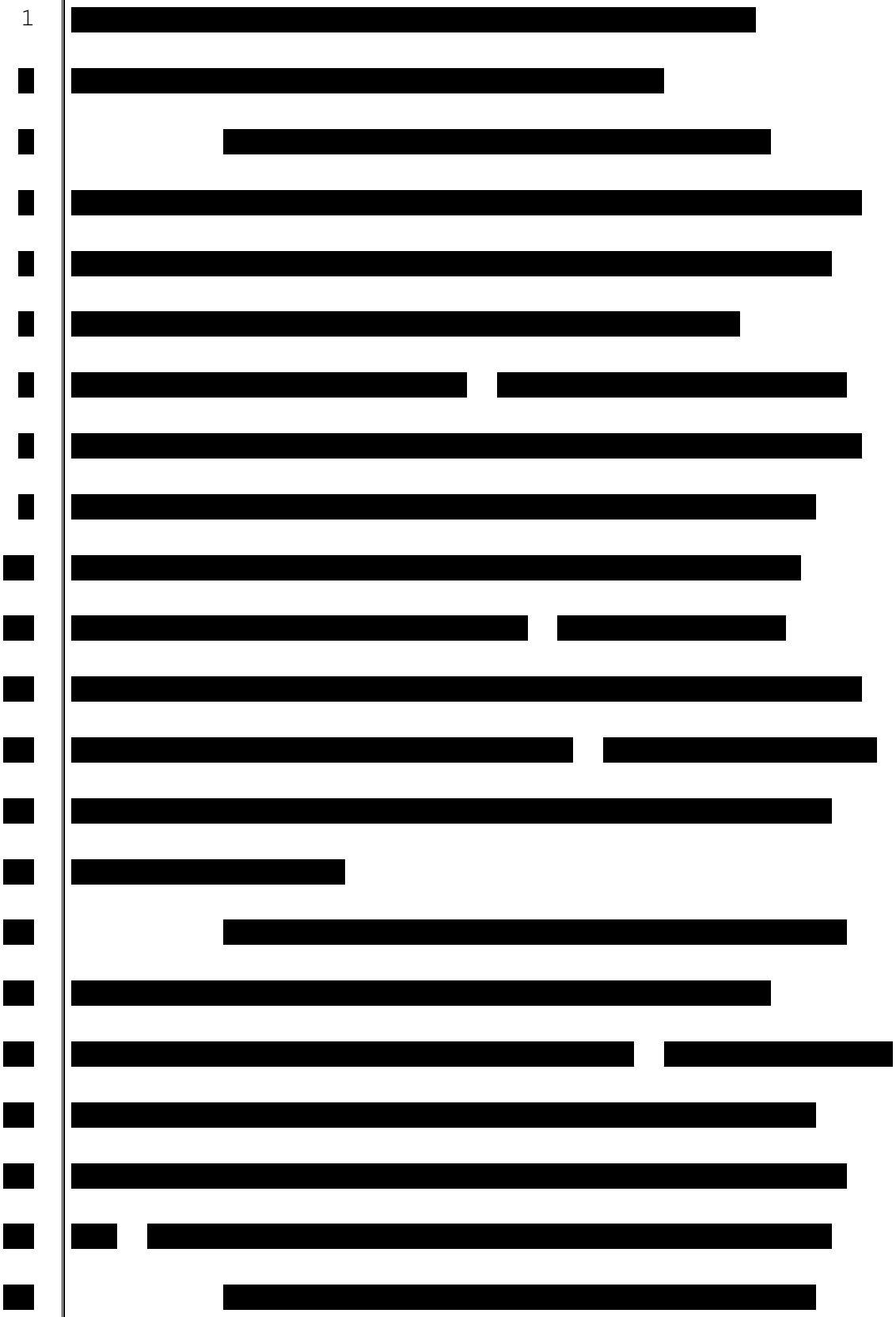
And that's just a little snippet from that Decision.

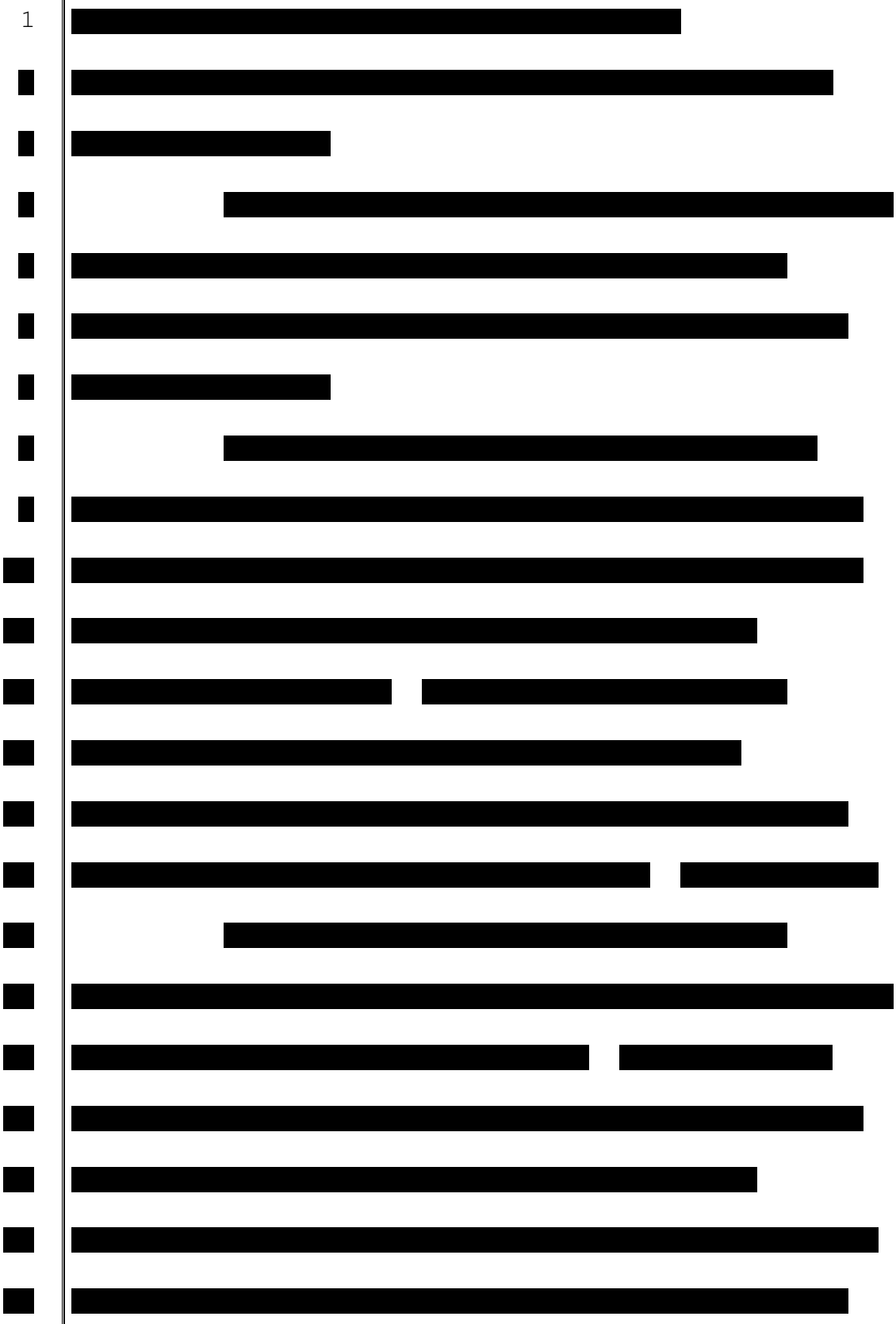
In the meantime, Colombia has listed the Meritage Property for early sale. It has put it in the queue to be sold even before Newport has the opportunity to prove its good faith, nearly six years after the seizure.

While assisting with the legal challenges to the imposition of Precautionary Measures, and coping with the disintegration of his business, Mr. Seda was invited to a meeting with Daniel Hernández, then a prosecutor with the Attorney General's Anti-Corruption Unit. Mr. Seda recounted the extortion scheme to Mr. Hernández, [redacted] He invited Mr. Seda to make a formal complaint, which Mr. Seda did on December 19, 2016.

Though Colombian authorities appear to recognize the falsity of Mr. López Vanegas' kidnapping claims, their investigation of it seemingly marches on, and Colombia now is even trying to somehow link

Mr. Seda to this investigation. Indeed, [redacted]





[redacted]

Again, corruption is hard to prove--I don't deny that--but it's not that there is no evidence here. [redacted]

[redacted]

With that, I will conclude the facts portion and turn this back over to my partner, Mr. Moloo.

MR. MOLOO: Members of the Tribunal, I do want to go back to Slide 84 for one second; which is an important decision, and this is a recent development, April 22nd, 2022. It's one of the new documents that's come into the record, so I wanted to draw the Tribunal's attention to it.

For a long time, Colombia has basically said Newport is not an affected party. And going to, actually, Mr. President's question, I think this is important: The Court just decided that, in fact, Newport should have been identified as an affected Party. Why? And this is at Page 31 of the

Decision--because of the original sales Contract from November 1st, 2012. So, as a result of that 2012 Agreement, that Purchase and Sale Agreement, Newport should have been recognized as an affected party, and an affected party under Law 1708--you will hear about this this week--they are entitled to have their good-faith status assessed. So, even the Colombian courts have finally agreed that this should have been done back at the outset having--being an affected party.

PRESIDENT SACHS: May I just put a question? Even though that Contract, the 2012 SPA Contract, did not provide for transfer of title?

MR. MOLOO: Correct. That did not provide for transfer of title.

And do I want to just confirm one thing to your question.

The status as of 2016 was that the Trust held the title and the beneficiary of the Trust, just to clarify, was Newport.

So, what happens --what actually happens for most of the units, they go directly from the Trust to

the Unit Buyer because there has been a contract entered into between Newport and the Unit Buyer, so it transfers usually from the Trust directly to the Unit Buyer. If anything happens, the Project doesn't get developed, there are any leftover units, then those units, Newport has the entitlement to have transfer of title to them. So, even at the date of the actual seizure, they were the beneficiary of the Trust, but title is still held by the fiduciary.

PRESIDENT SACHS: That is a correction to what you said earlier?

MR. MOLOO: Correct. That is a correction of what was said earlier. That is a correction of what was said earlier. But I think the critical point here is that the reason for it being an affected party as decided by the Courts, was, indeed, the 2012 original sale-and-purchase contract because that's what gave rights to Newport in the property. It had certain irrevocable rights as of that point that gave it an entitlement to be considered as an affected party.

ARBITRATOR PONCET: Just following up on the

President's question, what is the use or the likely use of being recognized and to be an affected party six years after the seizure, or almost six years after?

MR. MOLOO: I'm--it's precisely a question I intend to spend some time on. It's too late, too little, too late. At this stage, the property is gone. That Decision should have been taken by Ardila Polo. It was not reviewed by a court--at the very outset before she decided to take the property. She should have identified Newport at that stage as an affected party and assessed whether or not they were a good-faith third party. And having assessed that, said, yes, they are a good-faith third party, the seizure would never have happened. But we don't even need to answer that question, what would have happened if they made that assessment, because that assessment was simply never made. And now it's done. It's gone. It's too late. Clearly the Meritage Project cannot be developed at this stage.

So, you know, it's very nice to have a piece of paper that says you should have been identified as

an affected party, but obviously six years later, it doesn't do much good.

So, let's turn to the specific breaches. The first breach I want to talk about is that of national treatment. I'm not going to spend too much time on the actual articulation of the standards because this Tribunal is obviously very well-versed in investment treaty law. It's obviously in the deck for your reference. Article 10.3 is the national-treatment provision, which entitles both the investors and the investments to treatment no less favorable than it accords in like circumstances to its own investors or investments as the case may be.

Interestingly, with respect to regional level of government, there is an additional provision that says--that confirms that what we mean by this is you're entitled to the most favorable treatment accorded to investors or investments, so it's not okay to say, oh, well, one other Colombian had their asset also taken, you're entitled to the most favorable treatment that's accorded. And the standard for establishing a breach of national treatment is agreed

between the Parties, you must show that there was a foreign investor that has received treatment less favorable than other investors or investments in like circumstances, and that differential treatment is not justified. And as Colombia admits, the key question here that's in dispute is whether or not there are others in like circumstances and to what extent can it or can it not be justified that differential treatment.

A couple of cases just for your reference to confirm that, indeed, the identification of those in like circumstances is a fact and context specific exercise, Pope & Talbot and Occidental.

Another case that's interesting and helpful in this regard is Archer Daniels versus Mexico.

And I do want to spend a moment on Grand River versus the USA, which is CL-166 for the record. What that Tribunal said was that the relevant consideration is whether or not those in like circumstances, or to assess whether or not somebody is in like circumstances, is whether or not the same legal regime applies to them. Are they subject to the

same legal requirements, in this case the Asset Forfeiture Law? So I think that's a relevant consideration. Whether or not others, and we will talk about the comparators--they were subject to the same legal requirements.

So, who are the possible, in our submission, comparator groups that one should be looking at here? The first is the Sister Property with a common chain of ownership with the Meritage Property--I will talk about that in more detail. The second are other properties that are linked to Mr. López Vanegas. And the third are other persons with a current or prior interest in the Meritage Property itself. So, let me start with the first one, the Sister Property.

[redacted]

[redacted]

So, here is where Colombia says, Mr. Iván López had an interest. Now, he was not on title, it was the entities that are named here.

This was in 1994.

Now, if that was their concern, you can see up here the red box and the blue box. This is the Sister Property, the bottom one is the blue box, and the red box is the Meritage. Back in 1994, they had common ownership. So, if the Meritage Property was affected because of that ownership, then so was the Sister Property. They also talked about Mr. Varela, the fruit seller. Again, that's a common history of the two titles. They also talk about the engineer here, Mr. Cardona. Again, common ownership to both the Meritage Property and the Sister Property. And I'm going to go into this in a little bit more detail.

What was the basis—and you know, Colombia has flip-flopped even as recently as the Rejoinder, they have changed what the basis was for this asset forfeiture. But if you look at the Precautionary Measures Resolution, dated July 22nd, 2016 which was delivered, well it wasn't delivered on August 3rd, but the basis for the August 3rd seizure, what does it say? It says the existence of reasonable grounds supporting Precautionary Measures is the Real Property

recordation Nos. 719999 and 720000. That's at this early stage. That's at this early stage. And it says it was acquired at that stage through punishable conduct such as kidnapping, threats, and personal misrepresentation among others. That was the concern, this kidnapping story that we know is false, but was common to both lots. That was the only basis for the Precautionary Measures Resolution. So, if that was the basis for the Precautionary Measures Resolution, why are they only taking the Meritage Property and not the Sister Property? The Sister Property to this day is in the possession of the owners.

Let's look at the determination of claim. There, they refer to the same Iván López transaction, alleged ownership that I just talked about, and then they talk about this next one, Mr. Varela. Again, as I mentioned, that's common ownership. That happened at a point in the history of title when these two parcels were owned, had common ownership. And then they talk about Mr. Cardona, the engineer. Again, common ownership. If they are concerned about the fact that these individuals--by the way, their concern

was they didn't have enough money. How was Mr. Seda or Corficolombiana to know how much money they had to own or not own this property? Putting that aside, even assuming that that was a reasonable basis to say that this should have been taken, that ownership was common to both the Meritage and the Sister Property, but again the Sister Property remains in the hands of its current owners.

If we look at the Requerimiento, April 5th, 2017, what do they say at that point? At that point they're back on Iván López. They are concerned again with this original transaction. And they're saying the origin of this investigation, the assets that are the subject of these forfeiture proceedings, arises from what? The illegal drug trafficking activities displayed by Iván López Vanegas, who is alleged to have had an interest back in 1994. Again, his name was never on title, but even assuming that's true, why is there differential treatment between the Meritage Property and the Sister Property? There is no reasonable explanation for this differential treatment.

ARBITRATOR PONCET: Sorry to interrupt, so the point you're making is that since the seizure of August 2016 did not impact both properties--

MR. MOLOO: Correct.

ARBITRATOR PONCET: --it cannot be that the seizure is compatible with the Article 10.3 of the Treaty? That's what you're driving at?

MR. MOLOO: That's precisely correct.

ARBITRATOR PONCET: And to be compatible with it, the fruit seller, Varela, and the other fellow whose named Cardona, should also have seen the adjacent property seized. Is that the point you're making?

MR. MOLOO: No, it's slightly different, which is the Investor here was entitled to no less favorable treatment than the other investors, so it's not that their property should also be taken. It's that if their property wasn't taken, then neither should this property have been taken. So, it's not that they should be subject to the same bad treatment, it's that the Investor here should be entitled to the same favorable treatment, so it should not have been

taken from--the Meritage Property should not have been seized.

ARBITRATOR PONCET: Okay. But if the origin of the funds was polluted to begin with, for both Varela and Cardona, the consequence is that the same criminal seizure should have been applied?

MR. MOLOO: Not necessarily because remember, you have to do an assessment as to whether or not the purchaser was a good-faith third party without fault.

ARBITRATOR PONCET: They say it wasn't. They say they weren't in a way.

MR. MOLOO: But they never did the assessment. And I'm going to come to this. They never even assessed--they never even assessed it. To this day they have not assessed it for Newport. So, that may be what they're doing with the Sister Property, but they certainly did not assess the good-faith status of Newport at all. In fact, it's only in April 2022 that they'd even recognized that Newport had--was an affected party whose good faith should be assessed. That's been decided in the last

two weeks.

So, there was differential treatment. That property at the very least the assessment of good faith that should have been done if that's what's being done with the Sister Property, but nonetheless--nonetheless--there is no reasonable explanation as to why they did not--they seized the Meritage Property and did not grant it the same treatment as its Sister Property, which was no seizure.

PRESIDENT SACHS: I have a more technical question on Slide 106, just for my understanding when you talk about Sister Property there, and then you refer to the number 001-930481, is that Lot A2 that was subdivided in 2006? I'm a bit lost because you're talking about two lots.

MR. MOLOO: Yes, so, those two lots--

PRESIDENT SACHS: It's Lot A and Lot B?

MR. MOLOO: Lot A and Lot B are 719999 is Lot A, and Lot B is 720000.

PRESIDENT SACHS: Yes.

MR. MOLOO: Those are then reconsolidated.

PRESIDENT SACHS: Okay. And so, what is the Sister Property--

MR. MOLOO: The Sister Property, sorry, to be clear, is here. It's this blue box.

PRESIDENT SACHS: Okay, so it's Lot A2?

MR. MOLOO: It's A2. So A is then split into A1 which ends up with the Meritage, and B also ends up with the Meritage; and A2, which is part of Lot A, ends up with the Sister Property, so correct.

Lot A--

PRESIDENT SACHS: Okay, I see now.

MR. MOLOO: --is split into two ultimately. Lot A2 is the Sister Property, correct.

PRESIDENT SACHS: Okay. And here I see the matricula then on Slide 107 that corresponds to the one indicated on Slide 196--

MR. MOLOO: Precisely, that's 719999 and 720000. So, 719999 was--both Lot A and Lot B were both owned by these two entities that are alleged to be Iván López had an interest at some point in time. Of course, that's not in any records that were public that anybody would know about, but that's the

allegation that Colombia has made.

But if that's true, then it equally affects both the Meritage and the Sister Property.

They then later focus on the engineer. And this is in the Rejoinder for the first time. This is not in any of the earlier documents. They're saying, well, we're now concerned with Mr. Santamaria who you may have read his name is Perra Loca, and he was the real interest holder behind the engineer. How anybody would know this, by the way, I have no idea, but they have now figured out in 2021 that we think it's actually Mr. Santamaria who had an interest. But even if that's true, his ownership interest is said to be at this stage when there was common ownership again, of both the Meritage and the Sister Property.

At any point in time, whatever theory you pick of theirs, they're talking about individuals who owned this property as a consolidated whole before it was split between the Sister Property and the Meritage.

Let's look at the second comparator group. They were concerned clearly with Mr. Iván López;

right? They're saying well, he was involved in drug-trafficking. Well, if they were so concerned about Iván López on April 8, 2016, before the asset forfeiture,

Ms. Ardila Polo was sent a letter that made clear that Iván López had nationwide properties of 47. He had an interest in 47 properties, current or historical.

There is not a single shred of evidence on the record that any of those properties have been subject to asset forfeiture. If they were concerned with the drug-trafficking activities of Mr. Iván López, why haven't they gone after the properties of Mr. Iván López? It is inexplicable. Inexplicable. If he was the object of this—if there is public purpose. There are Essential Security concerns now that we've heard of. If their police powers concerns is we want to protect society against drug-trafficking, go after the drug traffickers.

And one of those--they say, well we have limited prosecutorial powers or resources.

And, in fact, by the way, you will see this,

but Mr. Martínez, Dr. Martínez says, you have to focus on the proceeds of the crime; right? So, that's whose assets you should have gone after. But if you look at Mr. López Vanegas, they say well, this one was in development, so that's why we were so concerned about this one because it was being sold to other people.

Well, one of Mr. López Vanegas'--well, he was previously on title--of the Quartier Project, which is currently being sold, 67 apartments, and these are photographs of the construction as of September 10th, 2021, you can see apartments being sold, and guess what, if they're so concerned about development projects, well, why haven't they seized this Project?

[redacted]

[redacted]

What does Dr. Martínez say? He says the correct course of action would have been to attach the payment rights of the Trustee and to identify who was a good-faith buyer. So, what could they have done? They could have said we are going to seize the property of those who we know are bad actors. And before we seize the property of those who we're not sure, we're going to do an assessment of good faith. That's what the law requires, but was never done in this case. So the proper thing to do was to follow the chain of title, historically, determine the

illegality, seize their proceeds because they sold the property and made some money after it, so you can go after their property, other properties, bank accounts. It doesn't have to be the actual asset, you can go after their properties, other properties, ill-gotten gains, but you have not a good-faith buyer.

Clearly, this was differential treatment. I don't think I even need to show you cases, but bad intent, or discriminatory intent, is not necessary. Bilcon and Occidental make that clear. So, even in Occidental, they say the Tribunal is convinced that this has not been done with the intent of discriminating against foreign-owned companies, but that was the effect. That was the effect. And if that's the effect, there is a breach of the national treatment protection.

And it cannot be reasonably justified. They say in their Rejoinder, well, we have to prioritize our limited resources, where should you focus your limited resources, on those who you know have conducted criminal misconduct, not on good-faith third parties.

But in addition to that, no additional resources were needed to make an inquiry of the Sister Property because it had the same history of title, so if they're concerned about limited resources, why didn't they seize the Sister Property? [redacted]

It does not explain why they did not assess Newport's status as a good-faith third party before seizing it. And they have not even proven at all that they did not have the resources to go after others.

So, it cannot be reasonably justified why there has been this differential treatment.

In addition to differential treatment, there has been, I think, a very clear expropriation in this case.

I notice the time, Mr. Chairman. It's 11:00. I'm not sure where exactly we're scheduled to

have breaks, but since we have been going for an hour-and-a-half, I wonder if this is a convenient time before I go into expropriation.

PRESIDENT SACHS: I would think so. Yes.

So, let's resume within 15 minutes. 11:20, please.

MR. MOLOO: Thank you.

(Recess.)

MS. BANIFATEMI: Thank you, Mr. President. I just have three very brief matters to address. I didn't want to interrupt Mr. Moloo earlier.

So, first of all, I want to welcome Mr. Youssef Daoud, who is with Gaillard Banifatemi Shelbaya Disputes and who is right at the end of the table.

The second point, I didn't want to interrupt Mr. Moloo, but when the point was raised by ICSID about the confidentiality and the slides that mentioned confidential, it's true that we all have signed undertaking agreements regarding confidentiality but the point is that we need to actually raise it, so that when we go back to the

recording, we know what sections need to be removed and redacted, so that is the exercise, and so it's a different exercise. I just wanted to highlight that.

And then the last point, it may be very minor, but I have noticed for some time there is a discrepancy of one slide between what we see on the screen and the binder that we have, so I wanted to raise that and see which version is the right version.

Thank you.

MR. MOLOO: We did remove a slide. I apologize. There is a discrepancy, so it looks--I think the hard copy is--

MS. CHAMPION: --will have an incorrect number.

MR. MOLOO: It'll be one ahead of the version that was shared. So, there we are.

PRESIDENT SACHS: Okay, thank you for these points.

And, Mr. Moloo, please proceed.

MR. MOLOO: Thank you for raising that, Ms. Banifatemi; I appreciate it, and I will do my best to identify Confidential Information in advance, and

if I do miss anything, we will make sure we let ICSID know for purposes of the provisions.

Are we ready to recommence, Mr. President?

PRESIDENT SACHS: Yes.

MR. MOLOO: So, the next breach I would like to discuss is the expropriation of Claimants' investment. Again, I will not spend too much time on the standard itself.

10.7 of the TPA is the provision that deals with expropriation, and it expressly addresses both direct or indirect expropriations through measures equivalent to expropriation, and, as in all investment treaties, expropriations are permitted but they must meet four criteria: They must be done for a public purpose in a non-discriminatory manner; on payment of prompt, adequate and effective compensation; and in accordance with both due process of law and Article 10.5, which requires as we all know, fair and equitable treatment, among other things.

And the annex to the Treaty provides some additional context, and it talks about, specifically in the indirect expropriation context. Now obviously

here we think there has been a direct taking of the Meritage Property, itself, but the investment here are the shares in Newport, among other things, and so we have a situation of an indirect expropriation where an action or a series of actions by a party has an effect equivalent to a direct expropriation. They still own their shares but they're worthless, in our submission, and that's the fact-based inquiry that considers, among other factors, and then it lists those factors, and I'll go through a few of those in a moment.

What has been expropriated? What has been expropriated here, in our submission, is the Meritage Claimants' interest in the Newport shares. Newport was the investment vehicle through which they owned their interest in the Meritage Project. Newport was the one that entered into all of the various contracts and had economic rights as a result.

And Mr. Seda is the hundred percent owner of Royal Realty's management company which had a management contract for the Meritage Project, and that Contract is also obviously worthless.

So, let's talk about the economic impact,

which, as many cases show, is one of the key parameters for assessing whether or not an expropriation has occurred. And here, I refer to Wena Hotels and Azurix that make it clear that, if there has been substantial deprivation of one's property that is not merely ephemeral, then that amounts to a taking.

And I should mention, one of the things that Colombia says is, well, they still--they might get it back, they might get this property back. But that doesn't matter for an assessment of expropriation. In the Wena Hotels Case, there was a hotel that was taken for under a year, and, in that case, the Tribunal found that that amounted to an expropriation.

And Azurix explains that no specific time set under international lawful measures constituting a creeping expropriation to produce that effect. It will depend on the circumstances of each case. They refer to Wena, which was less than one year. They refer to the Middle East Cement Case where there was a suspension for four months, and then they compare that to S.D. Myers where there was a limitation for only

three months which did not amount to an expropriation.

In this case, whatever measures you use, six years have gone by, and clearly at this stage, there is--it's not an ephemeral act. They have lost their property.

And for many reasons, among other things, it's partially constructed; it's in complete disrepair. In fact, the Government has listed it on an early sale list to actually be sold at some point; but no matter what, all of the unit buyers are out. They have sued the Company. They're not coming back. The financial institutions are out. They're not coming back. Construction costs have obviously gone up. This project is done. Giving it back now is not going to fix that. As unfortunate, this is not just for the Claimants but for the country of Colombia.

[redacted]

[redacted].

One of factors that—it's again, not necessary to an assessment or a finding of an expropriation, but it's one of the factors that one might want to consider, is whether there has been an effect on the reasonable investment-backed expectations of the Claimants. And we would say even though it's not necessary to a finding of

expropriation, there has been an undermining of the reasonable investment-backed expectations because Newport had acquired rights in the Meritage Property through all of its Contracts. It had obtained all of the necessary permits, the urbanization license, the construction license. It was, in fact, constructing on the property.

So, of course, it had a reasonable expectation, and I'll come back to this later, as well, when I talk about FET breaches with respect to this property.

The last factor to consider is the character of the government action.

Now, Colombia, itself, has said, it is undisputed that the Asset Forfeiture Proceeding was a governmental action, so they accept that, but they're saying you have to look at the character of that action. And if you look at the character of that action, we would say again you would find that there should be an expropriation finding here. It was a taking of a property before any assessment of good faith third parties. That is the character of the

action we're talking about: a taking without any hearing, a taking without--that was a complete shock to the Claimants, and that character should be taken into consideration in making a finding of expropriation.

In their Counter-Memorial at least, they said, well, it's excusable because it's an exercise of police powers. And Annex 10-B talks about the fact--and you've seen this probably in other investment treaties--except in rare circumstances, non-discriminatory regulatory actions by a party that are designed and applied to protect legitimate public welfare objectives do not constitute indirect expropriations except in rare circumstances.

Now, first of all, this is not a general regulatory action. This is not like the banning of a substance that's going to cause cancer. This is a specific exercise of discretionary authority by a prosecutor to take this property. So, I would suggest that this is not a regulatory action.

But, in any event, I think it's important to recall that any public purpose is not an exercise of

police power, and that's been confirmed in many decisions, such as Magyar versus Hungary and Pope & Talbot, and those case have made clear that if you were to equate every public purpose to a police power, that would leave a gaping hole, a gaping loophole in international protections against expropriation.

As we know, every expropriation to be lawful must be done for a public purpose, but that doesn't exempt the compensation requirement. That is one of the four criteria, in fact, for a lawful expropriation, so any public purpose does not equal the exercise of a police power.

So what then rises to the level of a police power, something that's so significant that it exempts the compensation requirement under the expropriation provision?

Well, the Magyar versus Hungary case is instructive. It says: First, the exemption from compensation may apply to measures of police powers that are aimed at enforcing existing regulations against the Investor's own wrongdoing. So, when the Investor has committed a criminal act or it has done

something wrong, then that cannot be an expropriation that is worthy of compensation.

And, second--sorry--second, abating threats to the general public. So, like I said, banning a substance that is carcinogenic because we need to take this substance out of the general population circulation so that the general public doesn't get cancer, for example. That is the type of measure that amounts to a police power.

This is not carte blanche, to do whatever you want, either, if there is that sort of public purpose. It's still--as the Bahgat versus Egypt Case explained, an action still must follow due process, and the Measure must be proportional to the threat to public order.

Here, there was no legitimate exercise of police power. Why? Because they were not going after the wrongdoing of the Claimants, that first criteria in the Magyar case that I mentioned. How do I know that? Well, Colombia accepts that. They say, at Footnote 846 of their Rejoinder: "While it is true that the Asset Forfeiture Proceedings were not

initiated in connection with any wrongdoing of Mr. Seda--of which Mr. Seda was personally accused," they accept that these Asset Forfeiture Proceedings were not some--to remedy any wrongdoing of Mr. Seda, so this is not that--doesn't fall into that bucket.

And it can't fall into the second bucket of trying to stop criminal activity. Why do I say that? Because they've not applied the Asset Forfeiture Law in this case to any of the individuals or properties that are similarly situated of those individuals who they are saying are the criminals that are subject to the concern of the Government.

It's also not a legitimate exercise of police powers because it's disproportional to any alleged threat to the public. If the threat to the public is criminal activity, go investigate the criminals, take them off the streets, seize drugs if that's your concern. But failure to assess the good-faith status of an individual before taking a property, how does that serve the public interest?

In fact, it hurt Colombians. There were Unit Buyers, who were also adversely affected. There

were over 150 Unit Buyers who were also adversely affected.

What we would submit is what should have been done is a focus on the disgorgement of the ill-gotten gains from the Asset Forfeiture Proceeding against those who the Government was concerned with, and that's not what they did. This seizure, without even taking a step to assess good faith was clearly disproportionate to any concern. They took no criminals off the street. They did not stop in any way the drug trade in Colombia, but that's what they would like you to think.

It was also not a legitimate exercise of police powers because it must be non-discriminatory, and for all the reasons I've already mentioned, it was not non-discriminatory. They did not treat the Claimants in this case in the same way and their investment in the same way as the Sister Property, which, by the way, one thing I failed to mention, that Sister Property, who is it owned by today? Mr. López Vanegas's sister-in-law. It's a member of Mr. Iván López's family.

Other properties to Mr. López, Mr. López Vanegas, other persons in the current or prior interest in Meritage Property, none of them have been affected by the Asset Forfeiture Proceeding.

It should come as no surprise that I think this expropriation is unlawful. The Tribunal needs only find that there was no compensation paid, which Colombia agrees. I think it cannot be disputed. They say compensation is not due, but they accept that it was not paid. And as the ConocoPhillips versus Venezuela Case explains, the failure to pay compensation, in and of itself, renders an expropriation unlawful.

So, to determine that this is an unlawful expropriation, that can end the analysis; but, of course, that's not--we can go through the rest of the criteria as well. It was a discriminatory measure, as you all know. It was not done for a public purpose, in our submission. And here the Vestey case is helpful , it says the idea is to determine whether the measure had a reasonable nexus with a declared public purpose, was at least capable of furthering that

purpose, and here, not even assessing Newport's actions--a status as a good-faith purchaser without fault before seizing the property cannot be seen to have a reasonable nexus to the public purpose.

And, of course, as I've said several times, the assets of those individuals who were actually involved in organized crime, alleged to have been involved in organized crime, their assets were not taken.

No due process. And this is important: The ADC versus Hungary Case explains what due process means in the context of expropriation. I'm going to come back to due process because it's an important concept in this case generally.

They say an actual and substantive legal procedure for a foreign investor to raise its claims against the depriving actions is necessary before it's already happened. Before the depriving action or shortly thereafter you must have the opportunity, you must have reasonable advance notice. You must have a fair hearing. You must be able to plead your case before your property is taken, and that was not done

here. There was no assessment of good-faith status before or any point thereafter of Newport.

There has also been a failure to accord due process because Colombia failed to follow its own law, and in the Siag Case and Quiborax, the tribunals find that failure to follow your own law can amount to a failure of due process.

And why do I say that here? Because Article 87 of Law 1708--and you're going to hear about this more later this week--clearly says before--so, this is the Article that deals with Precautionary Measures--and the very last sentence of that Article that deals with Precautionary Measures, it says: In any case, the rights of third parties acting in good faith without fault must be safeguarded.

In taking Precautionary Measures, how do you do that? By assessing their good-faith status before you take the Precautionary Measures. Otherwise, their rights are not safeguarded. We're six years later they're now being said to be an affected party, how are their rights safeguarded if you don't actually assess their good-faith status before you take their

Precautionary Measures?

And here, again, I refer you to the decision of April 22nd, 2022, just a couple of weeks ago, where the Court has concluded--this is from the Decision--that the Company Newport is entitled to participate in the case, given that it has a pecuniary right with respect to the affected properties. So it is "an affected party" because of that November 1st, 2012, Agreement. That's in accordance--that's Colombian law. That's the Colombian court telling us this now.

I turn now to the breaches of fair and equitable treatment. Again, I will not spend too much on the standard itself, only to direct you to Article 10.5, that each Party shall be accorded--shall accord to covered investments, treatment in accordance with customary international law, including fair and equitable treatment. They make a big deal on that side, Colombia does, that this refers only to covered investments, that investors are not entitled to fair and equitable treatment. Only investments are entitled to fair and equitable treatment.

But if you look at Annex 10-A, when they talk about does what customary international law mean for the purposes of Article 10.5, it says: "With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens, of investors."

It's inseparable. The rights of the Investor and the Investment is inseparable, and the Treaty itself recognizes that.

In our submission, there is no distinction between the autonomous fair and equitable treatment standard and the minimum standard of treatment, and there are several cases that have made that point. Murphy versus Ecuador and Rusoro versus Venezuela are just two of them.

And in articulating what that standard is, another recent case against Colombia, Eco Oro versus Colombia, says that that standard includes non-arbitrariness, transparency, protection of legitimate expectations, the need to accord that

investment an investor's due process, not to act in a discriminatory manner. And they make clear, obviously, as this Tribunal will know, there's no need to show bad faith.

But even if there is a distinction between the minimum standard of treatment and the fair and equitable treatment standard, we would say this case satisfies that threshold, but nonetheless, we do invoke the MFN provision 10.4 of the trade agreement, and refer you to the Colombia-Swiss BIT, which is at CL-069 and specifically Article 4(2) of that Agreement, to import, if it is, a more favorable fair and equitable treatment standard. That standard does not equate the FET standard to customary international law, and cases like MTD v. Chile, which is at CL-035 for the record, have done exactly that, import more favorable fair and equitable treatment standards of protection where it was found that one treaty provided more favorable protection than another.

So, what are the breaches? Well, the first breach I don't need to spend too much time on, because you've heard about me talk a lot about this:

discriminatory treatment. And discriminatory treatment with respect to fair and equitable treatment requires two things, that similar cases are treated differently without reasonable justification. That's what is required. And for the reasons that I've already explained to you and that I've put up on this Slide 148 once again, just for your reference, so 149 in the hard copy, Colombia has not acted in a non-discriminatory manner here; and for the reasons I explained with respect to the national treatment argument, those--that differential treatment is without reasonable justification.

But let me turn back to due process because there are two very--and I'll go into a little bit more detail on these important due-process violations here, that truly do even shock the conscience if one wants to go back to the Neer standard, which, of course, is not the standard here, but it would rise to that level, in my submission.

The two due-process violations are Colombia deprived the Meritage Claimants of the right to be heard prior to seizing the Meritage Property and then

[redacted]

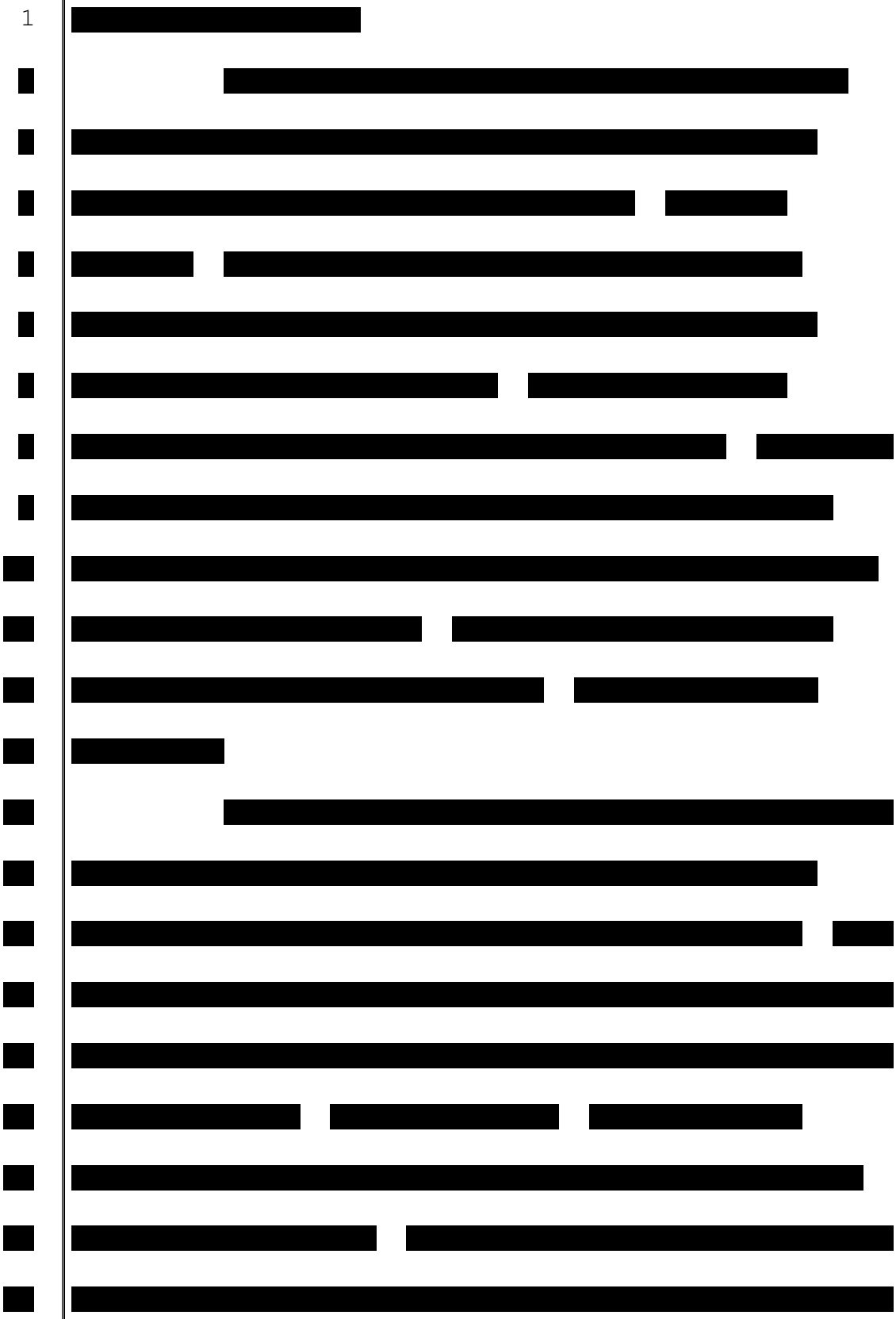
But there are two cases that I think are important to refer to in terms of this due-process violation. Rumeli versus Kazakhstan, there, the Tribunal found this due process requires one to have the opportunity to present their position before the action of the State, and there they found the Decision was made without Claimants having the real possibility to present their position. They were only verbally invited to a meeting two days before a meeting of the Working Group that then took an adverse decision.

So there they were even given an opportunity. It was just two days before. Here, August 3, 2016, came as a complete surprise. No opportunity to present their position at all before

the taking of this property. No opportunity whatsoever. Rumeli found a breach because they were only given an opportunity two days before. Here, there was no opportunity. And as this Tribunal will know, that Tribunal was presided over by Bernard Hanotiau and the wings were Stewart Boyd and Marc Lalonde.

Similarly, in Deutsche Bank versus Sri Lanka, the Tribunal there found Deutsche Bank was not informed of the case against it before the monetary board issued its stop payment order. It didn't know what the case against it was. It didn't have an opportunity to say, wait a minute, you shouldn't take this for X, Y or Z reasons. Just like in this case, Newport was not given an opportunity to say, wait a minute. Before you take my property, I'm a good-faith third party without fault. One not needs not even to make that assessment. We'll explain to you that they were, in fact, good-faith third parties, but that assessment was not even made, and they had the right to at least make their case, and they weren't given that opportunity, just like in Deutsche Bank versus

Sri Lanka. And accordingly, there's been a breach of their due-process rights and a breach of the fair-and-equitable-treatment standard.



[redacted]

There's also been a

fair-and-equitable-treatment violation because the actions of the Colombian Government in this case were disproportionate, unreasonable, and arbitrary.

I feel like after what I've just said, you don't even need me to make submissions on why the actions were unreasonable, disproportionate or arbitrary, but there are other reasons why they are. The overriding principle of proportionality means that the administrative goal must be balanced against the true nature and effect of the conduct that's being censured, as the Occidental Tribunal put it. One must balance the administrative goal with the action that's being taken against Claimant. [redacted]

As EDF versus Romania explains with respect to what is arbitrary conduct and excess of discretion, Ms. Ardila--for example, Ms. Ardila Polo taking an action, a discretionary action to do something, an excess of discretion is arbitrary. An action that is not based on legal standards, a violation of due process, these are all things that have been

articulated as being breaches of that arbitrary standard.

Now, we submit that, here, the actions have been a violation of this standard. Why? Because, as Mr.--Dr. Martínez said, the correct course of action would have been to go after those who you know have engaged in bad conduct, in criminal conduct, and take their proceeds of crime but not to go after a good-faith buyer or at least not to go and seize property before making that assessment of good-faith status.

So, what is the disproportionate conduct in this regard? It's to take the property before even making that assessment. Why couldn't they have just made the assessment first? There's no urgency. There was no--they could've taken a few months and said, let's--let's investigate this and see whether this is a good-faith third party without fault. And if not, then maybe they can, you know, take the property.

But what was so urgent that they needed to take the property then? For the administrative goal that's being accomplished here, it was

disproportionate.

It was also arbitrary because it was based the entire--Precautionary Measures Resolution was premised on what is known to be a lie. It was based on this kidnapping story.

Now, what does Colombia say in its Counter-Memorial? This is interesting. On 433, they say: "The Asset Forfeiture Proceedings are not and were never based on the kidnapping story." That's what they say. That's the submissions in this Arbitration. They were never based on this kidnapping story, but one only needs to look at the actual documents. For example, the Precautionary Measures Resolution where it says--and this is--the heading is "the existence of reasonable grounds supporting precautionary measures." They're referring to the kidnapping. That was the basis and they're saying, until it can be ascertained, that the statements that Mr. López are likely true, what are we going to do? We're going to take the property. Until we can verify that it's not true, we're going to go ahead and take the property.

Now, Colombia is running as far as they possibly can from this because they know that it's a false story, and they're saying it never was based on this. Well, I invite the Tribunal just to read the documents.

The Decision by the Asset, they're going to say, well, you know what, the Courts ratified this. But the Decision of control did not investigate the facts. That's important. The standard of review is very limited, so what we have a concern with is the actions of the Prosecutor. The standard of review of the Court was very limited. They did not investigate the facts. They assumed the kidnapping to be true. You can see that in the Appellate Decision on February 21st, 2017. They say setting forth the details of the kidnapping of his son, which served as the basis for the building of this theory of this case, they expressly did not assess good-faith status because they said it wasn't for them to do so. They said, it's not our job to do that.

So, the Court has a very limited standard of review, but they're trying to rely on that--that, you

know, review of legality proceeding as an imprimatur of, look, we did everything right. But you have to understand that those decisions in the context of the limited standard of review, and what that court actually did and did not do.

And by the way, that Decision of the Court, 21st February 2017.

By November 21st, 2016, there's evidence in the record that everybody knew this was a false story. This is a letter from Michael Burdick from the U.S. Government to the National Police of Colombia saying that this kidnapping story was feigned. It was actually with his consent, during this purported kidnapping, he was actually seen out at a nightclub. This was all just a made-up story. And the Government itself knows that it was a made-up story. Claudia Carrasquilla, the former Director of the organized crime unit at the Attorney General's Office, in a public interview said--he says--she refers to this "attempt of theirs to portray themselves as victims of an alleged kidnapping that never occurred." That's what she's saying in public interviews. They

know--they knew that this is a false story, and that's why they're trying to run away from it. But that was the basis of the Precautionary Measures.

This is arbitrary conduct because they did not follow their own law. As I mentioned, Article 87 of 1708 requires the protection of good-faith parties without fault. And if you look at the "burden of proof" provision in Artic--in Law 1708, that's Article 152--it clearly says: "Without prejudice to the foregoing, as a general rule, the Office of the Attorney General of Colombia has the burden to identify, locate, gather, and file the elements of proof which show the existence of some the grounds set forth in the law for the declaration of forfeiture, and that the affected person" which, as of April 22nd, 2022, the Colombian courts have said Newport is an Affected Person "is not a bona fide owner of rights without fault." The burden of proof is on who? On the Colombian Government, and they never did this. They never did this.

And as we know from this April 22nd Decision, that Newport is an Affected Person. That

was the Decision of the Courts.

You're going to hear from Dr. Martínez who will explain it and Dr. Martínez wrote the law. He wrote the law. And he's saying before you engage in Precautionary Measures, before you invoke Precautionary Measures, you must assess whether or not there's a good-faith Party without fault because that's the only way you can safeguard their interest. Otherwise, what happens? Here we are, six years later in an arbitration, and good-faith status has not been assessed yet.

And what, what happens? How has their rights been safeguarded? Of course they have not been. You must do it before you seize the property. That is what Mr.--Dr. Martínez has told you.

And Dr. Medellín, the father of the Asset Forfeiture Law, the former Minister of Justice, says the exact same thing in his Report. He won't be here because they don't want to cross-examine him. So, his testimony will go unchallenged, and this is what he says.

In any case, the rights of third parties

acting in good faith without fault must be safeguarded. He refers to that in Article 7 and explains what that means. That means that they must first assess the good-faith status of an affected party.

And here, I have the Rompetrol Decision, which is there just for your reference, and what this explains, and this is important because, you know, they say all of this only affects the Meritage Property, it doesn't affect the other properties. But what Rompetrol explains is, you have to look at the Investment holistically, and the State must appreciate that the actions that they're taking might affect a broader set of an investment that is directly or indirectly in the line of fire. That's the language used in the Rompetrol decision. The interest of TRG they found in that case, as such stood directly or indirectly in the harm--in the line of fire. And in that case, they found there was no evidence that steps were taken to avoid, minimize, mitigate that possibility of harm to this broader investment, and that's exactly what has happened in this case.

Colombia knew or should have known that their actions affected all of these other investments that stood directly in the line of fire. Now, why do I say that? Because of the very nature of an Asset Forfeiture Proceeding. The very nature of an Asset Forfeiture Proceeding says one of two things. It says either that Newport itself was engaged in illegal activity; right? Someone reasonably would--only have inferred that I must be concerned here because if they're taking something that this Royal Property Group has--is involved in, I must be concerned doing business with them because they might have done something illegal. Otherwise, why was their property taken? Or it tells you that they did not conduct adequate diligence. But either way, the very nature of an Asset Forfeiture Proceeding taints the--Mr. Seda and the Royal Property Group.

And that's clear from the evidence. Mr. Seda, as he testifies, could no longer borrow money. "The Asset Forfeiture Proceeding led to the cessation of all projects that I was working on, in large part because funding dried up." He explains "my

reputation as property developer has been so adversely affected, that I have been unable to secure additional funding for any other products." Why else would he stop a hotel that's 70 percent done?

[redacted]

Construction halted on the Luxé, even though the hotel was 72.58 percent done. That's from the architects, the engineers, the Contractor that was building the hotel. Mr. López, who again they don't want to cross-examine, and he's not here because he was the guy who was there on August 3rd, and that's what a lot of his testimony goes to, but he also talks about the fact that one of his calls with Colpatria, which was the lender to the Luxé Project, formally--they said they stopped disbursing funds.

They said, we will no longer formally approve any increases in the loan due to the ongoing Asset Forfeiture Proceedings against the Meritage Lots. That's the uncontested testimony of Mr. López.

Other investors, Palladin, for example, said we'll have to wait for this Meritage issue to be resolved before we invest further in Luxé.

Tierra Bomba, they entered into a revocation of the Purchase Agreement because they had already entered into that Agreement, so they had to revoke it, terminate it. And one of the reasons given are what? Given the delta--the difficulties and the scandal wield upon Meritage Project in Medellín, which was disclosed both in written and oral media reports, a situation that may result in a lack of success in any other project that shall be undertaken in the future. That's August 3rd, 2017. The rationale given for the seller revoking, and the purchaser revoking the Tierra Bomba Purchase Agreement.

They had the opportunity to manage another hotel in Tierra Bomba, and he gets a WhatsApp on September 13th, 2017 saying: "Yesterday"--this is the

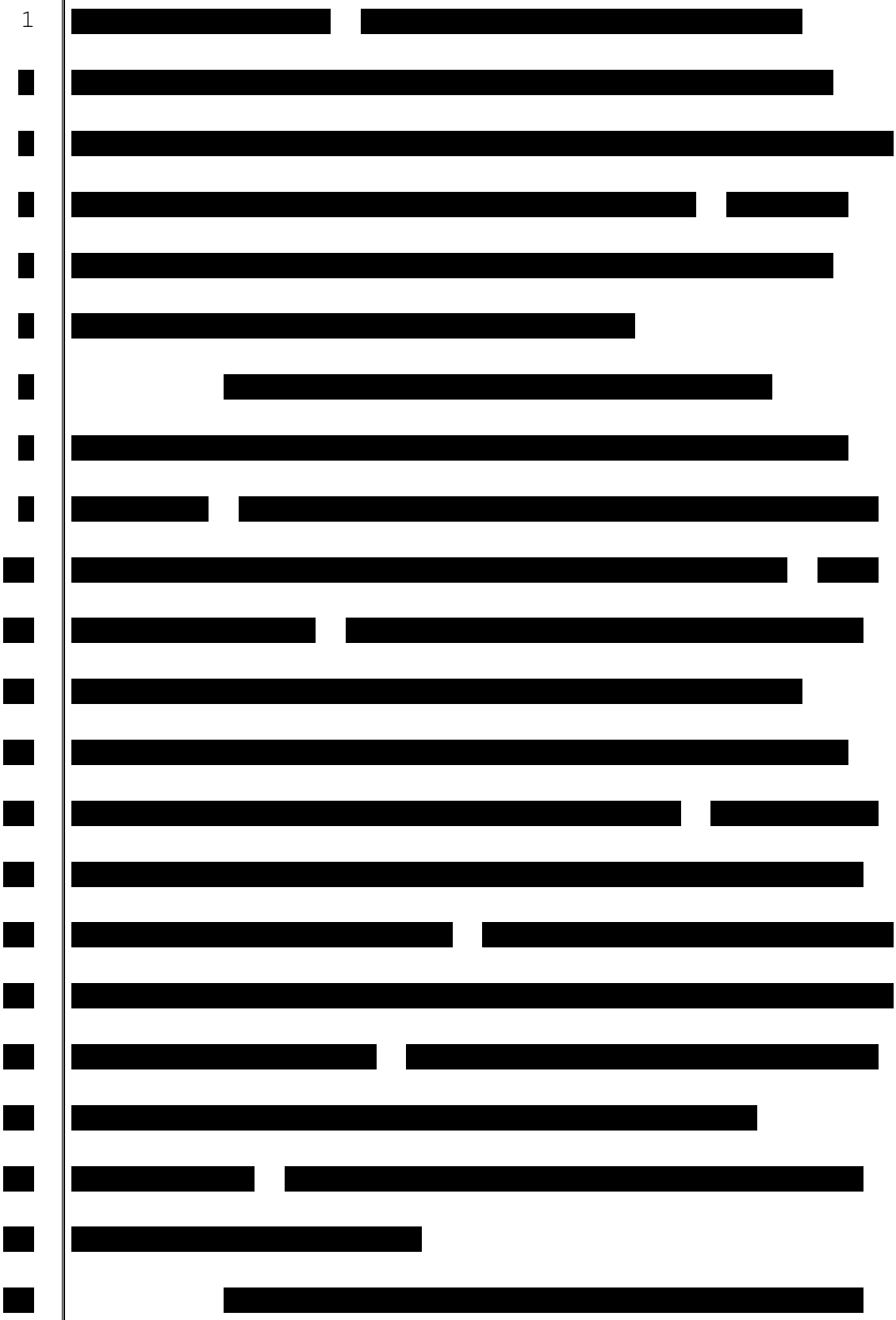
owner of that other hotel. He says: "Yesterday, at a meeting with our lawyers, we have determined that we must put an end to the negotiation process for the operation of our hotel, since we don't want the situation that is occurring with the Meritage Project to affect us in the near future." Now, Mr. Seda, at this point, unfortunately, has--what does he say? He says, "I'm actually surprised by this message, but I understand. I think that irrespective the problems we're having, these are completely different and isolated but I understand the concern."

Because at this point, he's--everybody's telling him this. He knows that he's just not going to be able to do any project anymore because everybody's--because nobody wants to do business with him.

"Sante Fé," as Mr. Seda testifies, "since the imposition of Precautionary Measures, we have not been able to find a bank willing to finance the Project. The partners, with whom Royal Realty acquired the land, advised us that they were not willing to move forward with the Project. Land

sellers, with whom we were negotiating for 450 Heights, advised us that they were not interested in continuing to move the deal forward due to the reputational issues that flowed from the seizure of Meritage."

[redacted]



[redacted]

And one might ask, why--why are we here? What is the rationale for all of this? I was wondering, how did this come to be? You had a foreign investor come in, had high--was providing jobs to Colombians, had established a well-regarded hotel in Medellín. These projects that are going to advance the economy of Medellín. What is the reason that one person, Ms. Ardila Polo, can single-handedly bring this all to a halt? Why? What's the explanation?

And there's no good explanation except for the one that Ms. Champion took you to. There are a number of red flags that show you that the only rational explanation here is that there has been corruption.

I'm not going to take you through this timeline again, but there are a number of indicia in this case that there have--the only rational

explanation is that they were trying to get some money out of Mr. Seda and they thought he would pay to get the property back. Ms. Ardila Polo could have lifted the Precautionary Measures if only the payment had been made.

And what are the various coincidences and circumstantial evidence that shows you that this is, in fact, the actual thing that's happening here?

Ms. Malagón took over the investigation and handed Ms. Ardila the case just two days after the López reinitiated attempts to extort Mr. Seda. On April 7th he was approached, on April 8 it was reassigned to Ms. Ardila.

Ms. Ardila arrived at the Meritage site and sized the Project just days after the Mr. Valderrama threat that says the negotiation phase is over. Now, they say, "well, but look, she had actually signed the resolution on July 22nd, and so this July 25th intervention where Mr. Valderrama urgently contacts Mr. Seda is three days after, so she had already made the Decision." But Mr. Seda didn't know that, but clearly Mr. López did, Mr. Valderrama did, because why

would else would they be urgently reaching out, and he's saying we need to urgently speak? And Mr. Seda rebuffs the attempt, he said, "I'm not paying you anything," and Mr. Valderrama says, "the negotiation Chapter is closed." And just a week later is when that—when the seizure, that Seizure Certificate is delivered to the property.

Mr. Mosquera repeatedly bragged to Mr. Seda about his connections and influence to Ms. Ardila Polo and his connections with Ms. Malagón.

Mr. Seda was approached several times by individuals claiming to be representing, you know, on behalf of Ms. Ardila saying, you know, pay us, do the right thing, make these payments, and we'll make this case go away. Of course, there's no written record of that because we all know that doesn't--that's not the way these things are done. But that testimony is in the record, in Mr. Seda's Witness Statement.

[redacted]

[redacted]. So, if you're looking for an explanation, you don't need to make the finding but we suggest that you could make the finding if you so wished. There has been corruption in this case, but given the number of other breaches, I can understand why there might be some hesitation to have to reach this particular finding, but there's more than enough evidence to do so, should the Tribunal wish.

There has been a breach of legitimate expectations in this case. And for the avoidance of doubt, I should say there's no need to reach that finding, assuming that the Tribunal finds a breach--one of the other breaches, of course. Otherwise, this Tribunal will have to confront the evidence of corruption and make a finding.

Colombia frustrated investor's legitimate expectations. The concept of legitimate expectations,

obviously, is well-known to this Tribunal, and when the conduct of a State creates reasonable expectations in an investor, it must abide by those reasonable expectations that they have created.

And here, Colombia has frustrated the Investor's legitimate expectations. Why do I say that? Well, Ms. Champion took you to the petition to the Attorney General's Office, which was 61 pages, and it--this petition was to the very Asset Forfeiture Unit that then seized the property; right? So, they're writing to them before they buy the property—or sorry, it's after the Sale and Purchase Agreement, but one of the conditions subsequent was sufficient due-diligence is done. So, that's one of the conditions in the Sale and Purchase Agreement.

And Corficolombiana says, prior to the Transaction for this Real Property being finalized--you know, these conditions being satisfied--in which it might be interested with the exclusive purpose. What's the purpose of this petition? The purpose is complying with the basic prevention measures as a precaution in order not to be

utilized in asset laundering operation for the financing of terrorism. The Company seeks to use high international standards of prevention and to avoid acquiring assets that may be involved in active investigations at the unit you direct.

So, they're writing to the unit and saying, in order to avoid being involved in a property that is subject to investigations, we are writing to you, tell us, is anybody in the history of this title tainted? And they write back.

And who is listed on this? It's important I think to know who is listed in this request. It's every single entity for the last 60 years that is actually on title. Every single entity actually on title. Plus as of that date, every legal representative of the entity is listed on title. What they didn't do, and this is something that Colombia says, oh, well, you didn't go back and look at who were the prior legal representatives, so you didn't go back and look in 1975, who was the legal representative of that particular entity at that point in time? That's one of the things that they accuse us

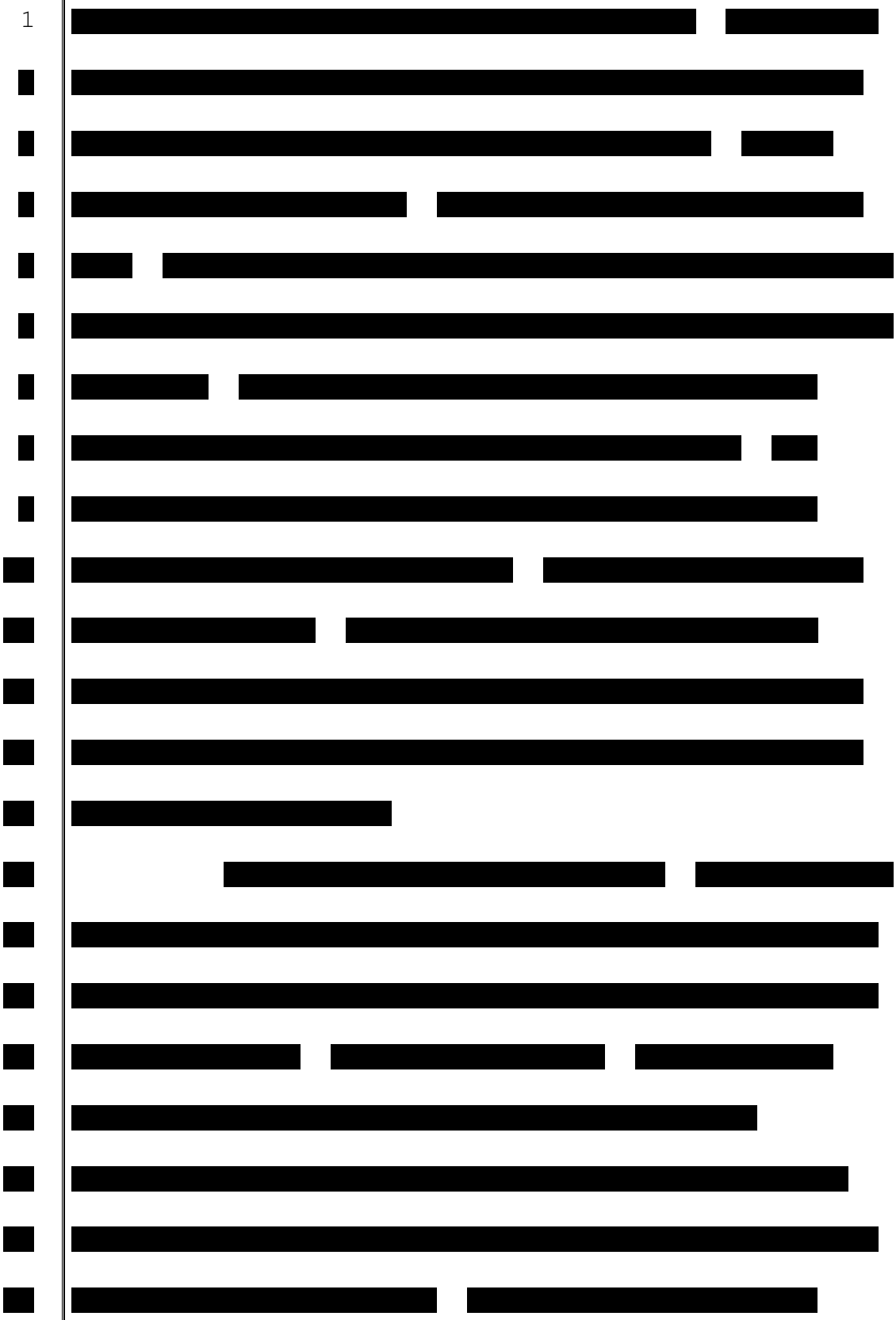
of. But I don't think that can be considered to be the due-diligence standard of any individual. In fact, this request, in and of itself, as you will have seen from the testimony that you have read of the legal experts goes well beyond what is necessary. Every single entity on the history of title plus the legal representative as of that date, as of September 2013 was listed.

And they write back, and what do they say? Having consulted the consolidated list, we can tell you no issues with any of these legal entities, no issues with any of their current legal representatives. And that's signed off on by Mr. Quintana Torres, the National Prosecutor Office Unit Chief of the National Anti-Money-Laundering and Asset Forfeiture Unit. Now, if that doesn't create a reasonable expectation that there should be no issues with any of these legal entities on the history of title, then I don't know what does. They acted in good faith, relied upon this information, and in so doing, they were entitled to be treated as good-faith purchasers without fault, but they were not--that

assessment, as you know, has never even been made.

And by taking the property or even not, if they come up and say oh, we looked at their good-faith status. Well, if they looked at their good-faith status, they had the entitlement, they were allowed to rely on this document, this representation by the State that none of the entities that were actually on title were subject to any asset forfeiture or any concern by the unit at the time that they had acquired this asset.

And by the way, the Government knows that they're entitled to rely on this. Why do I say that? Because, [redacted]



[redacted]

Look, the Lot doesn't have anything. She's saying you have this right, this legitimate reliance right under Colombian law, analogous to the right, the legitimate expectations right, that we're relying upon.

They say in this case, they do have a legitimate reliance, Corficolombiana does, she's saying, on the history of the title provided by the Attorney General's Office that we can say the Lot did not have any issues.

[redacted]

[redacted]

Since that date, since that type of certification that was obtained for this lot, guess what? The AGO, the Attorney General's Office, no longer issues those types of letters. What do they say now? This is a similar response to that type of letter that I showed you earlier, that type of petition. They now say this was not in the letter that was obtained at the time, but they now say--this is from 2020--it simply states that it is not possible to agree to provide information of any kind on the cited legal grounds. This does not constitute certification, nor is it an obstacle to an extension process being brought forward in the future, in the event that any of the causes of the extinction of ownership code coincide.

The translation is poor, but you get the message, the message is they now say--they have this disclaimer. We're not telling you anything that you can rely upon in acquiring of property, and to avoid extinction of domain at some later point in time. That was not in the letter at the time to Mr. Sintura and Corficolombiana that the investors here also relied upon.

I will spend just a moment on the full-protection-and-security standard. Now, there is some debate as to whether or not the full-protection--as their always is in every case that I talk about the full-protection-and-security standard as to whether or not it's just about physical security or also legal security, and we would suggest that, even if this Treaty only protects against physical security, we rely upon the MFN provision to import the more favorable full-protection-and-security provision to the extent it is more favorable in the Colombia-Spain BIT, and that's at CL-053 and Article 2(3) of that BIT is, in our submission, it does not contain this language that Colombia relies upon, which

is at 10.5(2)B where it explains the full protection and security requires each party to provide the level of police protection required. They say that addition of the word "police" is limiting, our submission is that it's not, but even if it is, we rely on the more favorable provision in the Colombia-Spain BIT.

And the AMT versus Zaire Award makes clear that this refers to the full enjoyment of protection and security of the investment, and among other things, a party should not be able to--be permitted to invoke its own legislation to detract from such obligation.

And what does it mean? The requirement is that it must show that it has taken all measures of precaution to protect against the Investments of AMT on its territory, and similarly here of the Claimants.

And National Grid versus Argentina, just one example of a case where it explains that the standard is not limited to physical security.

Professor Schreuer, similarly, explains that the Measures necessary to protect the Investment against adverse actions of the State and private

persons are covered, but here, of course, we're dealing primarily with the actions of the State.

And Colombia has breached the FPS standard in many ways. First of all, by failing to protect the Meritage Property from physical seizure without first assessing good-faith status but at all, I would submit. [redacted]

Those are the reasons why we say there's been a breach of the Treaty in this case.

I would like to turn now briefly to the Essential Security defense, and I won't spend too much time on this because it's just been briefed, and I assume the Tribunal has read the pleadings.

But I will address just very briefly the provision which says nothing in this Agreement shall be construed to preclude a party from applying measures that it considers necessary for the protection of its own Essential Security interests. "Preclude" is defined in the Oxford English Dictionary as to make impossible, to prevent, to make something impossible. Now, clearly here, all this--it doesn't say the Tribunal has no jurisdiction to assess whether or not there has been a breach or anything like that. All it's saying is that, if invoked, it does not preclude a party from applying a measure. It's not saying it's a "Get Out of Jail Free" Card, it's not a gaping loophole in the Treaty. It does not exclude from--the State from a compensation obligation. It does not exclude the State from a compensation obligation. It merely says that if invoked, they can continue their measure. And that's precisely what was

found in the Eco Oro Decision in interpreting some of the language, which I will get to in a moment.

So, what does that mean as a practical matter? As a practical matter, that means--and by the way, this applies equally to the investment context and the trade context, which is relevant because in the trade context, as this Tribunal will know in the intrastate trade context, the remedy is often what? Withdrawal of the Measure. Right? So, if you apply a measure, a tariff for example, that is unlawful, the remedy is generally withdraw the Measure. And so, what this is saying is that can't be the remedy, you can't order the State to withdraw the Measure. If they invoke the Essential Security Provision, they're entitled to maintain that measure. And all that's permitted then is, in our submission, a compensation obligation.

Similarly, in the investment context in 10.26 of the TPA, the Treaty specifically allows the remedy of monetary damages or restitution.

Now, we accept that if the Essential Security Provision is properly invoked, and we don't

think it has been, but if it has been properly invoked, then this Tribunal is not entitled to order that second prong, restitution of property, because they are entitled to maintain and apply their measure.

It does not say anything about jurisdiction, exception to liability, or anything like that. And they could have done that as they did elsewhere in the Treaty. For example, Article 10.18.1 provides, no claim may be submitted to arbitration under the section if more than three years have elapsed from the date on which the Claimant first acquired or should have acquired knowledge of the breach. That says it's not--you can't arbitrate the matter. There is no jurisdiction.

Similarly, 10E provides that the Claimant may not submit to arbitration a claim until after one year of certain events having arisen.

There are express carve-outs for liability, for example, Article 10.4, Footnote 2 says that the MFN provision does not encompass dispute-resolution mechanisms. That's an express carve-out of the MFN protection to certain aspects that an investor might

otherwise be entitled to rely upon it for.

Article 10.75 notes that the expropriation provision does not apply to the issuance of compulsory licenses granted in relation to "intellectual property" rights.

Those are carve-outs for liability or jurisdiction. That's not what this provision was. They knew how to do that if they wanted to do that, but that's not what they did in this case.

And to interpret the Treaty in that way, to have this gaping loophole, give them a "Get Out of Jail Free" Card, would undermine obviously the Investment Treaty Chapter as a whole. It would make it ineffective, but it would also undermine the purpose of the Treaty, which, in its Preamble clearly provides that the intention is to create predictable legal and commercial framework for the business and investment. By creating this gaping loophole, it would avoid certainty, avoid predictability. If at the time of a dispute, the State could pull out this "Get Out of Jail Free" Card and say, oh, we're out for any reason, from liability altogether, but that's not

what the provision does.

And in the Eco Oro Decision, that's precisely what the Tribunal found. They said Colombia also provides no justification as to why it is necessary for the protection of the environment in that case not to offer compensation to an investor for a loss suffered as a result of the measures taken.

And in 8.37, they explain, accordingly the Tribunal does not find that 2201(3) operates to exclude Colombia's liability to pay compensation to Eco Oro for its damages suffered, and there the question was, what does it mean to prevent a party from adopting or enforcing measures necessary? Now, they'll say well it wasn't self-judging. But that's not the question here. The question here is what does it mean to prevent a party from adopting measures to enforce the Measures necessary and requiring them to pay compensation does not prevent a party from adopting or enforcing measures necessary, or in this case, applying measures.

Requiring them to pay compensation as the Eco Oro Tribunal found does not prevent a party from

taking those actions. They can still take those actions, even if they are required to pay compensation. It does not make it impossible, as the Oxford English Dictionary interprets that word, preclude for them to be able to take those actions.

In any event, the new defense is time-barred. We understand that in Procedural Order No. 9 the Tribunal has, for purposes of admitting this defense as a jurisdictional objection, allowed it, but for the reasons I've explained, it is not a jurisdictional objection. And you will see that the language in the letter that Colombia subsequently submitted, they've shifted their language slightly from jurisdiction to justiciability, and that's an important shift because I think they recognize that it's not a jurisdictional objection. And it is time-barred because when it's not a jurisdictional objection, and it's an affirmative defense, they had to raise it in their Counter-Memorial and they did not. That's Procedural Order No. 1 and Rule 26. Unless there has been some sort of extenuating circumstance or new facts, which there has not been in

this case.

But they know that they had to kind of come up with something; right? So, in their Rejoinder, again, another Valentine Day's surprise, on February 14, 2022, ANDJE just the day before this was due, they get some new documents, and they're saying we've got new documents. That's why we're raising this late. But what are those documents? [redacted]. That cannot possibly give rise to a new information that tells them, oh, wait a minute, we now have an Essential Security concern; right? [redacted]

But I will tell you why that falls flat on its face, too. The reason why that falls flat on its

face is because the time at which that Essential Security interest had to be identified was at the time the Measures were taken. Article 22.2 makes clear that Essential Security interests allow--it precludes a party from applying measures that it considers necessary, so--sorry, let me explain. Nothing in this Agreement shall be construed to preclude a party from applying measures that it considers necessary to protect itself against its Essential Security interests.

So, of course, the Essential Security interests must have been known at the time that the Measure was being applied; right? And that's exactly what the Nicaragua versus U.S. case said, the ICJ case, where they said, if you look at the chronological sequence of events in that case, the activities of the United States, if they're to be covered by Article XXI of the Treaty, they must have been at the time they were taken measures necessary to protect its Essential Security interests.

But new facts that come to light now in 2017 and 2018 and 2021, 2022, could not possibly have been

facts or circumstances that gave rise to an Essential Security at the time they took their measure. It is impossible for a State to consider a course of action to be necessary to protect their Essential Security interests if they haven't yet identified that interest.

And the fact that they did not raise this defense in the Counter-Memorial is all you need to show that clearly if they knew that these measures were taken for an Essential Security interest at the time back in 2016, then they would have been able to identify it in their Counter-Memorial, but this is all just made up for this arbitration. And, therefore, it's not a good-faith defense. And there's a two-stage inquiry here: One that the definition of Essential Security is made in good faith--I'm sorry, the definition of the Security interest in and of itself; and second of all, whether it's plausibly connected to a properly identified interest. And it hasn't been. The articulation of the defense has not been made in good faith because it's exactly the same purpose that they relied on in their Counter-Memorial.

The purpose they identified for their measures in their Counter-Memorial was to fight organized crime, to attack organized crime. That's what they said at Paragraph 303. And it's the same reason that they're articulating in their Rejoinder. This is just a recasting of the very same purpose, so they have not articulated the defense, the Essential Security interest in good faith for purposes of this Arbitration.

And it is not rationally connected to the measures to the purpose, even if it was an Essential Security interest properly articulated. Why do I say that? Because the Asset Forfeiture Proceedings have not even touched the assets or disgorged the assets of the crime members that they have actually identified. They can still look into those individuals, they can take their property. They didn't need to take this property.

And more than anything, they accept that Claimants have not done anything wrong. They say that in their submissions, Claimants accept Claimants' wrongdoings are not the subject of these Measures. If

that's the case, then how could their Essential Security interest be advanced by taking these measures against individuals who they admit have done no wrongdoing?

And finally, even if this Essential Security interest was properly invoked and could be invoked and did apply, other treaties that Colombia has entered into does not contain this Essential Security interest, and the Investors here are entitled to equal treatment.

If, for example, a Swiss investor had brought this case, there would have been no Essential Security defense because the Swiss Colombia BIT at CL-069, does not contain this affirmative defense. And substantive standards of protection, as we all know, MFN provisions do allow an investor to import more favorable investor protections when it comes to substantive standards. And as a very last resort--I don't think this Tribunal even needs to get there, but if they do--the Colombia-Swiss BIT allows the Claimants that equal protection.

I turn now to the compensation that is owed

to the Claimants.

It's necessary to prove causation. We accept that. The actions obviously, the damage, rather, must be by reason of or arising out of the breach at issue here. And if it can be proven that the normal cause of events, a certain cause will produce a certain effect, it can safely be assumed that a rebuttable presumption of causality between both events exists and that the first is the proximate cause of the other.

And I have taken you through a lot of this already, so I will just highlight it and summarize it here.

But Colombia's invocation of Precautionary Measures and Asset Forfeiture Proceedings against the Meritage Project property halted development of the Meritage Project, obviously. It caused banks to pull financing from Luxé. You got citations on the slide here for your reference. It caused prospective investors to withdraw from Luxé. It precluded Royal Realty from securing financing for its other projects and it caused business partners to pull out of those

other projects. All of that evidence I have already taken you through.

And they say, but wait a minute, The Charlee Hotel is still operating, but the Charlee Hotel is self-sustaining. It doesn't require any additional funding at this point. And so to point to the Charlee Hotel as still operating does nothing to explain how or why Mr. Seda would have been able to still operate all of these other projects. Obviously he could not because he needed funding. He needed business partners, who were just not willing to do business with him anymore.

I've already explained how their focus on investments specifically with respect to the FET, the national-treatment provision makes no sense. I won't belabor that point. But I will spend a moment on the actual quantification of damages. I know you're going to hear from the Quantum experts themselves later this week. I'm sure you're much more interested in hearing all of this from them than from me, so I will just do a brief summary of the key points that the Tribunal will hear about later this week.

The Tribunal will be well-aware, and everybody accepts that Fair Market Value captures the full reparation owed to the investment--to the Investors, and there are three ways to assess Fair Market Value: The Income-Based Approach, the Market-Based Approach, and Asset-Based Approach. And generally speaking, the Income Approach is the place to start, and Ripinsky and Williams say that in their seminal text on the matter and the reason is because you can modulate the drivers. You know the drivers that are resulting in the ultimate damages figure that you are going to determine. And so it's much better to be able to assess those drivers on an individual stand-alone basis, and you can do that through the Income Approach.

But by using the actual expenditures that have been expended, despite what they say--and this is from Ripinsky and Williams again--does not actually calculate the Fair Market Value of an investment. This tribunal will well be aware of that. If I bought a car in 2018, what I paid for that car does not reflect what it was worth in 2019. Usually when I

drive the car off the Lot, it loses its value the very next day. Because of the pandemic, in fact, a year later, guess what? Used cars were worth more than what you paid for them a year later. 30 years later it might be an antique and worth even more, but at the end of the day, what you paid for something does not at all tell you anything about what it's worth on a particular date of valuation.

But more than that, it fails altogether to assess some cost approach that actual expenses incurred does not take into consideration the know-how and the expertise which is so critical, so critical to an investment, especially in this case. The market knowledge, consumer insights, vendor relationships, all of the things that Mr. Seda and the investors brought to this project was so much more than a piece of land. And none of that is valued when you take a Sunk Cost Approach. The brand value, the track record of successful projects. It is more than just a piece of land. It is all of these things that come together that help you assess what is something worth, what is a business worth, what is a project worth? It is

worth a combination of all of those things that is simply not captured by looking at what was spent.

And Colombia appears to accept, by the way, that the DCF valuation is possible if you use the correct assumptions. This is at Note 1,377 of their Rejoinder, they say it is possible to correct some of the assumptions made by BRG to reach a more reasonable DCF value which can be verified by appropriate crosschecks, as demonstrated by Dr. Hern.

So, Colombia seems to acknowledge, if you use the right assumptions, a DCF can be used. But the ultimate question for this Tribunal is, is it sufficiently certain that profits would have been made, and if yes, do we give you a reasonable basis to assess what those profits are?

And to that first point, we think it is sufficiently certain that profits would have been made based on the track record of the Claimants. If you look at The Charlee Hotel, everybody accepts, including Respondents, that there were market-exceeding profit margins at The Charlee Hotel. And in addition to the graph here, I refer you to

Figure 8 of BRG 2 at Page 62, where it's a comparison of The Charlee Hotel to the rest of the Colombian market. And you can see market exceeding profit margins. A history of that by the Royal Property Group.

And if you look at the individual drivers, it's actually not that hard when it comes to a real-estate investment. There aren't as many drivers as a mining or an oil and gas or a resource context as there are when you're talking about real estate property. You're talking about property, and the costs in this case, for example, CBRE, in their Expert Report actually say, according to Claimants' model, construction costs are pretty much aligned to our professional opinion. Costs are not an issue. One of the key drivers CBRE accepts, is pretty much aligned with their professional opinion. And then we deal with the other side, revenues. And those are based in this case on the contemporaneous business models of the Claimants; and, as we know, that's some of the best evidence you can have because it's used for real life purposes. The CC/Devas Case makes that clear.

And in this case they were used for many purposes including the fiduciary, setting the equilibrium point is based on these business models. Sellers in many instances of the new projects, sellers were accepting payment as the final apartments because--based on the models. These business models were actually used to transact.

Claimants are owed in addition to that what a DCF Model produces, as verified by the way by actual market studies by JLL, Pre-Award Interest, and we would submit as the Eco Oro found that the US Treasury Rate is not a commercially reasonable rate of interest. But in any event, for an unlawful expropriation, the correct measure should be putting the Claimants back in the position that they would have been in but for the unlawful actions, and that includes in the assessment of interest. But BRG has been very conservative, I would suggest, by using not even a rate that puts you back in the position you would have been in but for the unlawful actions, but they used a commercially reasonable rate of 5.03. That would be analogous to, for example, a Prime or

Prime+1 type rate, and they took this conservative approach to reach the damages that you see on this slide. And again, as I said, all of this will be articulated in much more detail when you hear from BRG.

I'll turn the floor over now to my colleague, who is going to address you on jurisdiction before I conclude. I think we probably have about 15 minutes left in our presentation. I'm not sure where we're at exactly on time, but it's probably an appropriate time to do a time check.

SECRETARY MARZAL: 17 minutes, according to my --.

MR. MOLOO: Okay, so we should be fine. Thank you.

MS. KAHLOON: Good afternoon, Mr. President, Members of the Tribunal. Thank you for the opportunity to address you today on behalf of Claimants. I will be providing the Tribunal with an overview as to the basis for its jurisdiction to decide the present dispute, pursuant to the terms of Chapter 10 of the TPA and Article 25 of the ICSID

Convention, namely because, first, the Claimants are protected investors under the TPA and the ICSID Convention. Second, the Claimants own a protected investment under the TPA and the ICSID Convention. And third, the Claimants' claims in this Arbitration directly relate to Colombia's unlawful measures. I will also be addressing jurisdictional objections that have been raised by Colombia with respect to these points before Mr. Moloo concludes Claimants' Opening Statement.

Turning first to the ratione personae requirements under the TPA, Claimants accept that, in order for an ICSID tribunal to exercise jurisdiction over a claimant, the ratione personae requirements in both the ICSID Convention and the TPA must be met.

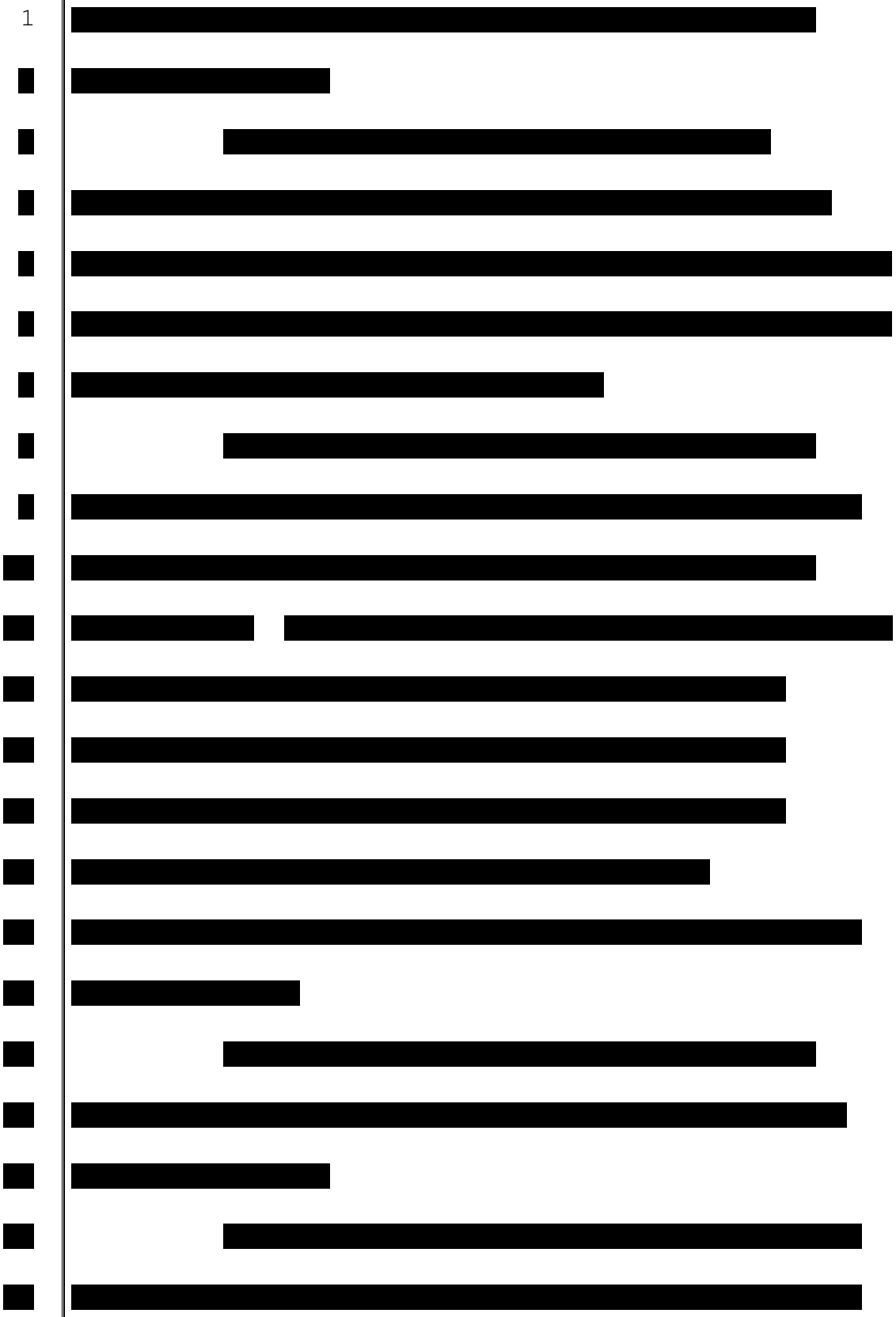
Under the TPA, pursuant to Article 10.16, an arbitration can be initiated by a claimant. Article 10.28, in turn, defines a claimant to be an investor of a party, and the TPA recognizes that investors can be natural persons with the nationality of a party or, alternatively, enterprises which are entities constituted under applicable law.

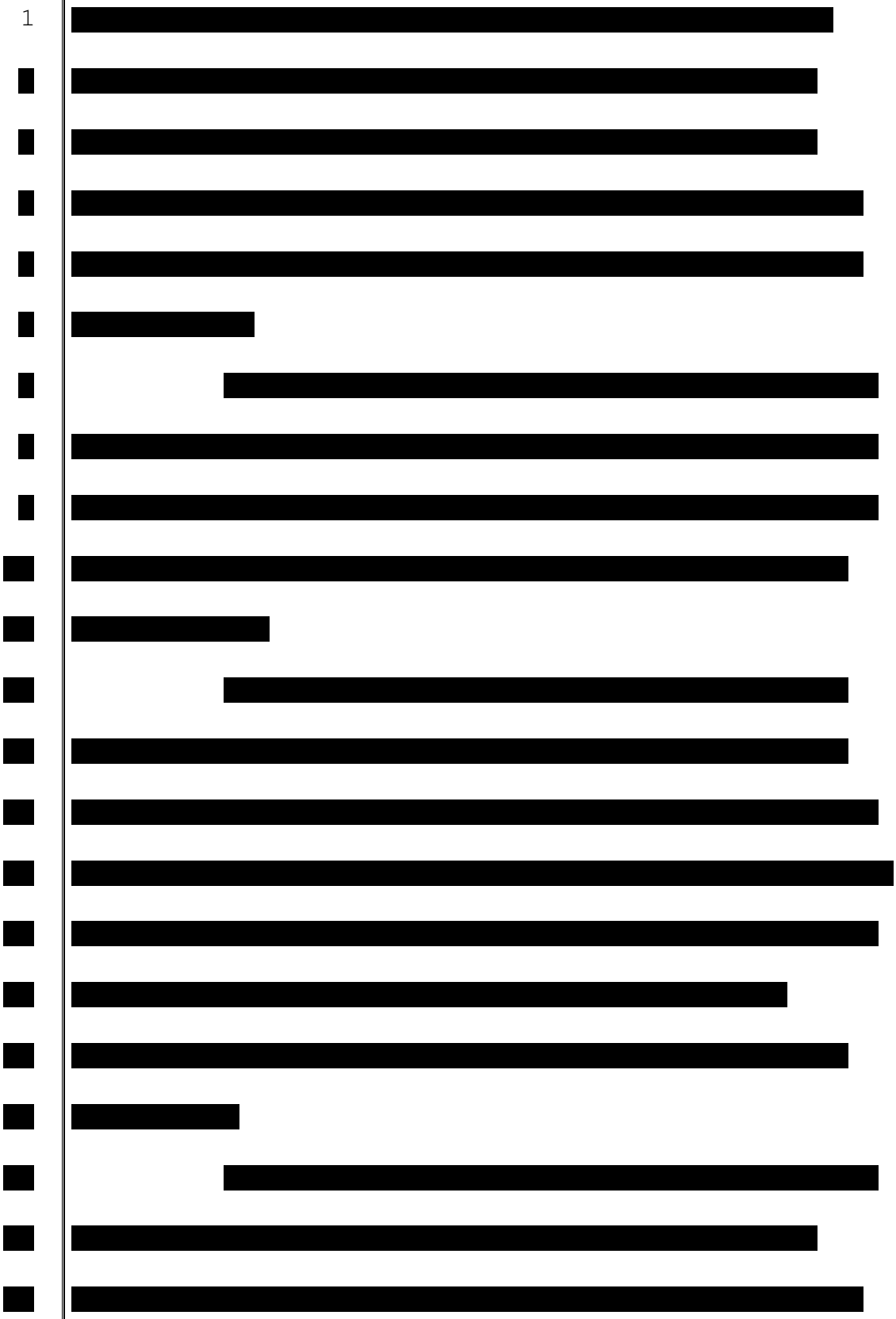
Similarly, Article 25 of the ICSID Convention extends the Centre's jurisdiction to nationals of another contracting party that are natural or juridical persons.

There are nine Claimants in this Arbitration, seven natural persons and two enterprises.

Colombia, at Paragraph 503 of its Rejoinder, does not contest that the seven natural person Claimants and one of the enterprise Claimants--JTE International Investments--can qualify as protected investors under the TPA.

[redacted]





1 [redacted]

Moving then to the second jurisdictional point in dispute, each of the Claimants owns a protected investment under the TPA and the ICSID Convention.

Article 10.28 of the TPA incorporates a broad definition for what constitutes an investment to include "every asset that an investor owns or controls" which has "the characteristics of an 'investment'."

The TPA, thereafter, sets out non-cumulative and non-exhaustive examples of what such characteristics could include.

Article 10.28 further provides the forms that an investment may take, including relevantly an enterprise, shares, equity participation, as well as management and revenue-sharing contracts.

The tribunals in Seo and Korea and Aven and Costa Rica interpreting a similar provision in the chorus at FTA and DR-CAFTA respectively, likewise had found that not all three characteristics must be present cumulatively for an asset to qualify as an investment and none of them is indispensable.

Claimants' investments in Colombia are comprised of a bundle of rights, including the shares owned by each of the Investors in Newport, Luxé, and/or Royal Realty. The chart on this slide sets out the equity participation of each of the investors in these enterprises.

Respondent attempts to cast aspersions on whether these Shares can qualify as an investment because the Shares are subject to a pledge in some cases. However, it is uncontested that the Claimants own these Shares, and the TPA only requires ownership or control. The existence of a security interest through a pledge, for example, does not alter the shares' ownership.

Claimants' investments in Colombia also include management contracts that were in place between Royal Realty and Newport, as can be seen at C-120, as well as Royal Realty and Luxé at C-101.

These management contracts entitled Royal Realty to payment of a management fee for operating the hotels in both developments. Royal Realty also had the prospect of many more management Contracts for

other projects that were in the pipeline.

Mr. Seda further invested equity in enterprises through the investment vehicles he set up for the Development Projects, RDP Interpalmas, RDP Cartagena, and Revmarketing.

Accordingly, it's clear that between their equity interests in Newport, Luxé, Royal Realty, and the development companies, as well as Royal Realty's management Contract, the Claimants own a broad range of investments, each of which display the characteristics of an investment.

However, in its submissions, Colombia asks this Tribunal to find that the ICSID Convention creates a separate jurisdictional hurdle that investors must discharge in order to gain access to ICSID Arbitration. However, it is trite to say that the ICSID Convention does not include a definition for the term "investment" or the so-called "cumulative criteria" that Colombia is attempting to read into the Convention.

A number of arbitral tribunals agree that these criteria are of limited relevance to the ICSID

Convention. For example, the Tribunal in Abaclat and Argentina at CL-139 held that the criteria should not serve to create a limit, which the Convention itself nor the Contracting Parties to the specific BIT intended to create.

But in any event, Claimants meet each of the criteria that have been advanced by Respondent.

First, Claimants have made a contribution and/or commitment of capital or other resources as protected investors. In this regard, it is important to note that tribunals have held that there is no minimum contribution that needs to be made in order for an investment to qualify as being protected.

Likewise, the TPA expressly contemplates that contributions are not limited to capital or funds and also extend to other resources such as marketing and real estate development experience and decision-making, management, and expertise.

Here, each of the Claimants have made capital contributions to Newport, Luxé, or Royal Realty and evidence of those contributions in the form of wire transfers and receipts can be found at Exhibit

C-358 and C-359.

Mr. Seda has additionally contributed other resources in the form of know-how, brand value, and his expertise in the development of luxury real-estate projects.

Moving to the second characteristic advanced by Colombia, each of the Claimants has also assumed risk in making their Investment in Colombia. As Colombia accepts at Paragraph 262 of its Counter-Memorial, a commitment of capital is a corollary to the assumption of a risk. Here, Claimants have assumed risk by putting their invested capital on the line and holding a concomitant expectation of profit.

Mr. Seda similarly has assumed significant risk by channeling his time and efforts into developing the underlying projects, and in developing Royal Realty.

Finally, Colombia raises an objection with respect to Mr. Hass' standing to appear as a claimant because he has structured his investment in Luxé through a Family Trust. However, the record shows

that Mr. Hass made his investment through Haystack Holdings LLC, which, in turn, was controlled by the Family Trust of which Mr. Hass and his wife are the sole settlors and sole beneficiaries as can be seen at C-222 and of which Mr. Hass holds full control.

Mr. Hass is also the ultimate beneficial owner of the Shares. He has standing to claim relief before this Tribunal pursuant to the principle in international law that grants standing and relief to the owner of beneficial interests.

Moving to the final jurisdictional objection in dispute, the Claims advanced in this Arbitration by Claimants are directly related to the measures that are in dispute. Article 10.1 of the TPA provides that Chapter 10 applies to measures that relate to investors and covered investments.

Colombia attempts to rely upon this provision to contend that this Tribunal does not have jurisdiction over those Claimants who have not invested in the Meritage Project. However, tribunals considering similar language have held that the phrase "relating to" does not denote "a narrow jurisdictional

threshold issue" without any regard for the substantive Treaty protections that are being invoked by an investor. Instead, all that is necessary is a relationship of apparent proximity between the challenged measure and the Claimant or its investment. Any further analysis is more suitably reserved for a consideration of the merits of the Claim.

As Mr. Moloo has already covered extensively in his submissions, the Measures at issue in this Arbitration severely affected not only the Meritage Project but also Luxé and Royal Realty's pipeline of Development Projects.

The impact on these projects of the Asset Forfeiture Proceedings amounts to much more than a relationship of apparent proximity. Indeed, as Mr. Moloo outlined, there is direct causation, and accordingly, this objection should also be dismissed.

I will now turn the floor back to Mr. Moloo to conclude for Claimants.

MR. MOLOO: I will be very brief, Members of the Tribunal.

I do want to say one word on moral damages

which, as you know we are claiming in this case, and Article 31 of the Articles of State Responsibility contemplates allowing, and in the Lusitania Case, they explained, the Court did, mental suffering, injury to feelings, humiliation, shame, degradation, loss of social position or injury to his credit or reputation, there can be no doubt of all of these things in that case and such compensation should be commensurate to the injury, and they explained that such damage is very real, even if it is hard to quantify. [redacted] And so, I think this is a case, even though it is rare, where moral damages is appropriate.

But further, the last thing I want to end on you know our Request for Relief, but I do think this is a case where obviously costs are necessary because to put the Claimants back in the position that they were in but for the wrongful conduct, but there are a

number of other factors here, including delayed Document Productions, we got a document dump last week. And I can go through the procedural issues, but I want to focus not on the procedural issues, even though there are numerous applications that were made that shouldn't not have been made, et cetera.

[redacted]. And at the end, you know, I talked about the fork in the road, that August 3rd, 2016, was in Mr. Seda's life, and this Tribunal can't, obviously, give his life back to him. It can't give his life back. You know, unfortunately, he's not doing what he loves, developing property in Colombia. His family is there.

He has children in Colombia. But what this Tribunal can do is something: They can give damages to try and make things better, to make this detour in the prime of Mr. Seda's life a little bit better, something that he looks back on and says, "Yeah, I wish it could have gone differently," but at least there was some redress, not just for him but for the other Claimants who have suffered.

With that, those are our submissions, and subject to any further questions from the Tribunal, we look forward to Respondent's presentation.

PRESIDENT SACHS: I don't think we have any questions at this moment.

We'll now have our lunch break and resume at 2:10, please.

(Whereupon, at 1:08 p.m., the Hearing was adjourned until 2:10 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT SACHS: So, we are ready to resume and we now give the floor to Respondent for Respondent's Opening.

OPENING STATEMENT BY COUNSEL FOR RESPONDENT

MS. BANIFATEMI: Thank you, Mr. President. And I just confirmed that we have sent the PDF version of the Opening slides. And we also have paper versions that have been or will be distributed, as we speak.

I have the honor to represent the Republic of Colombia in this case. I will share the Opening Presentation first with the Director of ANDJE, Mr. Camilo Gómez Alzate, who will say a few words.

Then my partner, Ms. Ximena Herrera Bernal, will address the Tribunal on the factual context of this dispute. And then I will pick it up, perhaps after a break, addressing this Tribunal on jurisdiction and merits issues, and Ms. Yael Ribco Borman will finish the Respondent's Opening.

So, without further ado, I now pass on to the Director of ANDJE. Thank you.

MR. GÓMEZ ALZATE (interpreted from original in Spanish): Good afternoon, Mr. President, distinguished Arbitrators, distinguished colleagues for the other Party, distinguished representatives of the United States State Department and all others

present in this Hearing.

I am Camilo Gómez, and I am the Director of the Agencia Nacional de Defensa Jurídica del Estado. Today, we are brought here by a very particular arbitration, which is of special importance for the State.

Colombia has been recognized in multiple awards for its compliance with due process and its international obligations. The actions that the Claimants consider to be in violation of the Trade Protection Agreement between Colombia and the United States are an exercise of the State's legitimate regulatory activity on the basis of the notion of asset forfeiture, which has been recognized as one of the main tools in the fight against drug trafficking and corruption worldwide. The asset forfeiture law establishes a constitutional action that is not subject to any statute of limitations and that is independent of the criminal procedure, and which in no way may be confused with a mechanism of expropriation.

Colombia, distinguished arbitrators, has been and still is the biggest victim of the world drug

problem, and this has forced us to develop advanced legal systems to fight this problem. The drug traffickers have assassinated judges, prosecutors, journalists, innocent civilians. They have blown up airplanes and set off bombs in shopping centers and, unfortunately, they've also penetrated the business world in Colombia, and they have found people who prefer to accept business even if it stained by the bloody money of drug-trafficking.

Today, Colombia disgracefully produces 70 percent of the cocaine in the world, which is 1 billion doses of pure cocaine. Of every 1,000 grams of pure cocaine, up to 9,000 doses of commercial cocaine are produced. The price per dose can be more than $200 in certain parts of the United States. UN experts speak of an average price of over $50 per commercial dose.

These billions and billions of dollars in money from drug trafficking are not moved around in boxes or briefcases full of cash, but rather through money-laundering systems that are as sophisticated as one might imagine.

The problem of drug-trafficking in Colombia, and especially in the areas of Medellín and Envigado, have been known publicly worldwide. There have even been world famous films and television series. And as a result of this being publicly known, foreign investors, when they invest in Colombia, cannot ignore this phenomenon or its scope. They are under an obligation to get to know very well the rules of the game, particularly in relation to asset forfeiture, and they must be very aware of its application. This requires special diligence and the most prudent attitude on the part of the investors.

The diligence of an investor, distinguished arbitrators, cannot be the same when one buys a property in Washington as when one buys a property in Medellín or in Envigado.

Asset forfeiture has been, and continues to be, one of the most important weapons for confronting one of the main forms of crime such as what is observed in this case. It is a question of structuring complex business transactions and fiduciary transactions that have made it possible for

large expanses of lands of elicit origin to go unperceived and to make their way into normal economic transactions.

In this case, the asset forfeiture proceeding began once it became known that Mr. Iván López, a recognized drug trafficker, who had already been extradited to the United States was in the chain of transfer of the Lot known as the Meritage Project.

[redacted]

The Envigado office is a dark criminal enterprise. It is well armed. It assassinates, it extorts and, above all else, it launders assets and traffics in drugs, and for decades it has had a negative impact on the interest of Colombians.

In the case for which we are here today, the Claimants rely on the supposed corrupt and arbitrary initiation of the asset forfeiture proceeding by the

Office of the Attorney General of Colombia.

I would like, most firmly, on behalf of the Government of Colombia, to emphatically reject the statements that have been made by the Claimants with respect to the actions of our judicial authorities. To the contrary, day after day our judges and prosecutors put their own lives and their families' lives at risk in order to fight drug-trafficking and asset-laundering. They are the target of the criminal interests because it is they who, on behalf of all of us, defend legality and justice. We admire them. We respect them, and we support them. Not just us in Colombia. Also the authorities of all States who are committed to the anti-drug trafficking effort.

As we will see throughout this week, the Claimants' case is characterized by a highly questionable paradox: the more serious their accusation against the State, the weaker the supporting evidence provided.

The Claimants' theory regarding the motives that led the Colombian State to trigger the asset forfeiture proceeding—makes no sense. What sense

would it make for a drug trafficker to corrupt a prosecutor to initiate an asset forfeiture proceeding that can only end up with the State becoming the titleholder of that land that the drug trafficker supposedly wanted to recover?

This Tribunal has before it a paradigmatic example of an improper use of investment arbitration.

First of all, the Claimants come to this Hearing without any clear evidence of a significant investment of foreign capital.

Second, the Claimants question the legality of a measure that had not even ripened in the domestic forum as of the date of the filing of the request for arbitration. A recent decision by a Colombian tribunal will allow Newport to show in court whether it is actually a good-faith third party without fault.

Third, the Claimants have made charges of systematic corruption without even waiting for the facts alleged to be investigated in Colombia. Because of this premature action, the arbitral record is replete with decisions in which independent judges and prosecutors have agreed that there is not the

slightest bit of evidence of corruption in the Meritage case.

We, Colombians, have suffered many ills stemming from drug-trafficking and organized crime; and so, it would not be fair for us to also have to face a multi-billion dollar international claim due to the legitimate application of the Asset Forfeiture Law to a property that is clearly of illegal origin.

This arbitration seeks to cast doubt on one of the most valuable instruments in the fight against drug trafficking. Those criminals, distinguished arbitrators, are not hurt by death or jail. What hurts them is to lose the money that asset forfeiture takes away.

With your permission, I give the floor to my colleagues Yas Banifatemi and Ximena Herrera, who will continue with the arguments of the Colombian State.

PRESIDENT SACHS: Thank you. Gracias.

MS. HERRERA: Mr. President and Members of the Tribunal. You've heard the Director speaking about the importance of this case, and you have heard him referring to Oficina de Envigado. In fact, you

have heard several times the mention to Oficina de Envigado.

What's the Oficina de Envigado? The Oficina de Envigado is an armed criminal group that was born in the Eighties as a branch of the infamous Cartel de Medellín directed by Pablo Escobar. What was the function of the Oficina de Envigado? The function of the Oficina de Envigado at its beginning, and it still continues to be, was to control drug-trafficking; but also, and importantly for this case, was in charge of collecting the debts and assets on behalf of the Cartel de Medellín. And when I say collecting the assets or debt, I'm not referring to going and kindly asking through a letter to have some debt paid, but forcibly making people give up assets and extort people and extort money.

In the '90s, the Oficina de Envigado merged and was instrumental in the creation of the paramilitary groups in Colombia, paramilitary groups that fought the guerrilla but also that were involved, same as the guerrilla, in drug-dealing activities.

One hallmark of the paramilitary actions in

Colombia has been dispossessed forcefully many, many people in Colombia of their lands. In fact, if you were to look at statistics, but particularly when they were--particularly active paramilitaries in the '90s and in the 2000s, you will see that the number of refugees in Colombia, internal refugees, which is below Congo.

Now, the Oficina de Envigado has continued operating and operates up to the date in Medellín, obviously in the area of Antioquia, but has more in fact, international criminal organization that is present in Europe, has links with Hezbollah and is linked with the Cartel de Sinaloa and the Cartel of the Gulf. [redacted]

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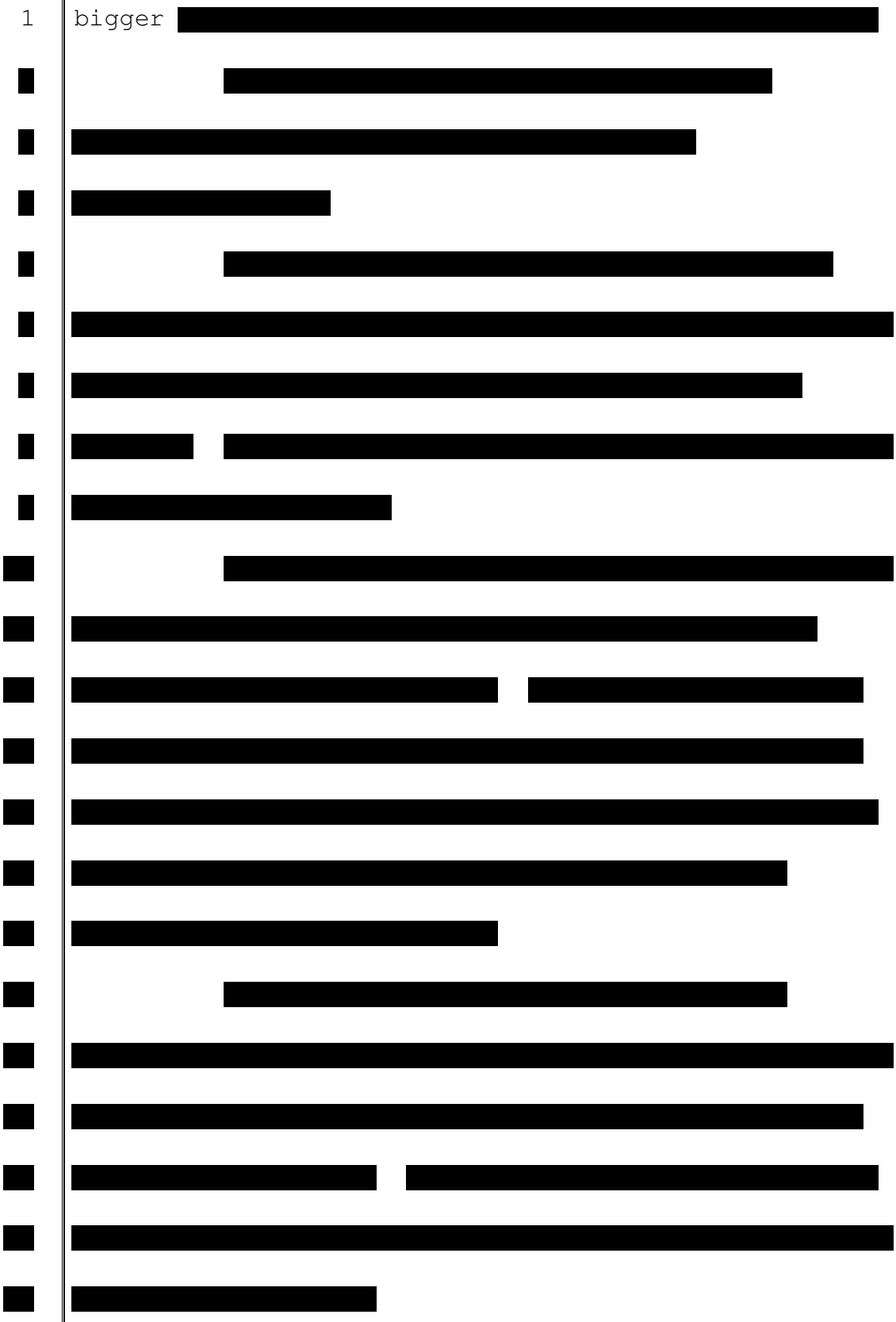
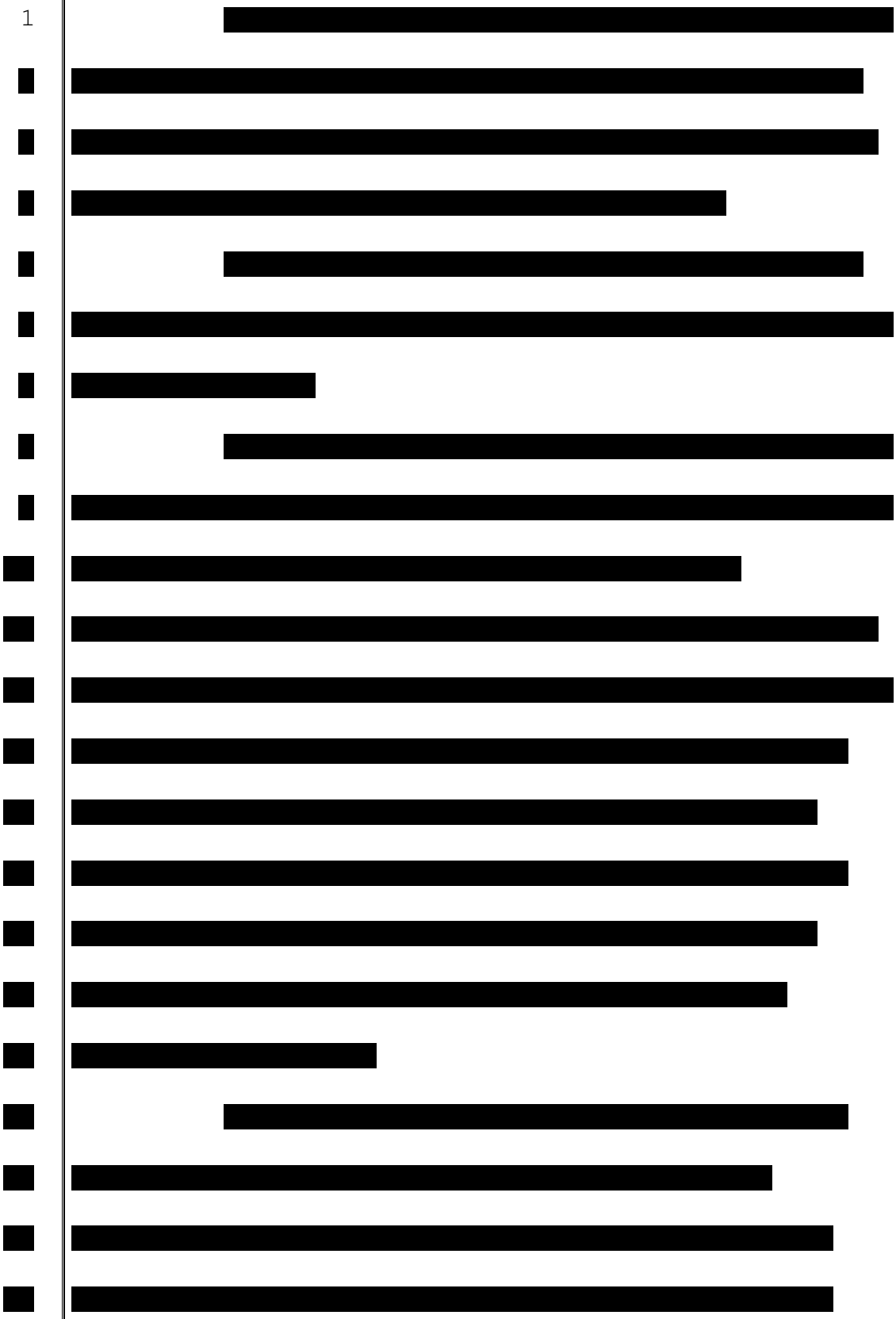
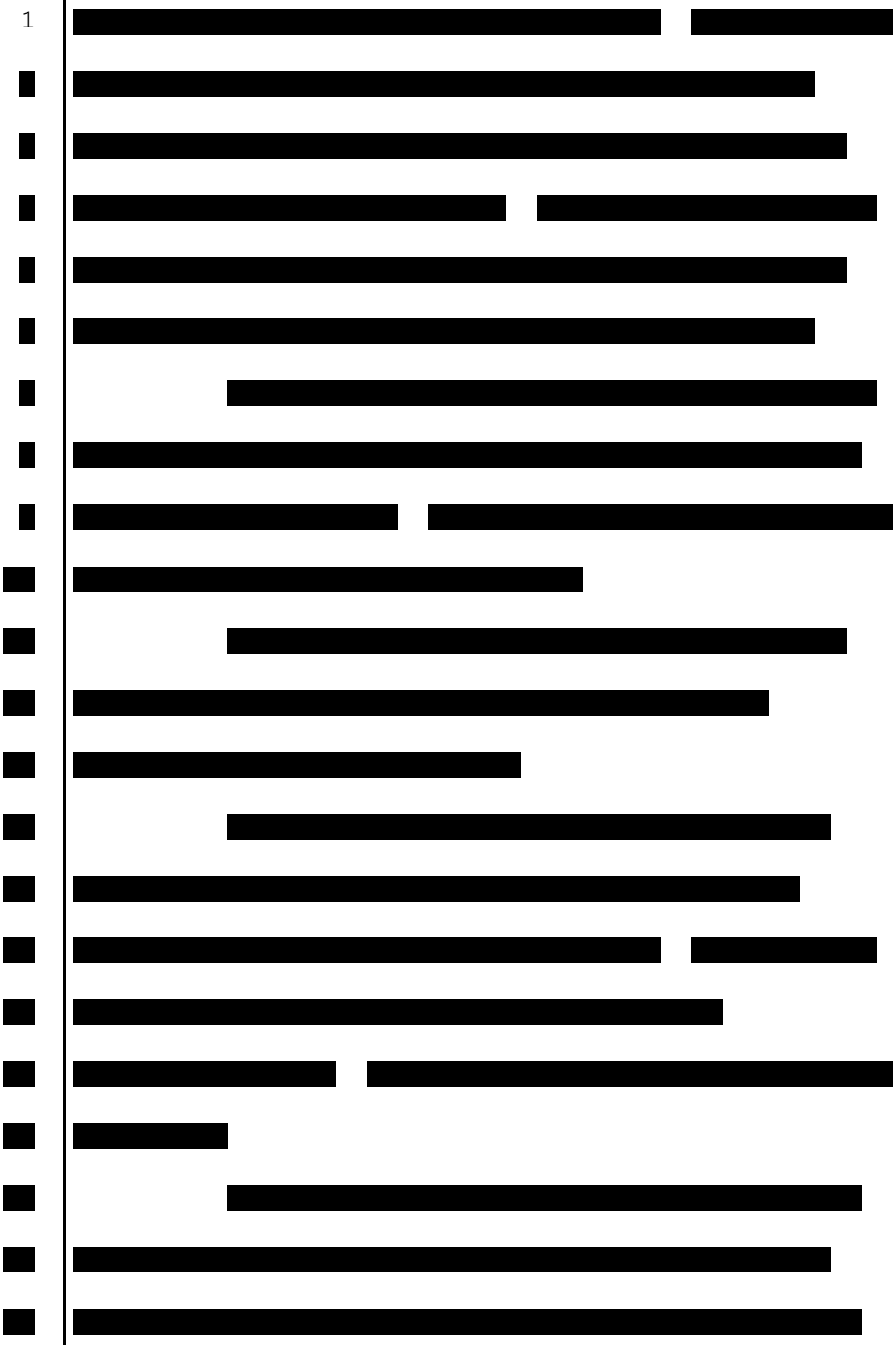






[redacted].

As the Director was saying, how is the only way that criminality can be effectively combated and that is targeting the kings, and that's the whole point of dealing with money-laundering and trying to target the kings to stop the incentive for criminality.

In fact, asset forfeiture proceedings and the Colombian asset forfeiture proceedings have been internationally recognized as an effective tool to fight criminal activities and to deprive criminal enterprises of their illicit assets. Here you have that recognition by the GAFILAT, which is the Financial Action Task Force in Latin America, that surveys and tries to prevent and combat money laundering.

Now, you have heard a lot about the Asset Forfeiture Proceedings in Colombia. You will have, later on in the week, to hear from the experts. We will hear from Mr. Reyes, and you will also have two

other prosecutors that are day in/day out dealing with this kind of procedures and can tell you what are the faces and how they really operate.

In any event, I think that it's important so that the Tribunal has a more clear idea of how this operates to describe the Asset Forfeiture Proceedings in a general way.

One important thing is that Asset Forfeiture Proceedings do not follow the individuals, and this is important because you have heard the other Party saying what Colombia should have done is follow the people that received the assets, the money from the sales. But it doesn't follow the people, it follows the assets tainted by--for its illicit origin.

What's the purpose? To forfeit the assets that are either the proceeds of crime or destined to criminal conduct. This procedure has two stages: An initial stage that is carried at the Prosecutor--by the prosecutors at the Attorney General's Office by the unit of Asset Forfeiture.

And then it has a second stage. There's a trial stage, where the parties in the trial stage are

going to be the prosecutors that are presenting the requests to the court to forfeit the asset, and obviously the parties that are claiming that they are affected parties, that they are bona fide.

And the Final Decision on whether these parties are really--are not third parties in--of good faith without fault. The parties, it's only taken at the end by the courts, and I will go about that in a moment and explain how everything evolves.

One important point here is you will have here the opposing Party saying that there were no controls. That's not true. There are controls of legality in place and, contrary to what you have heard, include both formal and material control. That's the case of the Precautionary Measures that were taken in this case.

The procedures are adversarial procedures at the judicial phase, due process of law is observed, and they are decided by independent judge. The decisions can be appealed as they have, indeed, been appealed in this case.

Another point that is important, these are

not procedures that are criminal in nature. They are civil, so they are not charging the person because there's a criminal conduct. They are charging the asset--doesn't matter who has it at that moment--because of the origin of the asset.

Now, you have heard a lot about the Claimants not having been considered bona fide, et cetera. That's not true, and I will go into what is that, what stages, and what is at each stage that either the Prosecutor or the Court have to decide and find in this regard.

The last thing that was mentioned by the Director, but it's important to bear in mind, is the Asset Forfeiture Proceedings are not subject to statute of limitations, and that's quite important because the due diligence that an investor needs to conduct is dictated and has to be done bearing that in mind.

Very briefly, I want to refer to some typologies of money-laundering that had been identified by the Colombian Superintendence of Notaries and Registrar, that has its own judicial

police division, in the real-estate sector. The real estate sector in Colombia has been considered--and it's considered to be a high-risk sector for money-laundering. There are several typologies that fit what happened in this case, but I want to walk you through a couple of them.

The first one is--[redacted]

usually you have an owner of a property, who is a drug dealer or a part of the family drug-dealing. What happens? If that person, the drug-dealer gets killed or that person is extradited, immediately the other drug-traffickers take control of those assets. They dispossess the families. They forcefully make them to transfer the land to them, and it remains within the control of the criminal group, [redacted]

[redacted]

The UIAF, which is the Colombian Financial Intelligence Agency has detected a series of red flags of money-laundering, what are those? operations that are performed between people that have an unequal economic purchase power. Successive sales of the same asset within a very short time frame, signs that the supposed buyer or seller is not the material owner of the land. Signs that the person is not acting on his or her volition under the true interests of the interested party is concealed. Natural persons that

pay in cash--and that's millions--on behalf of a client and, unfortunately, the use of trust structures.

You heard the Claimants refer to the commencement of the Asset Forfeiture Proceedings in this case as if they had come out of the blue, and it's the word, the result of the volition of a sole prosecutor who had this idea, "I'm going to target this asset." Nothing can be far from the truth.

So, on 3rd July 2014, Mr. López Vanegas, whom we know that through Sierralta López and Compañía had bought, in 1994, this plot of land, a part of which is now the Meritage Lot. Up here, and who had been extradited to the U.S., files a complaint before the Attorney General Office, this before the prosecutor that is specialized, that's Prosecutor 24, extension is not that Prosecutor 44, that's Ms. Ardila--24, that specialized on the Oficina de Envigado, and he alleged that he had been forcefully dispossessed of the land where the Meritage Lot is being built.

Prosecutor 24 hears and takes the

Declaration of Mr. Vanegas and asked him why is it that you're just announcing this. And he says--and this is a fact that the specialist at Oficina de Envigado know, because it's only now that the people that had been involved in this forceful transfer are either dead or had been extradited, so he felt at that point he could claim. Whether the question is--of the story about the kidnapping, I will go back to that. That's not the question. The question is this person appears and claims that the land is his.

The Prosecutor 24 sends the investigations--and you won't see that here but it sends the investigation--to asset forfeiture, the asset forfeiture that were being carried out in regard of the assets of Mr. Héctor Santamaria Restrepo, aka "Perra Loca."

Later on, you will see that the process of Mr.--in respect of the Meritage and the one of Mr. Héctor--sorry, Héctor Restrepo "Perra Loca" were divided. But one important thing here is you heard this morning the Claimant saying there was absolutely no sign of Iván López Vanegas in the title. You will

see, and you have before you, the deed of 1994 where Sierralta López pursuant to which Sierralta López acquired the plot of land, and you will see Mr. López Vanegas's signature as the representative of Sierralta López. Why? You will say, they say that it didn't appear, and I will go back to that later on in the due diligence because the due diligence was patently insufficient. The due diligence was limited to ten-years and please remember, I say the statute of limitations in Colombia in not subject--sorry, the asset forfeiture action is not subject to a statute of limitations.

So, if you see here, we have one of the red flags, assets that are linked, directly or indirectly, to criminal groups, in this case the Oficina de Envigado.

What happens?

Again, the Claimants will tell you that this was Ms. Ardila coming out of the blue without any more information and just saying there has been a kidnapping, which then they alleged --it was demonstrated that didn't exist, and I'm going to

initiate Asset Forfeiture Proceedings. No. Before that, the Judicial Police of the Superintendence of Notaries and Registry went and studied 27 records of property, went through 19 notary offices in Medellín and reviewed 52 deeds regarding in connection to the Meritage Lot.

Having completed this exhaustive investigation, the judicial police found out that there were serious irregularities in the deeds, including signatures that seemed forged. That was the case of the Sebastian López Bentacur, the son of Iván López Vanegas. Alterations in the deed, lack of properly given attorney powers, the errors in the deed, points at which the attorney that appeared --was appearing on behalf of the buyer and seller, and also grantors that appear as unofficial representatives of the parties.

What was the hypothesis that the judicial police of the Superintendence of Notaries and Registry --understood was happening in this case? There has been a criminal organization that had been forcing to get--had been trying to get property

rights, valuable realty property located in strategic areas of Medellín and Antioquia have resorted to extorting, kidnapping, coercing--that's forcefully making the owners, the people that appear as owners, transfer the properties and falsifying the signatures. And they have been using front men to give the appearance of legality. And this is consistent with the crime of money-laundering. So you see here. Second check, persons are not acting of their own volition and the identity of the people behind these transactions is concealed.

We come to 22 July 2016, and here before that--on fifth--sorry, that's the Resolution of 22 July 2016, you have seen today that Claimants say, well, if you look at the--if you look at the--at the way the Precautionary Measures were imposed, they came in August, they come out of the blue, and they didn't give this Resolution. Now, they're saying they had a Resolution before. Well, that's how it works. There was a Resolution, and the Measure to impose the Precautionary Measures on the Meritage Lot, and then on August 3, they were imposed.

Now, why were they imposed? And why was it that the Claimants weren't called to say anything before they were imposed? Because when they're imposed, it has to be--obviously there's no previous at--but--notice that they're going to be imposed. That's the whole point of the Precautionary Measures. And why--why did they consider it necessary and urgent? Because this lot of land, there was a project that was being built, there were units that were being sold to purchasers. The whole--the whole structure was--well, the whole--what was going on was subdividing and subdividing, and there were units that were being paid by people who will be in bona fide being sold this. So, wonder why it was necessary and urgent.

You will have heard the Claimants saying, well, no, what the Fiscalía--the Attorney General's Office should have done was attach the fiduciary--the fiduciary rights. That's not how it works. What's the asset that is tainted? It's the Lot. By law, it's the Lot that needs to be attached.

Further, imagine if they had gone and

attached the fiduciary duties. The building will have--the construction will have continued, and then what? And then, they will have to reverse everything, and--and when it's finished, say, well, now, you--you will have to be--you have not an opportunity to--to allege that you didn't have before. I mean, it just doesn't make sense. It's the--it's the--it's the property lot that has to be attached. It's not the gains of the people that have been transferring, and it's not the fiduciary lot--rights.

Now, Ms. Ardila, who you have heard mentioned several times here, she didn't stop here. She continued with what she should do under the law. And the law--what the law requires is for the prosecutor to collect sufficient evidence to reasonably infer that there's absence of good faith. There is no requirement at that stage in the proceedings that she proves that they are good or bad faith. In fact, that's not her--in her remit. That determination is not in her remit. What she has to do is say, I have collected sufficient evidence, and I can infer there is no good faith of the third party

holders.

But in any event, what does she do? She starts investigating further and she calls to the several people in the chain of title to speak and to interrogate them about how this transfer happened.

The first one is Mr. José Varela Arboleda who appears as the purchaser--first purchaser from Sebastian Lopez Bentacur for the Meritage Lot, and demonstrate that he doesn't have the means, he's a fruit street vendor. Mr. Sebastian and Mr. Varela Arboleda further state that he was forcefully taken to the notary, and made signed some papers and was told to shut up, not to say anything to prosecutors, to keep it quiet.

She then, Ms. Ardila, interviewed Mr. Cardona, who had purchased the land from Mr. Arboleda who says, "I made no payments, though I appear as the titleholder, I made no payments for the Lot."

Once more, she goes to Ms. Tatiana Gil, who also appears in the chain of title, and she says, "it was my partner, Guru, whom you have me heard mentioned

before, who actually had the property, and my name was just put there basically, but I didn't have the money, and I didn't put the money."

And then, [redacted] You will heard from the other Party saying that was a fake story of kidnapping. Whether it was kidnapping or not, it's irrelevant. The truth is, what--what's important is this was a Lot that was--that belonged to Iván López Vanegas, a drug-trafficker, [redacted] We are talking here about the illicit origin of the asset, and that's not in discussion.

So, you see hallmarks, we have again insufficient economic power and people acting as frontmen.

Thereafter, and in her investigations, Ms. Ardila Polo, again speaking with the--one of the frontmen, in this case frontwoman Tatiana Gil, hears that in fact it was Perra Loca at the end who bought from Tatiana Gil and Guru their property and paid in cash. Once again, hallmark of money-laundering.

And we come to the other big hallmark and red flag, and it's the division and subdivision and then reintegration of properties in--that we can see with the Meritage Lot.

I want to stop here a moment because the other Party has told you how come that the--that Colombia has gone and has forfeited--or was in the process of forfeiting because it has not, yet--we'll see if that happens--the Meritage Lot but--but they have not pursued the other plot of land. So, we're taking here the--with the minor alterations, the image that the Claimants show you before. And you will see that at the beginning of the chain, you have two companies: Sierralta López Compañía, and you will have Entrelagos Orozco Vanegas Company. Which the two of them acquired in 1994, land--and you see the big

Lot there. One had 75 percent of interest, the other had 25 percent of interest.

If you continue on the line, you will see that there's several subdivisions back and forth, property consolidates, and yes, the properties go through the--through the same frontmen. But at one point, they divide and you will see Lot--Lot A1, Lot B, and this is 2006 and 2000--2006, sorry, and Lot A.

The Meritage Project is being built in what will be Lot A and Lot B.

Lot A2, however, which is why they refer as the--what's the--neighboring property, they are saying why Colombia didn't pursue it. That's not correct.

[redacted]

One important thing: This Lot, it's combined of assets that are--or money that is tainted

with drug dealings and money that is not. So far, there's no evidence that Entrelagos Orozco Vanegas, who was owned by the half-brother of Mr. López Vanegas, was involved in this--

PRESIDENT SACHS: I'm sorry. This is too quick. I don't understand that. Because, I mean, if the Lots were divided in 2006 into Lot A1 and Lot B, these are the two Lots that became the ground for the Meritage, and to Lot A2, the Claimant was saying the problem was the same. I mean, if you go down the chain of property, and you start with '94, as you told us, wouldn't that be the same for that Lot? That was their argument.

MS. HERRERA: Except that it was more--

ARBITRATOR PONCET: And to add to the President's question, if I may, I understood you, but I may have misunderstood. I understood you to say that Lot A2 was actually put under attachment as well, or was it not?

MS. HERRERA: No. No.

So, on the first point, Lot A was partly--if you go at the beginning of the chain, you have 25%

Entrelagos López Vanegas. Nobody has said that that money comes from an illicit source. Then, it's all combined, then you go out to Cardona, where you see there--where the--again--

PRESIDENT SACHS: I'm sorry, even though that Mr. López Vanegas was the legal representative?

MS. HERRERA: By the Sierralta.

PRESIDENT SACHS: Yes.

MS. HERRERA: Not of Entrelagos--.

PRESIDENT SACHS: Oh.

MS. HERRERA: Vanegas.

PRESIDENT SACHS: But that was Jaime Vanegas, the half-brother?

MS. HERRERA: Their half-brother.

PRESIDENT SACHS: Yes.

MS. HERRERA: Correct.

PRESIDENT SACHS: Okay. So--but he's not suspicious, though?

MS. HERRERA: There has been no information or any kind of suspicion of drug-trafficking or illicit activities by Mr. Vanegas--the half-brother, Jaime Vanegas Orozco.

PRESIDENT SACHS: Okay. But that ultimately is--is it relevant? Because--

MS. HERRERA: It is.

PRESIDENT SACHS: Because in 2000--what was it--the Lots were merged again into one?

MS. HERRERA: That's correct.

PRESIDENT SACHS: So--

MS. HERRERA: That is correct.

(Overlapping speakers.)

MS. HERRERA: Yeah, that's correct and then they are divided.

PRESIDENT SACHS: Yes.

MS. HERRERA: The problem is that there is a percentage that it has no illicit--illicit origins. So, when you see Lot A, after we divide, yeah, part is tainted, part is tainted because it came from part of the Sierralta plot, but part is not.

So, what happened at that point is Ms. Ardila opens another investigation and says, please investigate and--

ARBITRATOR PONCET: I'm sorry. I'm sorry.

MS. HERRERA: Um-hmm.

ARBITRATOR PONCET: I haven't--I haven't understood.

Please start again from the division of Lot A with the 25 percent going to Cardona and the 75 percent going to Luis José Varela Arboleda and explain why this is relevant to what happens next.

MS. HERRERA: What is relevant here is that although these lots are combined on Cardona, you have part of that money that goes to the Lot: 75 percent that is from illicit origin; 25 percent that is not.

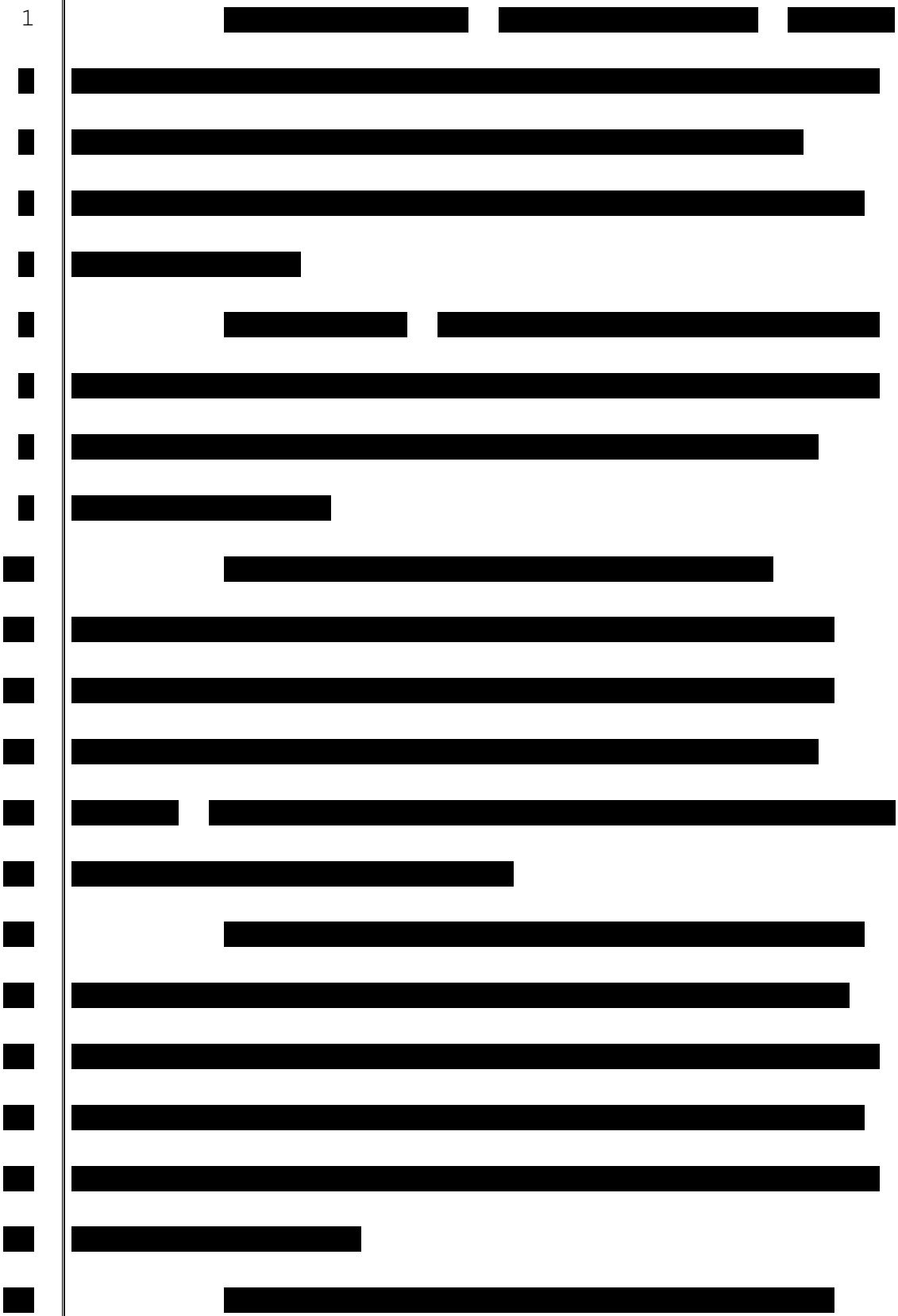
ARBITRATOR PONCET: Why is it from illicit origin?

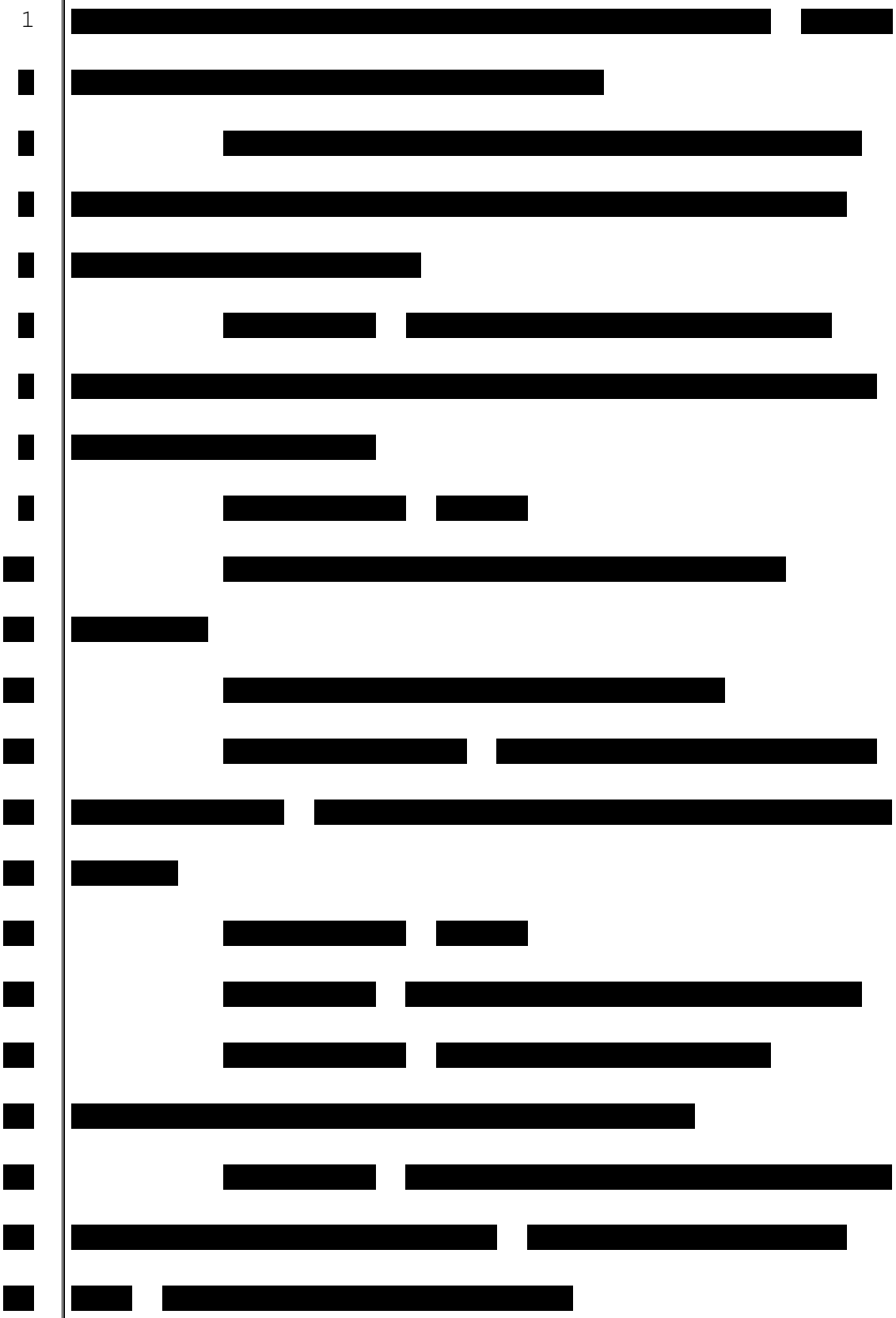
MS. HERRERA: The one Sierralta Lopez is of illicit origin, the one of Vanegas is not.

PRESIDENT SACHS: Because it was only the half-brother?

MS. HERRERA: No, because there's no record of him being involved in any drug-trafficking activities.

Then, you have--you go to Cardona, and you see that it's subdivided again; right? In different Lots: Lot A1, Lot B, Lot A2.





[redacted]

ARBITRATOR PONCET: I'm sorry, since we're stopped anyway--

PRESIDENT SACHS: Sorry for that.

ARBITRATOR PONCET: --I understand the point that A2 was not attached because as opposed to A1 and B, it was not being parceled out to acquirers. That's what you're saying, as of August 2016; right? What happens after that with A2?

[redacted]

[redacted]

MS. HERRERA: It was not attached. Later--

ARBITRATOR PONCET: Why not? I mean, if the origin is just as dubious as the other one, why is it or how come is it that one is attached and the other one never gets to be attached? I can understand the point if there is urgency, but the urgency hasn't lasted from 2016 to 2022; right?

[redacted]

[redacted]

[redacted]

ARBITRATOR PONCET: I understand that it's complicated, and we all know, you know, there are some people in this room who do have some experience with money-laundering matters, and we know how difficult it can be, but still if you have a drawing that shows essentially that the origin is the same, so the funds at the source are the same, why is it that one part of the proceeds of this money-laundering, if it is, ends up being--never being attached? How do you justify that? I'm sure there is an explanation.

[redacted]

[redacted]

So, I continue here about the transformations of the plan and sub-divisions that is another hallmark. And we arrive then at the Provisional Determination of--

SECRETARY MARZAL: I'm sorry. I'm so sorry

for the interruption. The Interpreters are asking you if you could speak a little bit closer to the microphone.

MS. HERRERA: Okay.

We arrive to what is called the Provisional Determination of the Claim which is one of the stages in the initial stage before the Prosecutors.

And here, I would like to stop again and make clear that, contrary to what the Claimants had said to you, it is not true that Newport was not allowed to intervene. Once there had been the provisional measure, the Parties that had been affected by the Measures, and you have seen "affected" here in an ample way -that's the term, were notified of these proceedings.

You will also have heard that Ms. Ardila acted contrary to the law and due process because, allegedly, she did not give the copy of the Resolution of the Provisional Measures to Corficolombiana. The way it works under Colombian law is the titleholder, which at that point was Corficolombiana, has to go to the Attorney General Office to get notified. When the

lawyer of Corficolombiana, Mr. Sintura, who you heard speaking of this morning, arrived, she was not present. He went, he had contacts in the Fiscalia, he went around and had another prosecutor tell the assistant of Ms. Ardila to keep the copy. That's what generated the incident that you have heard that the assistant was sanctioned, et cetera, simply it wasn't within her remit to give the copies if the Prosecutor of this case wasn't there.

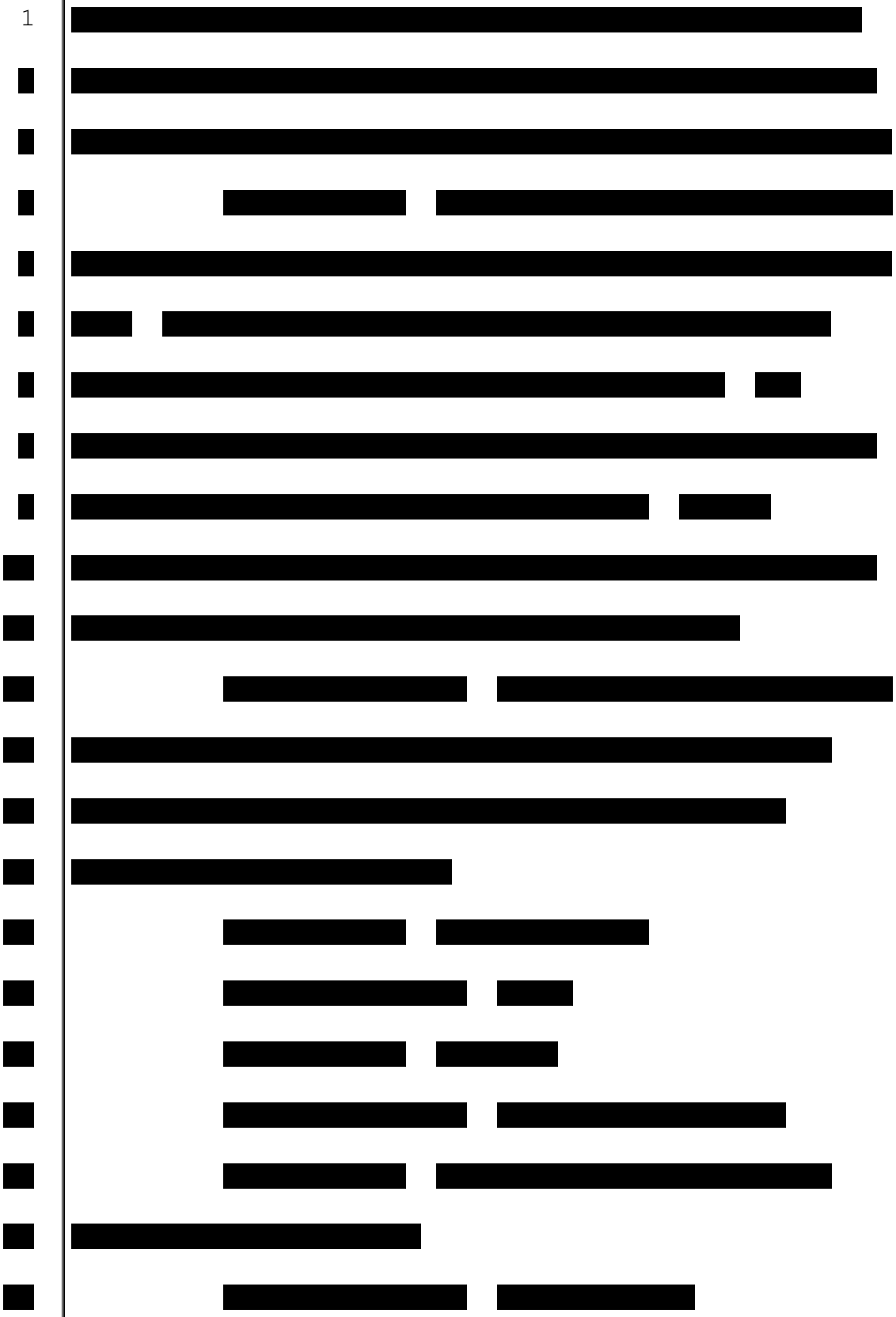
Now, Provisional Determination, prior to the Provisional Determination, Newport had been notified. In fact, it had presented three documents or petitions in which they claim to be bona fide buyers. It is not the obligation, and it's not what the Prosecutor has to say to determine and make a statement in the Provisional Determination as to whether they are or not bona fide buyers. It receives, it observes, if it continues to believe there are reasonable grounds to infer that there is absence of good faith, the Prosecutor continues the proceeding.

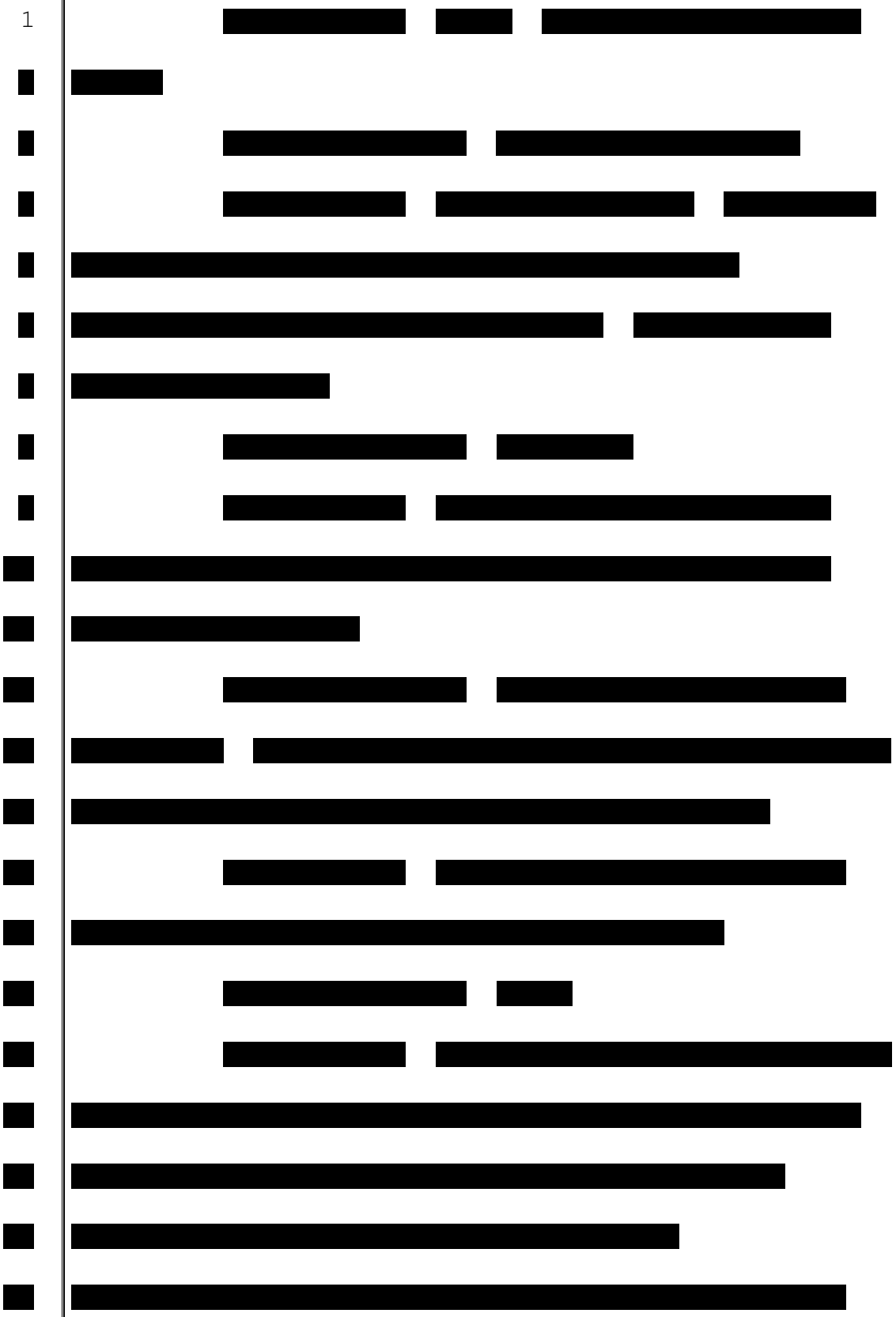
So, the Prosecutor, Ms. Ardila, issued the Provisional Determination of claim on three grounds.

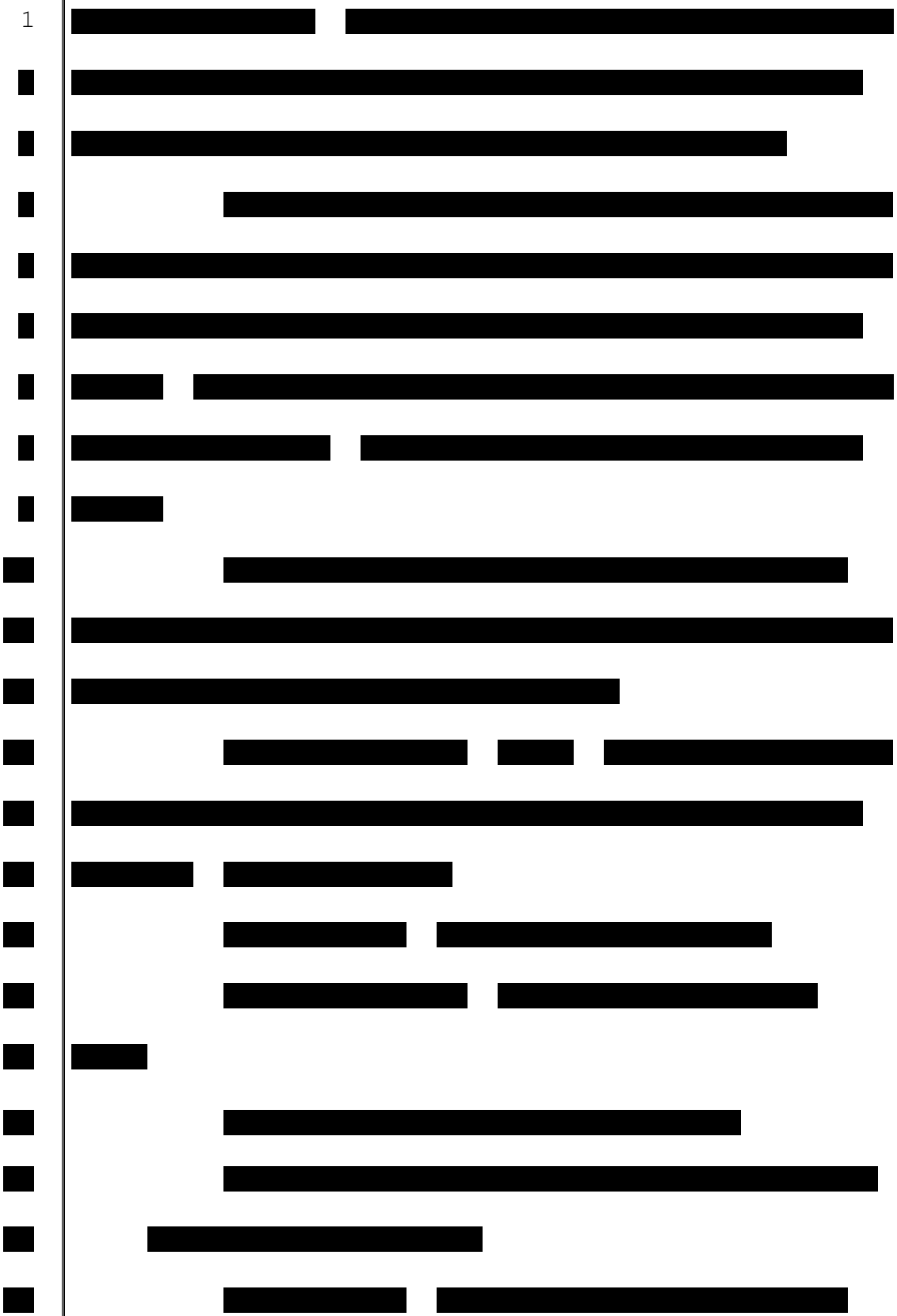
The grounds were that the Lot was directly or indirectly the product of an illicit activity. That it had suffered a series of total or partial transformation or conversions and, to put it that way, the illicit activities, and that there has been an increase in the assets of the owner at the beginning that can only be explained for illicit activities.

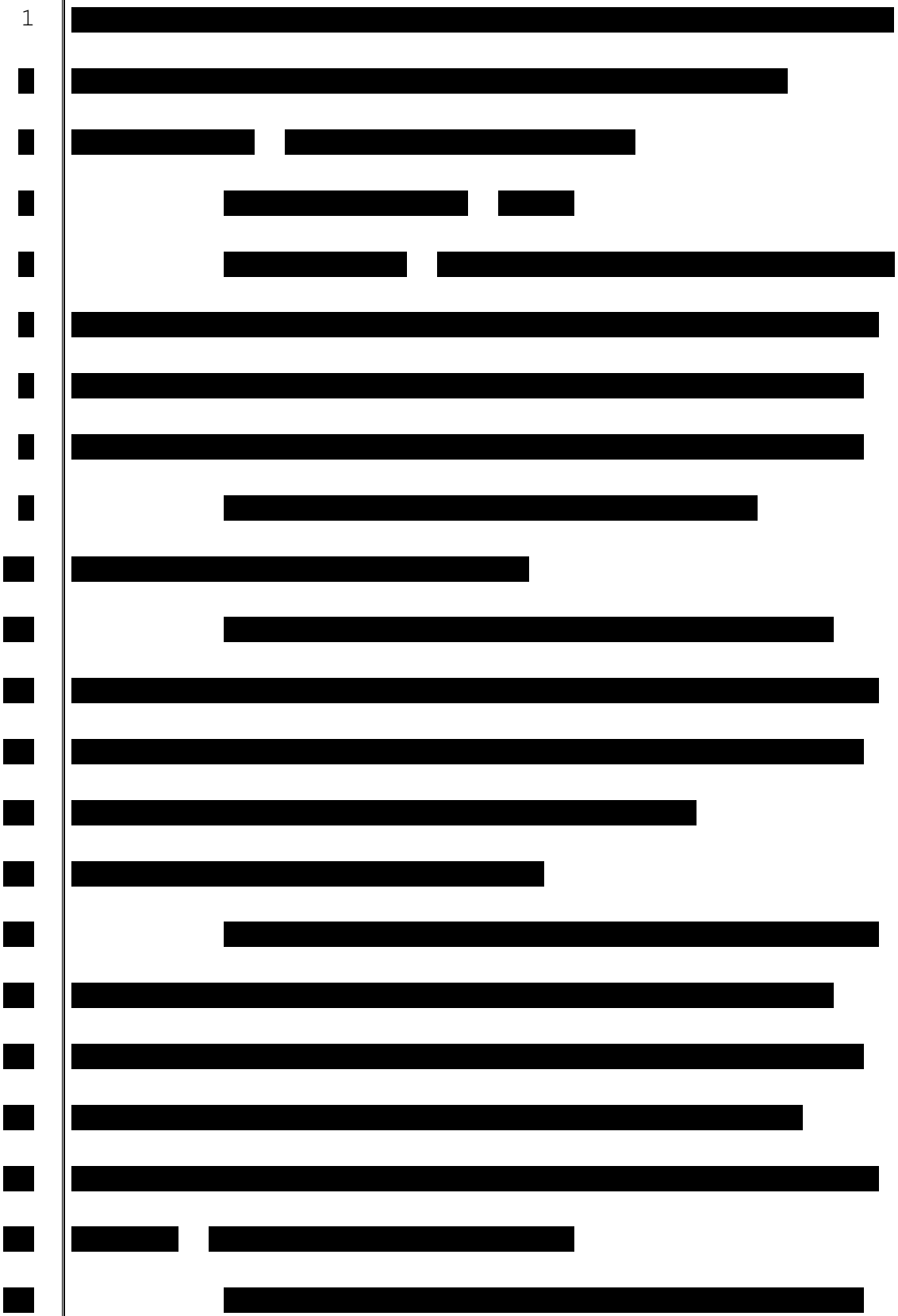
These were the basis on which Ms. Ardila started the proceedings and having notified Newport, having included them as an affected party, the proceedings continue.

[redacted]









[redacted] Under the law, she had to do something. You have heard the Claimants say that Newport had been denied due process, and that's not true. They have had multiple opportunities to present their case. As I was saying before, there are two phases in this proceeding: The initial proceeding, the initial phase or stage before the Prosecutors. During that period, the Claimants were notified and were included as affectados, and they presented, in fact, several petitions. In fact, if you look at the--we're going to move quickly to the Order of the Requerimiento. You will see here, you will see here in the little square, that Mr. Caro, which is the Prosecutor that took the case that was

reassigned to the case after Ms. Ardila, includes Sociedad Newport as affectados, so it is not true that they have not had an opportunity to participate, and they were excluded from the exception of these proceedings from the process.

Now, another point that is important here is it's not true that there has been no controls of the actions or the decisions of Ms. Ardila. Once again, you heard that Ms. Ardila just took the decisions discretionarily and ran with them. Now, Ms. Ardila, as regards the Measures taken--Ms. Ardila regarding the Precautionary Measures, were a control by the Courts, Corficolombiana, which is the one that has the title, requested the legality control to the Courts, and again, they are formal and material. They're not just formal. And again, unsatisfied with that Decision, Corficolombiana appealed the Decision of the judge of control, and the first Specialized Asset Forfeiture, the Tribunal, sorry, not only the Specialized Asset Forfeiture judge, but also the Tribunal both stated that there had been no violation of due process, and that their prosecutor has gathered

persuasive elements of proof which make it possible to establish illegal activities based on which it concluded that it was necessary and urgent to order the Precautionary Measures.

And furthermore, they were needed to avoid ongoing trade for transfer of the property to third parties.

The Tribunal in Bogotá, which was the second instance, also found that it had been sufficient evidence to impose the Precautionary Measure. And importantly, noted that the appellant, Corficolombiana, was getting ahead of the debate because Corficolombiana, as the Claimants have done with Newport, insisted on being recognized as the bona fide without fault third party. As I have said, that's a determination for the judge, not for the Prosecutors.

You have heard now what happened in the face of the--on the trial phase of these proceedings, so once the Prosecutors present the case to the courts and the last of the acts in that chain is what is called the Requerimiento, or request for the asset

forfeiture. And at the point you have the two adversarial parties or several in the trial stage.

When the judge of the Second Circuit of Medellín obtained or received the request from the Prosecutors, it accepted it, three times it rejected it for formal reasons, but then it accepted it, and then analyzed who are the affected parties that are going to receive in this trial phase. And what was the logic and the decision of the judge?

So, the judge looked at the law, this is Law 1708 of 2014, and his interpretation was: Under Article 30 of the Law 1708 of 2014, we see that for those cases where what is being attached is movable or immovable property, the affected party has to have rights in rem. If he has personal rights, if he has contractual rights – other kinds of contractual rights, that's not enough. It's not rights in rem.

So, the Judge of the Second District in Medellín based its decision on this. Who had title at that point? Corficolombiana as trustor. Who was it who appeared as a titleholder in the deeds, in the register? Corficolombiana as trustor. So you can

agree or not agree with the decision of the judge of first instance, the Second District of Medellín, but his interpretation was based on law, and he spent multiple, multiple, it's a very long and recent decision.

ARBITRATOR PONCET: So, does that -

MS. HERRERA: Yes.

ARBITRATOR PONCET: Does that mean that, for instance, if one plot was about to be sold, actually it had already been sold to an acquirer, but title had not yet been transferred, or if there was a plot of land that was being financed by a bank, they would not be entitled to intervene under the law? Because obviously, they would have no rights in rem; right? They would only have personal title--

MS. HERRERA: And a strict interpretation of the law that apply, yes. And that's why afterwards, on appeal, the Tribunal --Superior Tribunal of Bogotá gave another view and said, I'm giving an extensive and open guaranteeing interpretation, and I'm going to allow Newport, who has signed a sales purchase--

ARBITRATOR PONCET: That's the 2022

Decision?

MS. HERRERA: Yes, that's correct.

ARBITRATOR PONCET: Which unfortunately, comes six years after the attachment; right?

MS. HERRERA: In that period, correct. But in that period there is no actual--there's just the appeals, there is no actual, at no point is Newport cannot intervene. In fact, there are continuous appeal and, of course, Corficolombiana too. And yeah, it comes five years later.

I'm going to stop for one moment, what's the concept of "bona fide" without fault in Colombia? And this is not just bona fide general. It's a required very--requires a high threshold of due diligence, so it requires an extensive and exhaustive analysis of the title.

And in particular, when you're buying in an area that you know and it's known to be a place where there has been violence, drug-trafficking and dispossession of lands.

We're going to look at the due diligence on which the Claimants rely. They rely on a title study

by Orteo & Palacio that was commissioned by Royal Property Group. That study was wholly insufficient. It covered 10 years. And as a result of that limited analysis, you will see they request for information that then based on that study, Corficolombiana presented to the Asset Forfeiture Unit was also incomplete. Had Orteo & Palacio conducted a full investigation, they will see as we have seen before and contrary to what the Claimants say, that indeed there was Iván López Vanegas appeared as a representative of Sierralta and was, indeed, if it they had just done a Google search, they would have seen that he's a drug dealer.

I go now to the wrongly-called certificate of clean title. The Attorney General's Office responds to--

ARBITRATOR PONCET: I'm sorry just to make sure I understand it. I apologize for repeated interruptions.

MS. HERRERA: No, no.

ARBITRATOR PONCET: Your point is that finding Iván López Vanegas as a signatory on the deed

was sufficient to make the purchaser, that is Mr. Seda, to put him in a situation where he should have suspected an unclean origin of what he was being--

MS. HERRERA: That's correct.

ARBITRATOR PONCET: That's the point you're making?

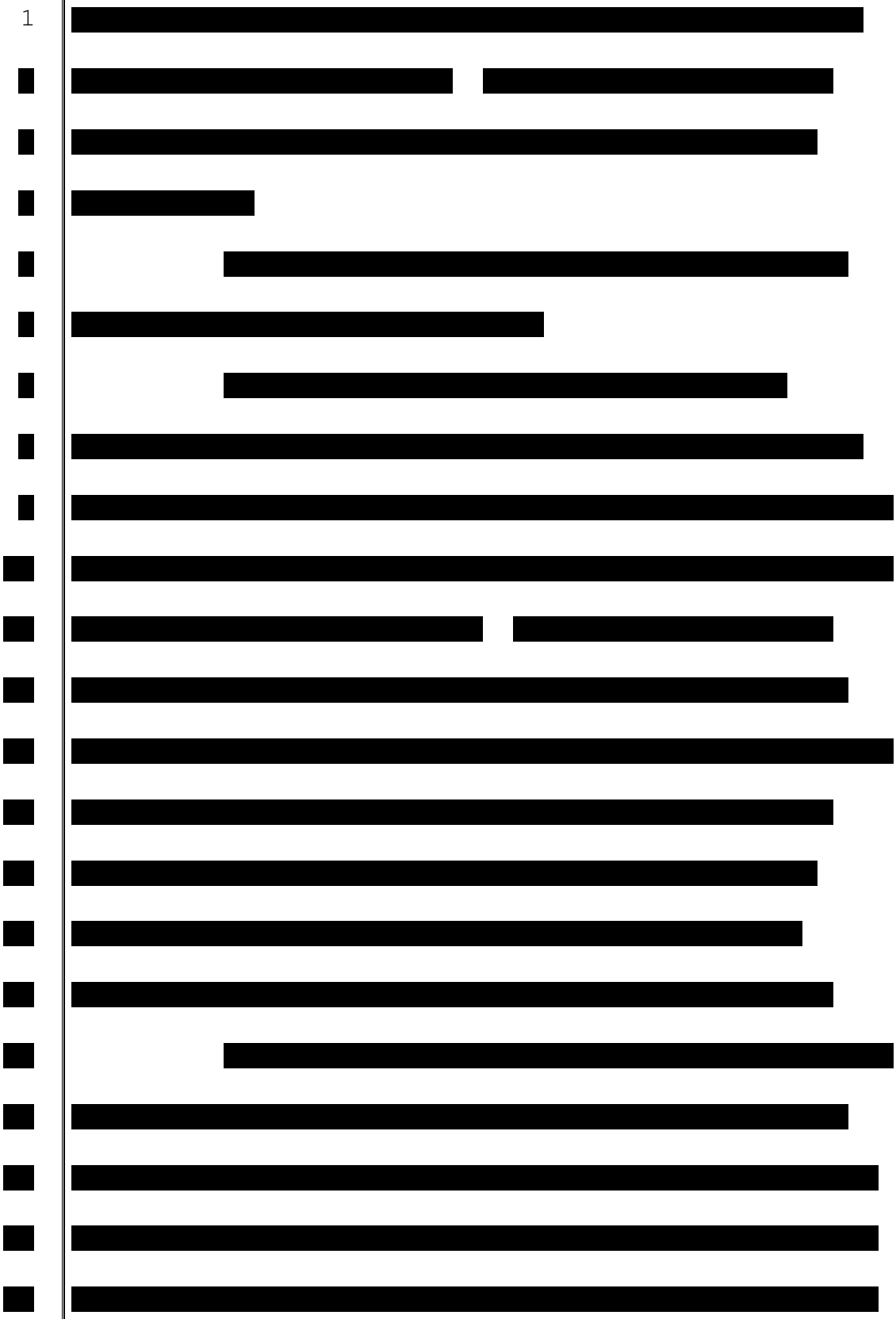
MS. HERRERA: That's the point, yes.

The Claimants rely on the several--two, actually, two requests of petition rights that were presented by the Claimants and actually Corficolombiana to the Attorney General's Office as regards whether there were criminal proceedings in connection with the series of people that appear in the deeds. The problem is that the list of people here did not include Sierralta López and Compañía and Iván López. Why didn't it include it? Because it didn't go back more than 10 years, and they didn't look that the company, this company that appears as Inversiones Nueve now, had changed its name and that was in the deeds, had changed his name from Sierralta López and Compañía and whose representative was Iván

López Vanegas. But the other point is it is not for the Fiscalía to conduct the due diligence, and there is no certification of clean title. The wording on the responses to the rights of petition of the Fiscalía are very clear. They say, in the information that we have these units, there can be other units investigated, as of today, we don't find these names. The Claimants have told you that now the wording of these responses have changed. Yes, it has changed because of the abuse. It has changed but not significantly in the terms that it was circumscribed. It was clear just what we have at this moment, the information we have, and remember, asset forfeiture proceedings don't have a statute of limitations.

ARBITRATOR PONCET: But it is somewhat reassuring to know that a list of people are not on the A.G.'s, on the Attorney General's hunt list, right? It is reassuring.

[redacted]



[redacted]

Now, you were asking about the obligations of Newport. Newport had a high level, a high threshold of obligation of checking with whom they are dealing and to try to comply with the rules, which it didn't follow, and you could hear more of this. You will be able to hear more of this when you also hear of the analysis of the applications of the buyer from Dr. Reyes.

One point that is an absolute breaking point in this proceeding is, Mr. Seda, by his own admission, says that López Vanegas contacted him in early 2014 claiming to be the owner of the Meritage Lot. Mr. Seda says that he asked one of his lawyers, Juan Pablo Lopera, to check who Mr. López Vanegas was, and the response was he's a drug dealer. What did Mr. Seda did? Nothing. He said he went to

Corficolombiana, he says he went to La Palma, we know now who La Palma is owned by, to say oh, don't worry. Frankly, if you know that there is a drug dealer that is claiming property here, you go back to the Fiscalía. He will say--the Attorney General he will say, oh, no, I didn't trust them, that doesn't excuse it. You know that there could be an asset forfeiture, and you know it by --for a fact. In case there was any doubt that he didn't know before, and assuming, which is not the case, that it was difficult to find before because in a Google search it would have come out, he knew in 2014. In 2014, no construction of the Meritage Project had been started. The contracts could have been rescinded, terminated and saved all this pain.

I go back again to one point that is important, and sorry to belabor it, but it's quite important to understand that it is not for the Prosecutors to determine who is a bona fide without fault third parties. The Final determination is to be made by the Court. The burden on the Prosecutors is to get enough--gather enough evidence to infer that

may not be bona fide in the persons that are claiming to be the buyers because there has been insufficient due diligence.

You would have seen the Claimants, in their Reply, heralding the decision of the Colombian Constitutional Court, C-327, and saying, you see the Constitutional Court now recognizes that our level of due diligence was not high threshold except that this Decision doesn't deal with assets of illicit origin but licit origin. Again, Dr. Reyes could explain much more in detail this point, and I'm sure the expert will explain it. The Constitutional Court does not pronounce itself on things that have been res judicata which is what is required in terms of due diligence when you're dealing with assets of illicit origin.

I'm going to move to the meetings that were recorded by Mr. Seda with the members of the assets--with the Fiscalía.

ARBITRATOR PONCET: Before you move to that, allow me one hopefully final interruption. Do I understand the Respondent's case as being that with a properly due diligence all sorts of alarm bells should

have rung because it was clear that this was at the origin and at a later stage tainted with very dubious people and very dubious money. Is that the position?

MS. HERRERA: The position is that the origin should have been made clear.

ARBITRATOR PONCET: I understand that, but go one step further. Is the Respondent saying that the dubious origin, the polluted origin, and the presence of dubious characters in the background would have been made evident by a reasonably well-performed due diligence and that, to this day, it is clear that there are dubious people involved? Is that what the Respondent is saying?

MS. HERRERA: The position is that due diligence would have revealed López Vanegas at their origin and a simple due diligence with Google who was a drug dealer. More difficult perhaps to see the other transfers, yes, but López Vanegas would have been found at the origin and being a drug dealer.

ARBITRATOR PONCET: Okay. And this is what triggered the August 2016 Decision, right? I mean, the Order.

MS. HERRERA: That triggered part of the investigation.

Now, in that process, there were cumulative evidence, so one thing is talking of what the Claimants must have found, and the other thing is what the Claimants must have found and what the Fiscalía has also found about the money-laundering.

ARBITRATOR PONCET: Okay. So, five years before now, we have the Fiscalía or the Attorney General determining that this group of plots is most likely polluted by all sorts of things; right?

MS. HERRERA: Correct.

ARBITRATOR PONCET: Now, we're five years later, why hasn't this land been forfeited?

MS. HERRERA: The one --You're referring to the adjacent one?

ARBITRATOR PONCET: Yes. Why not?

MS. HERRERA: I told you, the situation was that it was started, unfortunately, and mistakes happen. They look at who was--who were the list of owners of that property and didn't find illicit--

ARBITRATOR PONCET: No, no. I'm sorry. I

didn't make my point clear or you misunderstood me.

What I'm driving at is, if you have a procedure that starts on what seems to be fairly obvious elements, it should have been concluded, and it should have led to a final forfeiture within a few months, a year or two?

MS. HERRERA: The proceedings take their time. I'm not going to say they take time because their resources are scarce, but usually it would have taken about three years. What happened is it was appealed, and the appeal has made it longer.

ARBITRATOR PONCET: What is the legal status of the Meritage Lot today from a criminal point of view?

MS. HERRERA: There is no criminal question there, sir. It's a civil situation. So the Meritage Lot continues to be--

ARBITRATOR PONCET: Under provisional attachment?

MS. HERRERA: It's--yeah, under provisional attachment.

ARBITRATOR PONCET: Five years later?

MS. HERRERA: Yeah, until there is a determination of whether there are third parties that acted in good faith or not, but that's the Courts.

MS. HERRERA: Okay, so I'm go—

(Comments off microphone.)

PRESIDENT SACHS: Would this be a good moment to take the afternoon break?

MS. HERRERA: Yes. Thank you.

PRESIDENT SACHS: Yes?

MS. HERRERA: Thank you.

PRESIDENT SACHS: Okay, then we will resume at 4:00.

(Recess.)

PRESIDENT SACHS: Thank you. And maybe, by the way, if you could slow down a little bit for David. It's becoming a bit stressful, so let's please proceed.

MS. HERRERA: Thank you, Mr. President.

I wanted to go back quickly to the question of the duration of the proceedings and to show the timeline of the proceedings.

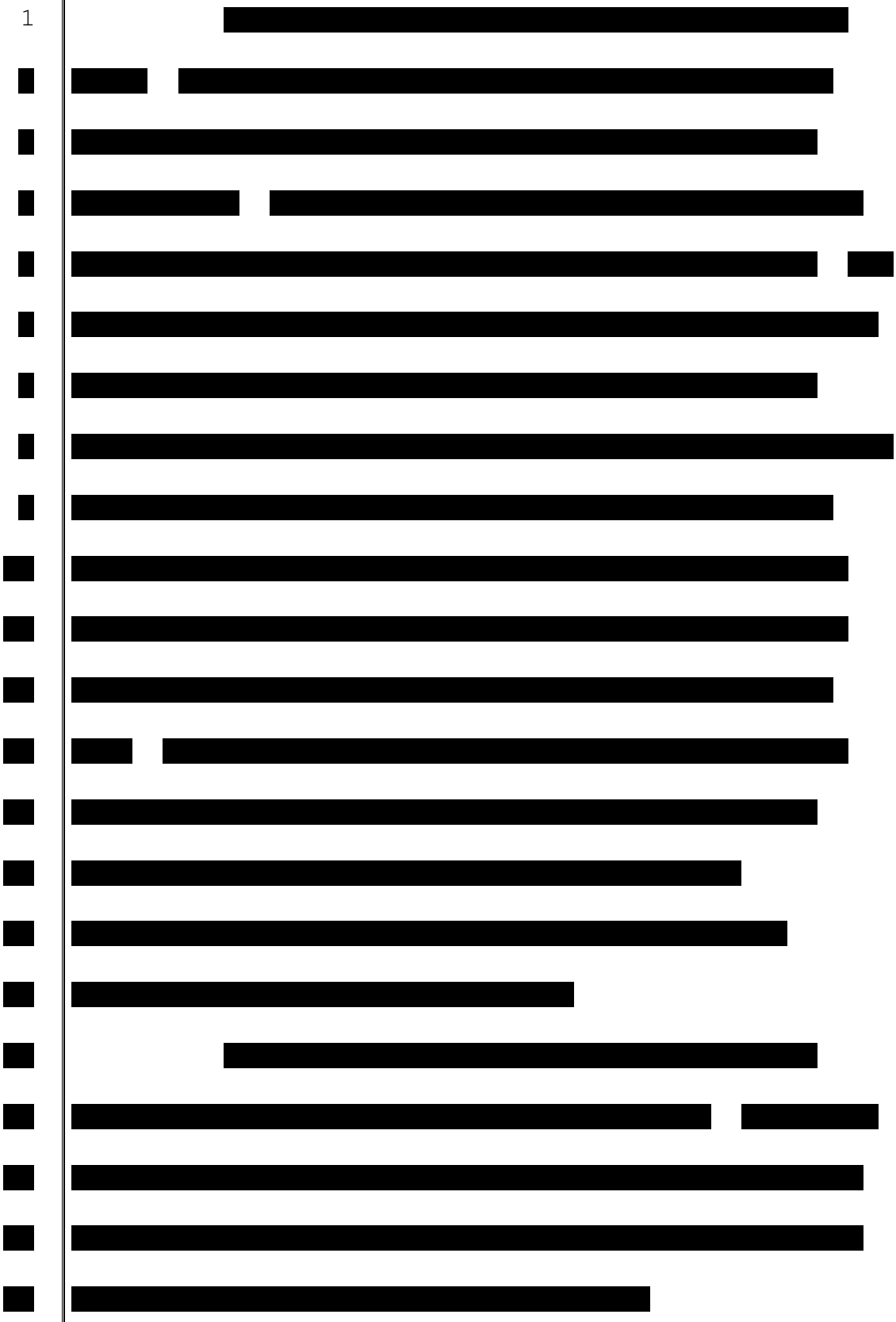
As I said, usually--and it's an estimate, if

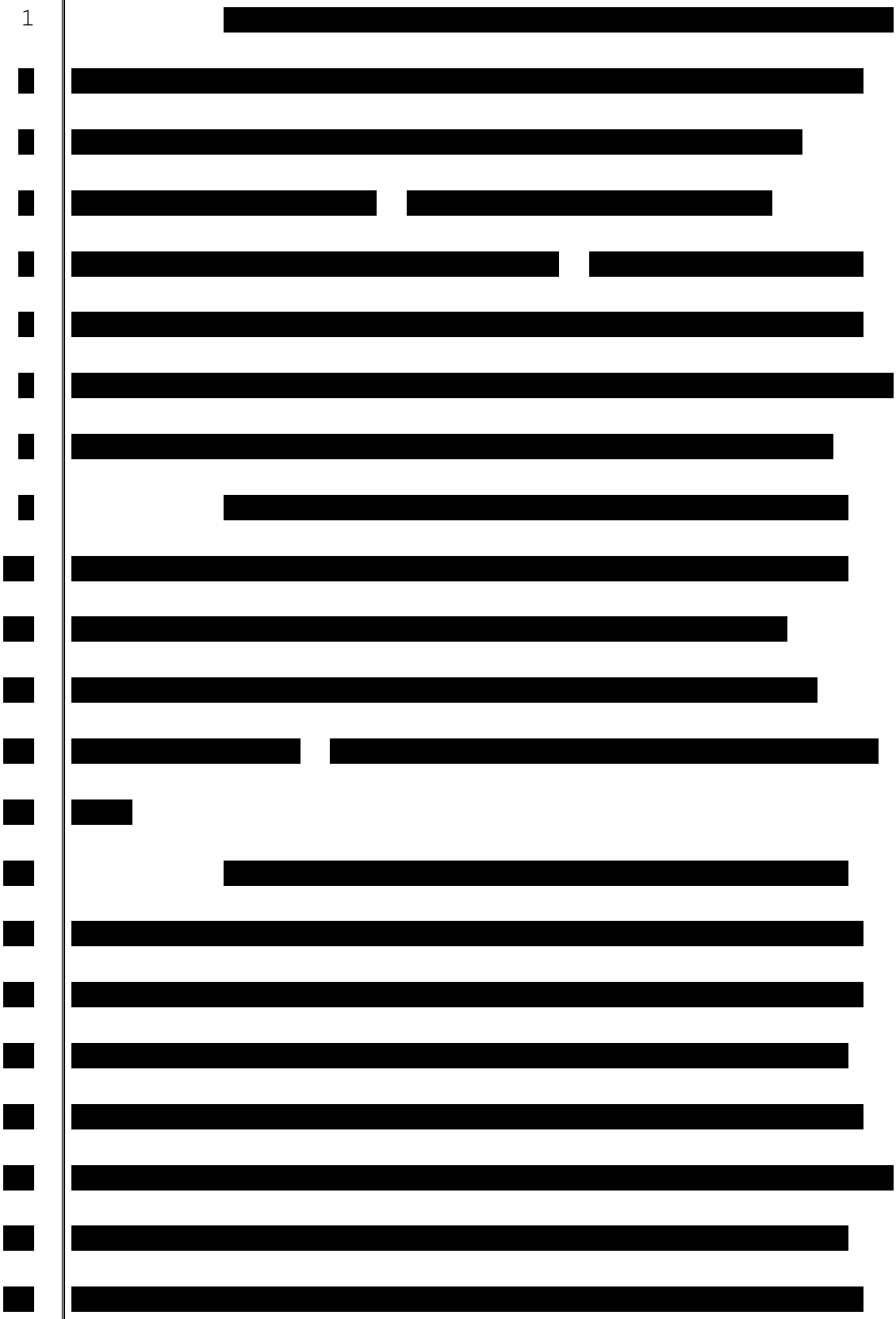
there's no appeals, one of these proceedings can take three years. Now, you have to bear in mind that these are--it's not only Newport and the Prosecutor here, you have Corficolombiana, you have the buyers that have been intervening and coming and presenting their cases. And, in fact, as you can see, the things were slowed down because of the appeals. When you see the dimensions of these proceedings, there are over 8,000 pages and--I mean, the record only, you have about--you have in it Exhibits twenty-two or four to 225. This is a massive, massive file. And unlike other countries or other more developed countries, it is true that resources are really scarce. The appeal, slowed this, and there are two appeals. There is appeal on the Decision of the Judge to accept the Claim, the requerimiento, and there was this appeal on whether Newport was an affected party or not. I just wanted to clarify that.

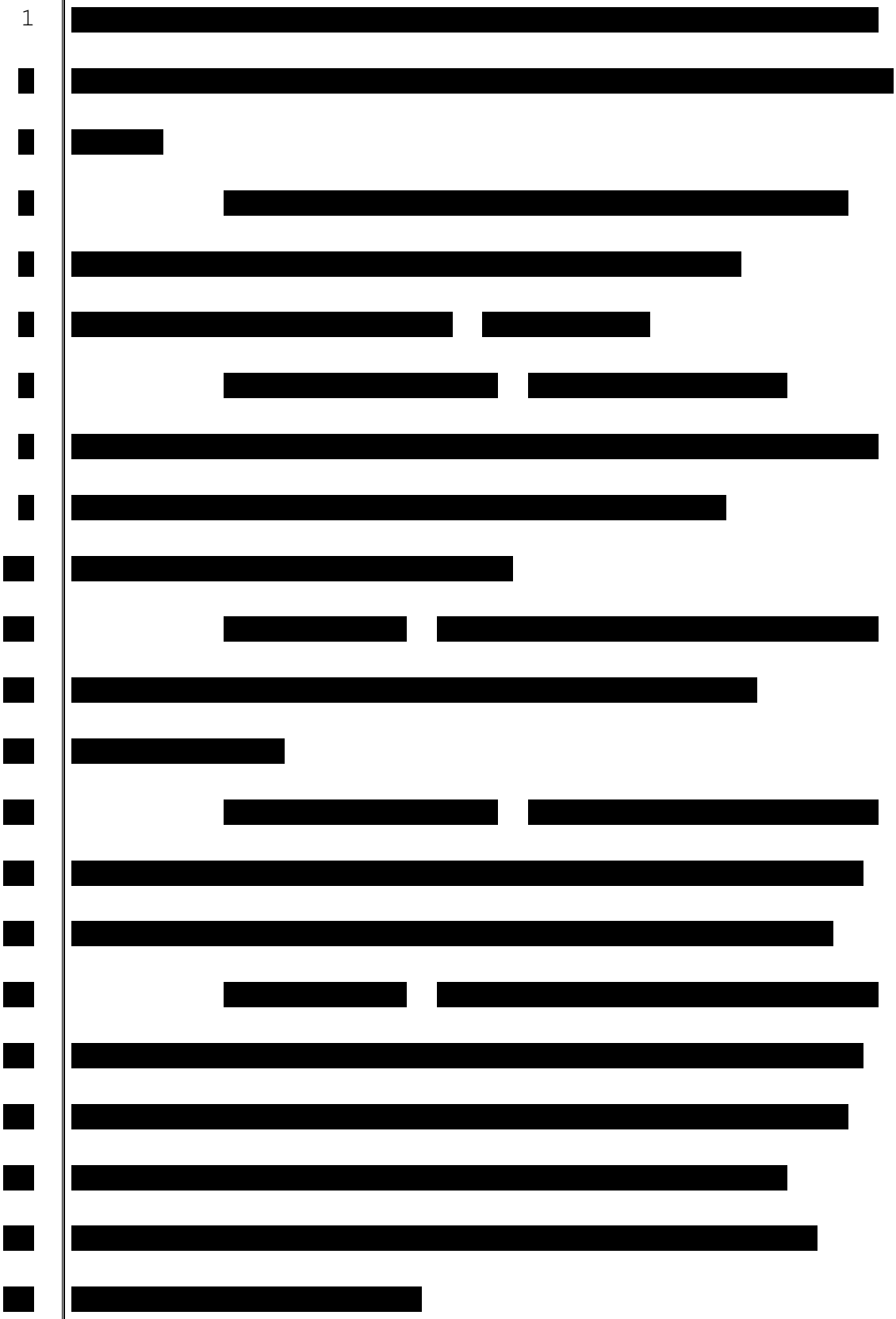
I'm going to go quickly to the point of the statements that the Claimants have referred to you made by members of the assets--sorry, of the Attorney General's Office. And first of all, I want to put

into context these meetings.

[redacted]







[redacted]

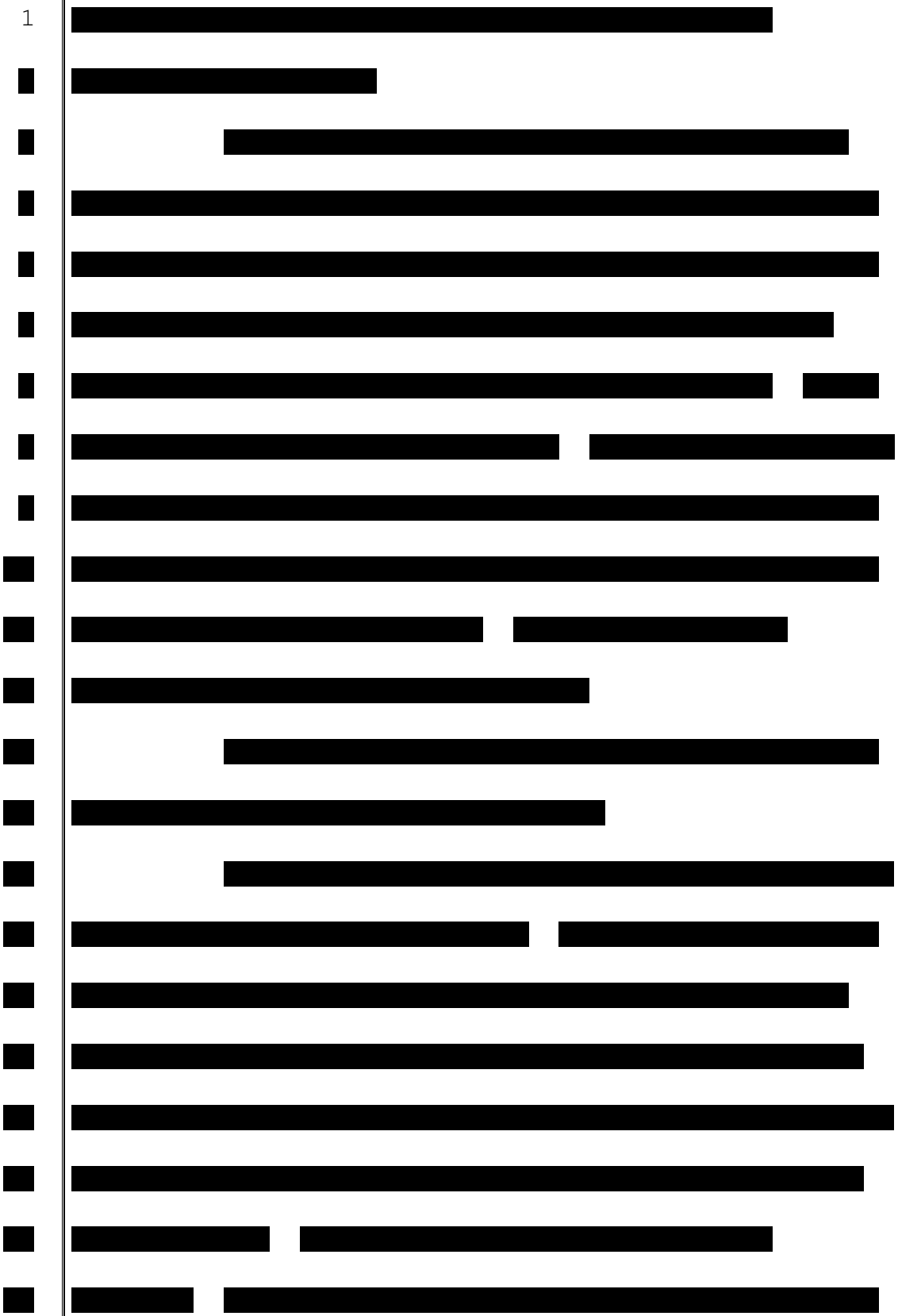
I'm going--you can see at the end the investigations where they stand. Of course, the Claimants will say, well, now, every time that an investigation is closed is because of this arbitration. Well, no, these are different

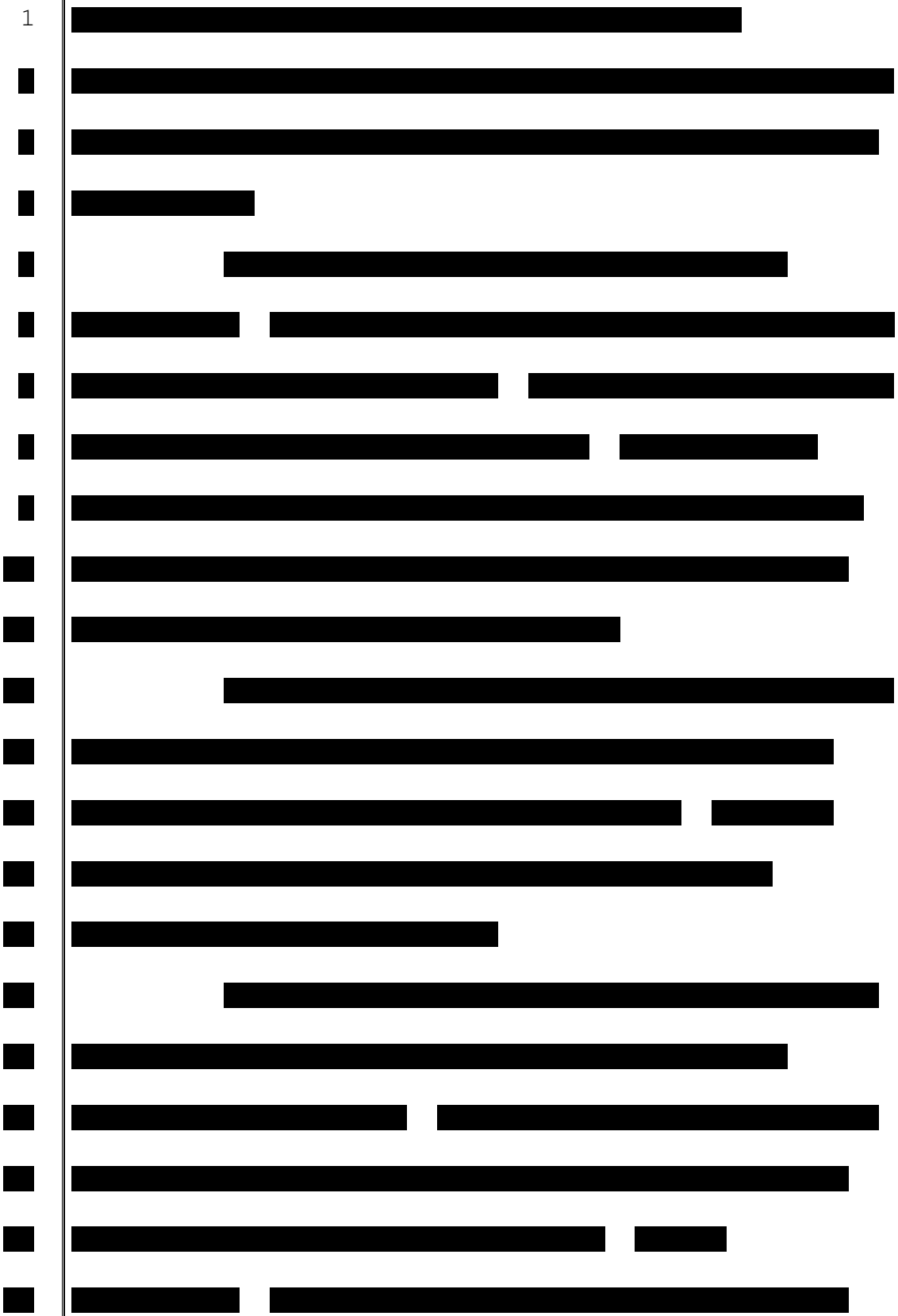
investigators, different prosecutors, and this is not a case of systemic corruption with everything is cleaned internally in the Fiscalía and put under the rug.

[redacted]

[redacted]

You will see also claims that he was not protected, that there are--this is disproved by the evidence. There were orders of protection issued by--to the police by the Attorney General's Office to protect him. [redacted]





[redacted]

Very quickly, as regard corruption, I won't go through the civil corruption allegations, but as the director said this morning, it just doesn't hold water. Why would the drug dealer be interested, drug trafficker Iván López, to have an asset forfeiture on his property, that will end up, at least for him, there's no chance to recover it. It just doesn't square.

As regards investigations of Ardila and Malagón, I must notice that at least four of those investigations were started by Mr. Seda.

Nothing has been found in relation to wrongdoing of Ms. Ardila. You will have in the back all the investigations what has been found. There has been no wrongdoing.

And, as regards the coincidence in time--and

I want to go here back to the timeline--what the Claimants allege were coincidences in time that supposedly will show that it was--that Ms. Ardila was in cahoots with Mr. Iván López. I showed you the early communications of López Vanegas when there was no mention of starting any kind of --procedure. It just says, "I will go to the media."

You have investigations that I referred to before by the Registry, the police, the judicial police, on the deeds, and that's April 2016. 18 April 2016, the case is launched. The case had been assigned on 8 April to Ms. Ardila.

Mr. Vanegas, when he filed the tutela that you refer, which is a request for protection because he was saying he was being dispossessed, comes later, 6 of May. You have a series of meetings in which Mr. Seda engaged in speaking to Mr. Iván López and his lawyers, including discussing switching--swapping properties to somehow compensate Mr. Iván López.

You have the Order of Precautionary Measures that comes before this so-called "meeting" when they say the negotiation chapter, it's closed.

So, coincidence? No. Coincidence if you don't look at what was happening at the Asset Forfeiture Unit.

I'm going to finish now and give the word to my partner, Yas Banifatemi, who will now address the merits. [redacted]

[redacted]

MS. HERRERA: If you can go to--back to the timeline, you can see on the lower part that I just showed--sorry.

ARBITRATOR PONCET: Yeah, I've seen that.

MS. BANIFATEMI: If I may?

PRESIDENT SACHS: Yes

MS. BANIFATEMI: Thank you, Mr. President, Members of the Tribunal. I will do my best to address

the very substantial parts that I have to address within the time that I have, not running through the slides. If I do, please let me know.

I will go back to, and frankly this is also why we asked for a longer Opening Statement because we have a lot to cover, there is a lot of misrepresentations from the other side, which we have to correct, and we will have seen it's difficult to cover everything.

So, this is really an opening. A lot of these we will go back to and also throughout this week with the witnesses and experts.

So, I will address now, first, jurisdiction, and I will start with the Essential Security issue.

Can we please move on to the next slide.

So, that is--you're familiar now with it--it's Article 22.2 of the TPA, and the first point we're making is that this is a jurisdictional matter. You know that. I will go through that fairly quickly because I think it's obvious, but it doesn't seem to be seen that way, so I have to go through the explanation of how this reads in fact.

So, under Article 31 of the Vienna Convention, of course, you have ordinary meaning of the words, right? So, Mr. Moloo referred a lot to preclude a party from applying measures, but he forgets the chapeau which is, first of all, a provision which is "nothing in this Agreement shall be construed to preclude", so "nothing in this Agreement" is also very important point. And then you have, of course, the entirety of the provision and every single word matters, which that the Party considers necessary for the protection of its own Essential Security interest. And, of course, there you have the footnote where the Parties have made sure to say what their intention is for greater certainty. If a party invokes Article 22.2 in arbitral proceedings, the Tribunal or panel hearing the matter shall find that the exception applies.

This is the self-judging nature of the provision that we referred to, and I will come back to it. So, but starting with the ordinary meaning, the words mean what they mean, and this is your starting points, but then you also have to look at the context,

and talk context matters, again under Article 31. And what you see is that this is found in the Chapter 22 exceptions. This is an exception to the applicability of all of the other chapters, right?

So, what is important here is that this is placed at the end of the Treaty. It's not placed in the "Investment" chapter; and so, it encompasses--because it's an exception, it encompasses the entirety of the Treaty, and that comes and confirms what you will have seen in the wording, nothing in this Agreement, so that is an exception to the application of the entirety of the Treaty, including, of course, Chapter 10, which is the investment protection.

Now, still on the context, moving to the next slide, you see that Article 10.2 very clearly says that if there is an inconsistency between Chapter 10 on investment and another chapter, the other chapter shall prevail. So that means essentially that when a party refers and relies on the Essential Security exception, this trumps everything else in the Treaty; again, that goes to the clear

wording of the provision itself.

One last word on the interpretation tools. This is the object and purpose of the U.S.-Colombia TPA, and this is, as you see in the Preamble, "promote broad-based economic development in order to reduce poverty and generate opportunities for sustainable economic alternatives to drug-crop production."

Here, if we are given the chance to produce some additional evidence, there is evidence from the time when this was signed that actually supports why this drug-crop production is a very important intention in the--sorry--objective in the intention of the U.S. and Colombia specifically because Colombia is engaged in the war on drugs.

Now, the next point I want to make is that again, under treaty law, you can compare the intention of the parties in this Treaty with other treaties that both States have entered into, and starting with the GATT Article, so on my Slide 114, I believe, you see that these--you have on the left side Article 22 of the U.S.-Colombia TPA, and then you have the GATT.

And what you see is the GATT refers to

Essential Security interests on the right hand, and then you have the limited list of three situations, and those are absent in the TPA between U.S. and Colombia, and that's why the self-judging, which is included in the footnote, is so important because, unlike the GATT, you don't have a limited series of situations where then a review or a check may be possible in relation to those situations. Here, in the U.S.-Colombia TPA, it says nothing. It just says its own Essential Security interests, and then the footnote says the Treaty --the exception applies. It suffices that the States invokes it.

If you look at my next slide, you see that the GATT--sorry, the TPA has a different provision as well, which is 22.1, which comes before 22.2, which is the Essential Security provision, and that is the general exception. And the general exception in the TPA refers to GATT, so it takes GATT into consideration, but that's not the case in the Essential Security provision.

So again, you have on the left side is the Essential Security with the footnotes in relation to

the self-judging nature has to be given effect, has to be read with effet utile, and you will see that there is a distinction in the intention of the Parties between the general principle and the Essential Security, and that has to be given effect.

What I cannot do now, I'm hoping at a later stage to do that, is to also rely on the travaux préparatoires, which we asked to provide to the Tribunal and the other side did not agree, so this is part of the discussion we will have later today, in relation to whether there should be a court review and whether the exception applies in the entirety of the Treaty and the travaux respond to that, and we're hoping to be able to refer to that.

Now, two--a final point on this, the self-judging character of this provision is supported by the interpretation of the tribunals. You will not be surprised on my next slide that this refers to GATT because we have the Essential Security exception in the GATT. And in the red box you see that there is the a contrario logic that has been put forward by the ICJ in the Nicaragua v. USA decision where they say

essentially you have Article 24 but for that, the courts can determine whether it has jurisdiction or not but a contrario Article XXI which we saw just a few moments ago which contains the essential security interest exception, you see that the ICJ refers to that cannot be construed because it has the--considers necessary for the protection of its Essential Security interests.

So, this a contrario argument, you see the Court says, I can look, I can determine my jurisdiction in relation to Article XXIV, but I cannot do it a contrario for Article XXI because it has that language "considers necessary for the protection of its Essential Security interests."

Some tribunals have had to look at this provision or this--provisions similar to this. So, referring first to CMS versus Argentina, you see that the Tribunal said that when there are, like the GATT, provisions where the State can invoke the legitimacy of extraordinary measures, States do so expressly, and these are the three first lines in CMS that you see on top, and there is a reliance, you see, on which it

considers necessary for the protection of security interests.

So, CMS-Argentina confirms that this language which it considers necessary means that it's self-judging. So when it is provided for expressly, it has to be given effect.

The Deutsche Telekom versus India, the Tribunal essentially decided that, in relation to the Treaty in that case, this wording was absent. That's why the Tribunal in that case decided that it can exercise its jurisdiction to determine whether or not the provision has been invoked in good faith because it doesn't have the "which it considers necessary".

So, you see that tribunals have given effect to this wording. The GATT Panel itself--the WTO--I'm sorry--panel itself on my next slide has in relation to the Russian conduct, the case of Russia-Traffic and Transit, has looked at that and said, well, there is a number of different interpretations possible. One is which it considers can be given effect, and so it's self-judging, but you can also have another interpretation which the WTO Panel adopted because

precisely Article XXI of GATT has the "which it considers" essential but with the limitation of the three situations which you do not have in the TPA between Colombia and the U.S., so that is to be given effect as well because you don't--in the U.S.-Colombia TPA, you just have a very general, no-limitation situation where the States can determine that what it considers to be its Essential Security interest it can invoke, and that will be the self-judging nature of the provision.

Now, the Claimants are saying that this is not admissible, we're too late and so on. So, a few words on this. On my next slide, this is--this is the Preliminary Response provided by the Claimant. You see their--say that there's no basis for which Colombia can invoke this, no new facts, no new circumstances, this is just a merits defense.

Okay. So, first of all, on my next slide, this is Procedural Order No. 9. You have decided that this is admissible. And because you have a duty to ascertain your jurisdiction, and may do so at any time, so you did not consider that it was appropriate

to reject the defense. So, that is decided, we can move on.

[redacted]

So that, we say, is a provision that we can invoke that goes to jurisdiction because, as you know, it says nothing in this Agreement and, therefore, the entirety of the Treaty can be trumped. It's enough to raise it. And as you'll have seen in the footnote, it's self-judging.

Now, assuming you want to nevertheless look at the merits of this question, you did--you want to determine whether--you want to say I can actually determine my jurisdiction, I want to know if--if--if there--there is matter here. So, what we say is that then the Tribunal is bound to apply to Essential Security interest. Why? Again, my next slide, is that you cannot do without the footnote. You cannot just ignore it as the Claimants want to. They don't even talk about it. They just ignore it.

So, it does say the panel--or the Tribunal panel here in the matter shall find that the exception applies. You are bound by this provision. You just cannot ignore it, so--so this is an extremely

important clarification, interpretation provided by the two States when they provided for this provision, just so that no wrong application of it can be done by Tribunals.

Now, the invocation meets with all of the requirements that are laid down in the--in Article 22.2(b). So, first Colombia has adopted Measures, right? Assuming you want to go there, which we say you cannot because it's self-judging, but assume you want to go there. So, Measures, Asset Forfeitures Law, Asset Forfeitures Proceedings, the criminal investigations that are unfolding in parallel, all of these are Measures that Colombia is taking in relation to the chain of ownership of the Meritage Lots, they all constitute measures within the meaning of the TPA. You see "measure" is broadly defined as any law, regulation, procedure, requirement or practice.

So, this you see again how broadly the Treaty itself defines "measures." So, these Measures are those that Colombia deems necessary. And again, you have to go back to the provision itself. It says,

"measures that it considers necessary of--for the protection of its own Essential Security interests." You have to defer to what Colombia says in relation to what it needs to do, what is necessary to protect its interests, and its National Security interests.

And this, in fact, in the Russia-Traffic in Transit, is what the WTO Panel decided too. It is for Russia to determine the necessity of the Measure for the protection of its Essential Security interests. So, there is a measure of deference by Tribunals to the States when they invoke this type of provisions.

Now, the Respondent considers that the proceedings that it has undertaken, pursuant to the Asset Forfeiture Law, are necessary Measures in the fight against criminal organizations, money-laundering, and drug-trafficking. This is confirmed by the Experts. Look at Dr. Pinilla, the Expert put forward by--by the Respondent. You see at Paragraph 15.

A very efficient way to counteract these criminal activities consist in preventing the use of ill-gotten gains, with assets forfeiture being an

appropriate means to do so. And Mr. Martínez, the Claimants' expert, confirms, asset forfeiture traces its origin to the National Constituent Assembly and the efforts to fight drug-trafficking and its related activities. The assembly developed the concept as a criminal-policy tool to fight organized crime through the rejection of wealth originating in illicit activities, such as drug-trafficking.

So, under Colombian law, as you see the two experts of law accept and agree, Asset Forfeiture Proceedings by nature are aimed at fighting organized crime, drug-trafficking and money-laundering. This is a serious matter.

And the additional point is that Asset Forfeiture Proceedings also allow to protect the rights of third parties. Because there is this parceling, and because the units are sold to individual buyers, that's also a way to protect their rights because if you just allow the process to go on and to continue without an asset forfeiture, at some point they may be harmed, they may be prejudiced because then it's the ownership that they have had

which will be tainted by illegality. So, it's also a measure taken to protect innocent buyers.

What the Claimants want to do is to focus solely on the time of the launch of the proceeding and say it's too late. You have to look at the time when it all started, the time of the Measures. With respect--and that's on my next slide--my next slide--the Measures are ongoing. The Measures started, asset forfeitures started, they are ongoing, and the Judge is deciding the matter: First point.

Second point, Article 22.2(b) does not establish any time limit for the invocation. You don't--you will not see anywhere that there is a time limit or any limitation to the right of the States to invoke this provision, and to decide otherwise would be to not give any effect to the--to the provision and render it meaningless.

The next point is that, under Article 10.24.d of the TPA, there is no waiver to any objection on jurisdiction. So, you see here, that we have produced a provision, "the Respondent does not waive any objection as to the competence or any

argument on the merits merely because the Respondent did or did not raise an objection" under this paragraph. So again, there is no waiver. Colombia is in its right to raise and invoke this exception.

[redacted]

And finally, when the invocation is made, you look at the time of the invocation. You don't look at before. And if you look at Asset Forfeiture Law, this is even before the Arbitration, so the

argument makes no sense, it's neither here nor there. You have to look at the Measures at the time of the invocation.

I apologize for my pace, I have so much to--to tell you. So, in any event, we say Colombia has raised this provision in good faith. Why? You see again--and the deference is important. Even if you decided that this is not jurisdiction, even if you decide that you want to actually look and make an assessment of whether or not this was in good faith, even then you have to give a deference to how Colombia determines its own national security interests. And the standard is minimal. This is what you see in--again in the WTO Panel Decision that I referred to. Every--it is left, in general, to every member to define what it considers to be its Essential Security interests.

And you also have in the case of the WTO case of Saudi Arabia, Measures concerning the protection of intellectual property rights, you see that here the panel has referred to a minimal standard to enable an assessment of whether the challenged

Measures are related to those interests is not a particularly onerous one and is appropriately subject to a limited review by a panel.

So, even in the GATT world, in the WTO world, where you have the enumeration, which is--does not exist in this case, even there the WTO Panel has said that it's a limited review, and you have to defer to how the State defines its own security interests.

And frankly, that's quite logical because nobody's in the mind of the State. Nobody knows how the State is actually looking at such serious measures and such serious situations as war on drugs and drug-trafficking and money-laundering so--and my next slide is the--is--is just--just an example of how seriously Colombia is taking this. The fight against organized crime, money-laundering and drug-trafficking. You see this is a speech of the President in 2014. And this is important because this is the time when the TPA was signed. So--and--and that goes to the intention of both Parties when they accepted to have that--that provision in the TPA.

And you see that there is a--here a

reference to the fuel of the conflict in Colombia is without a doubt drug-trafficking, and there is a reference to war on drugs. And you see on the right side, that there's also the General Assembly of the Organization of American States, also referring to the drug policy debates.

So, no matter how you look at it, this is an extremely serious situation, and Colombia's determination that it is its National Security interests to take measures, including asset forfeiture proceedings, to protect its national interest, this is something that has to be given deference to.

And looking at again, the--how--how you look at this here, the Respondent's Measure were adopted for the protection of its Essential Security interest. Again, referring to WTO decision in Russia, you see that the standard, the minimum standard is one of plausibility between the Measures and the interest. And you see here, the Panel must, therefore--7.139, the Panel must, therefore, review whether the Measures are so remote from or unrelated to the--here is the 2014 emergency, this is the Crimea situation.

So, it's a plausibility. You look at--you look at whether there is a plausible--the Measure is plausible to address the situation.

[redacted]

[redacted]

First of all, you have to determine that there has been a breach of the Treaty. This is in--again, here I'm still in my alternative argument, which isn't even assuming that this is a merits question and it's not a jurisdiction question. There cannot be a violation of the Treaty if the Essential Security exception applies. And in this logic, it excludes the application of the substantive obligations of the Treaty. This is what you see in

CMS in relation to Article 11 of the Treaty in that case, Argentina-U.S. BIT, where you see on the bottom of the Page, the last three lines, you see there's a reference to Article 11. Article 11 if, and for so long as it's applied, excluded the operation of the substantive provisions of the BIT. This is the logic.

So, even assuming it's not self-judging, even assuming you are in the merits, you have to consider that this is exclusion of the substantive obligations of the State under international law.

Now, my next slide is the reason why there cannot be compensation, there cannot be reparation unless and until a breach has been found, right? So, Mr. Moloo here said earlier that, "well, again, Colombia can continue taking these Measures, but, you know, this doesn't exclude compensation." First of all, you see that nowhere in the provision, nowhere in Article 22.2, it says, "preclude the Party from applying Measures", and, as we just saw, this sort of provision at the very least, if it's a merits question, it excludes to the applicability of the substantive standard.

To support his view, Mr. Moloo referred to the Eco Oro Decision against Colombia. Here, with respect this that doesn't work either. That's--Eco Oro was rendered based on the Canada-Colombia FTA. Which has a completely different provision, it's a general exception. It's not a National Security interest exception. It's Article 2201(3), of the Canada-Colombia FTA, which says specifically for the purposes of Chapter 8 investment subject to the requirement that such Measures are not applied in a manner that constitutes arbitrary or unjustifiable discrimination, et cetera, et cetera, and then there's protection of environment.

So, you see that the provision itself in the Eco Oro says there is a number of conditions, so it should not be arbitrary, unjustifiable, it should not be discriminatory and so on. And it says, "for purposes of the investment chapters." Of course the Tribunal will look at whether or not there will be a compensation possible because there are conditions put there in relation to environmental protection. This is not the case here. This is not what you have here.

Here again, have you Article 22.2(b), which refers very broadly to whatever either State, by the way, Colombia or the U.S., can consider necessary for the protection of its own Essential Security interests. This is what it says.

So, the provisions are completely different, and the--the analogy doesn't work.

And my final point on this slide is that simply, under international law, you're an international tribunal. You are--you can grant compensation if you find a breach of the Treaty. Absent a breach of treaty, you cannot give compensation. So again, it's neither here nor there, where they say, "well, just give us compensation. Forget about all of the ongoing procedures in Colombia on asset forfeiture. We may retrieve it at the end of the day, but it's fine, give us compensation in the meantime, and we'll go happy. 200 million, we're very happy." It doesn't work that way.

ILC Articles, Responsibility of a State, there is an international wrongful act of a State when conduct consistent of action or omission constitutes a

breach of international obligation. You would have to find a breach first. You cannot give reparation without a breach. And as you know, the national security interest excludes the substantive protection of the Treaty, so that is also the consequence of the national security interest.

So again, you cannot give any compensation but unless you have found a breach, which you cannot because this is the provision, the mechanism of Article 22.2(b) which Colombia has raised.

And again, if we are allowed to provide the travaux préparatoires, we will be able to discuss some more of the--what the Treaty--the two States have determined to be the consequences of the implication of this provision.

And to finish, in an event the Tribunal--you cannot determine liability nor compensation because this is ongoing. This is just too premature. It's premature for you because the Asset Forfeiture Proceedings are ongoing. [redacted]. You cannot just come and say, "I'm going to anticipate what's going to be done" because you

don't know the end result of the Asset Forfeiture Proceedings.

So, on my next slide, should Newport--and this is really important for you to understand--should Newport be recognized as bone fide without fault third party which it can't because the proceedings is ongoing. The Colombian courts are seized of the matter. Our friends on the other side are not claiming the judicial process in Colombia is wrong. They're saying specifically that they're not complaining of denial of justice. And in fact, they are very happy with the Decision of April, two weeks ago, April 22, where the Bogotá court accepted them as an "afectado" party in relation to the asset forfeiture, so let the Courts decide, let the Courts take this in the normal course of what an asset forfeiture proceeding should be. And at the end of the day, it may well be that Newport will be recognized as a bona fide without fault third party. In which case, the Precautionary Measures will be lifted, Newport will be entitled to dispose of the land. It would be excluded of the Asset Forfeiture

Proceedings. [redacted] If there is actual omission of the Authorities that has caused harm, you can seek damages from the State. Yes, that's in the Constitution of Colombia.

So, they're not remedy-less. They have remedies, and they can seek damages from the Courts in Colombia in the event that the Courts at the end of the day find for them and find that Newport is a bona fide without fault third party.

So, if anything, this all shows that the damage that they're complaining of is not sufficiently certain. It's actually uncertain. They have not incurred any damage.

Now, one final point on the MFN Clause. This is just a magic trick, they like to go to MFN and actually your cite was quite fast, let's just look at the MFN provision 10.4 of the TPA. You see that there is a--again, a footnote on the second provision 10.4.2

in relation to most favored nation in relation to investment, where the States have said, you see penultimate line, that it does not encompass dispute resolution mechanism, so it doesn't apply to arbitration.

The reality, and that's my next slide, you see that the Claimants have failed to set out the precise basis on which they seek the application of 10.4. Is it investment? Is it investor? We don't know. They have failed to set out what is the better treatment they're seeking? They just generally say, and you heard Mr. Moloo earlier, yeah, the Swiss investor is better treated, how? On what basis? The better treatment has to be based on comparison. You have to take a provision and compare it to some other provision and to see what exactly is the problem and where is the better treatment, and what is the better treatment. Here it's nothing, it's just, oh, we want a whole in our Treaty, we want to import the whole in another Treaty and import the whole. That doesn't work that way. That's not what MFN clauses do.

And they recognize --They fail to recognize

the express exclusion, in fact, of the entire Treaty, from which is the consequence of Article 22.2(b), which includes the MFN provision itself. Again, you remember nothing in this Agreement, it trumps the entirety of the Treaty, including MFN, so they cannot invoke the MFN provision, and that is also the effect of Article 22.2(b). And by the way, to the extent that they like to refer to doctrinal work on whether or not arbitration is a substantive right, as you know, even if arbitration is a substantive right, as you will have seen from CMS, this type of provision also excludes the applicability of substantive rights, so again, this is neither here nor there.

And very quickly, I don't have the time, on my next slide you have CMS and Siemens, and you see that both Tribunals have said that--on the right side you see Siemens claiming a benefit, second line, by the operation of an MFN Clause does not carry with it the acceptance of all the terms of the Treaty. You have to look at other terms of the Treaty involved. You cannot just forget about a very important provision and just make it as if it didn't exist.

And of course, as you know, it also refers to the public-policy considerations judged by the Parties to a treaty essential to their agreement. That's exactly the situation here.

And CMS on the left side, it refers to the MFN Clause not to be able to play a role in that case. It was again Article 11 of the Treaty in that case, and the CMS Tribunal said that's the treatment point. If you want to have a better treatment, you have to find another exception provision in another treaty and then compare and look at which is the better treatment, which they don't even bother doing here.

So, this is the--for now, the entirety of our argument on the Essential Security, and you see regardless of how you look at it, jurisdiction or merits, this is something that has been invoked in good faith by Colombia in relation to extremely serious conduct and extremely important provisions and measures taken by Colombia to protect its national security interests.

And we ask you to first of all recognize that it's self-judging, and even if you're not with us

on that, you have to give it very heavy deference to Colombia when it determines what is its national security interest--Essential Security interest. I'm sorry.

Quickly on the other jurisdictional issues, not a protected investment under the TPA and ICSID Convention. This I will go rapidly fast. Of course you know this, but I have to go through it.

The Claimants' investment does not have the characteristics of an "investment." This is in reference to the TPA. On my next slide you see that, of course, here you're an ICSID tribunal, so you have--it's a double-barrel test. You have to satisfy both the ICSID Convention and the TPA. ICSID Convention you have the--arising directly out of an investment, and you have -you are familiar, of course, with the test that there has to be a commitment of risk and duration, Salini test.

Under the TPA you see the TPA itself provides for—yes…

ARBITRATOR PEREZCANO: Sorry to interrupt, Ms. Banifatemi, and I want to go back to the Essential

Security interest. You're rushing through this, so I will try to gather my thoughts on this.

MS. BANIFATEMI: I apologize for that.

ARBITRATOR PEREZCANO: So apologies for going back while you're already getting into your other argument.

I understand your argument to be that this is a jurisdictional exception, so essentially whatever Colombia says, that is the end of the matter, we would not have the authority to look into it almost at all. I understand that. But the alternative argument is that, if we--the Tribunal is not with you in this jurisdictional argument, you've argued that Colombia has made or has applied the exception in good faith. And I may be not--you may have phrased it differently, but, in other words, Colombia has either made a good-faith application of the law, Colombian law, in this case specifically or a good-faith application of the exception, whichever.

But if we are into the alternative argument, what is your position into the Tribunal looking at that matter, whether Colombia has applied it in good

faith or not.

Since you made the comparison to other treaties and specifically I think it was the Canada-Colombia Treaty in the environmental context where it says, provided that measures are not applied in a discriminatory or arbitrary and so on and so forth, manner, what is your position, in your alternative argument of what this Tribunal could do. Can we look into whether it has been applied in good faith or put another way, whether it has been applied arbitrarily or discriminatorily and so on and so forth?

MS. BANIFATEMI: Thank you for the question.

Assuming you're not with us on jurisdiction and you determine that you have to assess whether or not Colombia is in its right to invoke the exception, right? So, that question we say is one where you still are bound by the footnote also which says that it's self-judging, right? The Tribunal shall find that the exception applies.

ARBITRATOR PEREZCANO: Yes, but that sort of brings you back into the prior argument, if it's

self-judging, then we have nothing to say, and whether you call it jurisdictional or something else, you're basically kicking us out of the room, saying this is for us to determine, you don't have a say in it. So, we're into the alternative argument where we're not with you on jurisdiction, and the question is what sort of a say do we have into what you have now portrayed that it has been a good-faith application of the law in this context and of the good-faith application of Colombia's or a good-faith determination, if I may put it this way, Colombia's Essential Security interests? Can we look into whether it is good faith or not.

And I appreciate that the footnote--I don't want to put words in your mouth, but I suspect, and you will tell us, if the Tribunal determines that it has been in good faith, then the footnote requires the Tribunal to have deference to Colombia and apply the exception. But otherwise, what are we to do?

MS. BANIFATEMI: To be clear, that's why I wanted to go back to the footnote because we cannot ignore the footnote, right? So, there is three levels

I would say. Level 1, it's a jurisdictional question. You simply cannot determine whether or not you have jurisdiction. It's enough that Colombia raises this for the entirety of the Arbitration to fall because you do not have jurisdiction, to the extent that Colombia says this is all about financial security interests--Essential Security interests.

ARBITRATOR PEREZCANO: Let me stop you there and put it point blank. The footnote says "the Tribunal or panel hearing the matter shall find." That to me suggests that we have a say in what the Tribunal shall find. It doesn't say the Tribunal shall accept whatever the Party says. It says the Tribunal shall make a finding, so that's point blank.

It seems to me that we have a say, under the footnote.

MS. BANIFATEMI: Okay. If I may finish, then I will just do the sequencing.

Jurisdiction, we say, and our primary argument is jurisdictional, you cannot go to the determination of the substance of dispute because we say you do not have jurisdiction to do so.

Shall find that the exception applies, shall find, you can make a determination which is I find that the exception applies because I have to, I shall. It's my obligation. So that's our primary position.

The second position is, assuming you think that you have to make some type of assessment, right, so that type of assessment, if it's on the substance of the dispute, and on the substance of whether or not this provision has been invoked in good faith, then you still are bound by this. You shall find that the exception applies, and it's not that the--it's simply that the exception applies, and, therefore, to the exclusion--to the preclusion, the Agreement cannot allow you--sorry, the exception cannot allow you to make a determination on the Measures that are taken by Colombia in order to address its--and what it considers to be its Essential Security interests. It has to be plausible. I mean, now--Going to the third level. So, this is the second level. Let's assume you determine that no, I actually have to determine both, that it's raised in good faith, and also have to determine the substance, the good-faith substance, of

that, and that's probably your point that I have to find something, I have to make some type of assessment. If we're there, then that is the plausibility argument that I mentioned earlier, and what we say and that's the slides that I admittedly read fast because I don't have much time, it's the deference that the WTO Panel, for example, and the other tribunals have said when an Essential Security interest is raised, when you have the terminology that says, but it considers that the State considers to be its own Essential Security interest, you have to give deference to that determination.

You cannot go as far as saying whether or not these Measures are the right, the appropriate fully of the situation. It has to be plausible, right? Whether or not it's very remote from the objective which is a fight against drug-trafficking, a fight against money-laundering, or whether it's quite plausible that Colombia in taking the Measures that it's taking, the law itself on asset forfeiture, [redacted] whether these are the answer to what it says is Essential Security interests.

ARBITRATOR PONCET: Which is the definition of a "prima facie" test, right?

MS. BANIFATEMI: On which side? On the merits?

ARBITRATOR PONCET: Yeah.

MS. BANIFATEMI: Well, yes, can you say, you can say it's prima facie. You can say on the face of it I see it's plausible that the Measures taken are designed to address this situation, and this objective.

But you have to stop there, because you don't have, and that's what it says, and you have again to give meaning to this because you have a limited level of determination. You have to give deference to what the State itself. Otherwise, you're not giving effect at all to what it considers to be for the protection of its only Essential Security interest. You have to give deference to the State the way that it determines this.

Now, again, if we have the travaux préparatoires, I can give you more detail about this because this goes to the intention of both Parties,

both the U.S. and Colombia, when they entered into this provision as to what they actually meant by this and the sanction and the consequences of the implication of this provision.

PRESIDENT SACHS: Just a follow-up question.

So, to start with the national interest, isn't that defined in the Forfeiture Law to combat against drug-trafficking and money-laundering? So, isn't that defined in that law, what Colombia intends to apply and to do in this respect?

MS. BANIFATEMI: Yes. I see--I see probably what is stuck in your mind is the argument that is made--the argument is made that you had to raise it before. Is that the question?

PRESIDENT SACHS: No, that's not the argument. The law contains this exception that a bona fide purchaser cannot be subject to the Forfeiture Proceeding, so isn't the expression of the national interest contained in that law with that exception?

MS. BANIFATEMI: Well, it's the whole purpose of the Asset Forfeiture Proceeding to determine whether someone is a bona fide without fault

third party. But you have to go through the motion of the actual proceeding itself, and the Courts are seized of that matter, which is what we're saying. The Courts are seized of this matter. The Courts are making determination as to whether Newport, which is now an affected party, and it was before, it is again, it can make submissions, it can make its views known, and that will be determined.

PRESIDENT SACHS: I understand that argument.

MS. BANIFATEMI: Yes.

PRESIDENT SACHS: On the international-law level. When we have to look at how does Colombia define its national interests in this regard, so we have to look into the law and the law provides certain proceeding, certain thresholds and certain standards and certain protection, but it also provides for this exception, the bona fide acquisition of a possibly tainted property.

So, my question is: Isn't that then part of the consideration that this Tribunal has to carry out?

MS. BANIFATEMI: Well, this is in the event

that you don't give any effect to 22.2(b), which would be a problem because, again, this is a right for Colombia to raise the exception. And as the States have said, and confirmed, the exception applies, and this Tribunal shall find that it applies.

So, what you're saying would be in the event that you completely ignore this, and you go into the merits and the substance and we're very comfortable with the merits, that's not the issue. It's whether or not the--how the law functions, whether or not in what conditions, whether there was due process and so on and so forth. So, that will be on the merits and will be an alternative when we argue all those points.

But the exceptions and the proceedings that are allowed by Colombian law, whether those were followed and we will argue that on the merits, but that is again in the alternative.

And our point is that your mandate stops before that. You have to give effect to what Colombia says is Essential Security interest because at the time when it was raised, it was raised in circumstances where there were new elements, new

circumstances in relation to--and you may remember, I think it's slide 47 of our opening where you have the whole chain. You have an entire chain of relationship with the Oficina, which here, which you can now see.

So, this is extremely serious. If Colombia says I'm looking into this, and I'm investigating this, within the Asset Forfeiture Proceedings and that legal framework, that is for Colombia to do. Colombia says it's my Essential Security interest, let me do it, and this is what this provision says. You have to give effect and deference to what I say and what I consider to be my Essential Security interest. And those built-in exceptions are part of that. So, you have to trust Colombia when it says, especially that there are exceptions and due process and everything that's built into Colombian law.

And again, they're not complaining that the Courts are not doing their job, so the Courts are actually looking at this. It's an ongoing process and, therefore, it's an ongoing measure. The Measures that you have before you are ongoing.

ARBITRATOR PONCET: But if the--sorry.

PRESIDENT SACHS: No, no.

ARBITRATOR PONCET: If the interpretation of 22.2(b) is so clear in the two options you have outlined either as a jurisdictional impact or on the merits, why do we need the travaux préparatoires at all?

MS. BANIFATEMI: Because we wanted to understand the intention of the Parties--well--

ARBITRATOR PONCET: I suggest--

MS. BANIFATEMI: I'm going through what we always do, which is when you interpret the provision, you're going to interpret this provision. If you're going to interpret this provision, we say the language is clear. But if you look at the language, I'm just looking at Article 31, you have to look at the context, which I explained. You have to look at object and purpose. You have to look at other treaties and how the same two States have entered into and have looked at the same type of provision of the Treaties, and you have to look at the travaux because that's also where you have the intention.

I'm just arguing this to give you comfort

that what we're saying about how you should read this is right. It's just the interpretation of this.

ARBITRATOR PONCET: How voluminous are these travaux that you would like us to look at? And does the well-known caveat apply that one finds in the travaux préparatoires a real explanation except in support of what one has decided to argue to begin with. You know the classical caveat about travaux préparatoires, right? They serve to back up whatever opinion one has because you can always find all sorts of things.

MS. BANIFATEMI: Well, with respect, it depends on the travaux, it depends on the substance--

ARBITRATOR PONCET: I think you and I have invoked travaux préparatoires in a different context.

MS. BANIFATEMI: Yes, we have. And in that context, the travaux préparatoires were extremely clear about the State's intention, so it's the same here. It's going to be extremely clear on the State's intention as to what they meant when they drafted this provision.

So, to answer your question, I will address

this later, because it's the housekeeping matter before us, but we have shared with our colleague on the other side the entirety of the travaux, which is 186 pages, and we did identify to them the pages that discuss Essential Security interest, those are 14 pages, and we have shown that to them already.

Yes, I'm being corrected that the entirety is 3,000 pages, the 138 pages that were provided is relevant to--more directly to this chapter, I believe, and then on Essential Security is the 14 pages that I referred to.

Does that answer?

ARBITRATOR PONCET: Not completely because I mean, there is--sorry, well, should we discuss this at some later stage?

PRESIDENT SACHS: Possibly.

ARBITRATOR PONCET: Okay. I don't mean to waste or I don't mean to eat some of your time.

MS. BANIFATEMI: Not at all. So, I want to make sure that I answered also your question, thank you.

So, is this three level sort of decision

tree that we propose--

ARBITRATOR PEREZCANO: Your answer is clear.

MS. BANIFATEMI: Thank you. Thank you.

So, and then, of course, you have our slides on the plausibility, and also what I discussed about why this is, in fact, and my slide is 137. That the Measures adopted are, indeed, addressing the Essential Security interests.

If I may, then, go back to investment, I was at Slide 153, I believe.

May I ask how much time is left? Maybe I should start there.

SECRETARY MARZAL: One hour.

MS. BANIFATEMI: I will do my best.

So the TPA itself, you see, defines the characteristics of investment. You see that it refers to 153.

So, commitment of capital resources, assumption of risk and expectation--sorry, or expectation of gain or profit. This is the definition in Article 1028 of the TPA.

On my next slide, you see that the case law

has said in similar provisions that this is a global assessment that must be determined by the Tribunals, and you see this is in reference in the decision and on the KORUS FTA, and it refers to the global assessment as you see on Paragraph 96.

Now, if we look at the Claimants' purported investment, you see that the commitment of capital. So, based on this criteria, the commitment of capital or the resources has not been significant. Pursuant to the Financial Statements of Newport between 2013 and 2017, you see that there has been a payment of less than USD 2 million, so that is not significant at all.

And the further point which is related to this point is also that the Meritage Project was mainly financed by the pre-sales of units to buyers, so it is not a lot of risk that is taken by Mr. Seda and his partners, it's actually sold and pre-sold to the buyers. And you see that this is also a reference to sell, where any capital resources committed are incapable because of their insignificance of contributing in any meaningful way to objectives of

the TPA.

So, the significance matters in this global assessment, and the next two points which I will be fast on, it's a matter of logic, in fact, if you have not contributed in any significant matter, the assumption of risk is not there, either. You only risk what you contribute. If you have not contributed much, you're not risking much. And likewise for the expectation of gain or profit.

The next point is the encumbered nature of the rights over Royal Realty. My next slide you see this is the pledge of the Shares as collateral in favor of Downie North LLC, the Claimants' funder in this arbitration. And you see here the proof of the collateral on the left and right hand. And how this shows on my next slide--this is the confidential slide, the charts that show sort of the different flows of shareholding. You see what is relevant for you is the red dotted lines which are the Shares pledged in favor of Downie North, and you see that pretty much a lot of these--so you look at the dotted red lines, you see that a lot of these Shares have

been pledged in favor of Downie North.

And so, what you know now is that they have recently disclosed on my next slide that Tenor Capital Management Company, the parent of Downie North is a party in this Arbitration, there was some debate about that, we're still not done with that debate. What is important on my next slide is that they have--this is an email of the Claimant of 20 April, they have refused to disclose the financial interest of Tenor through Downie North. And we say this is a very serious matter, this is part of also the housekeeping matters that we have to discuss. Why? Because Mr. Amariglio, who is sitting in this room, is the co-Executive Chair of the Board of Directors of Eco Oro, the same decision that was referred to by Mr. Moloo earlier and he became--he took on that status one month after the Award was rendered in the Eco Oro Decision. So, what we say is that, yes, there was Document Production, you did not order the financial arrangements. What we say we're not saying give us the financial information. We're not asking you to reopen the matter. We're saying, however--and

this is very important--we need to know what is the exact financial situation. We need to know what is the financial interest and who is the real interested Party here. And if there is a similar situation where Mr. Amariglio will have, and here since he's presented as a party representative, will have through Tenor a financial interest in the case and in the dispute.

So this is important, this goes to jurisdiction, who is the Claimant in front of you. This is important enough that you actually would want to know the financial interest, and by their own word, they say that they have not disclosed the financial interest.

Now, my next point is that the vast majority of the Claimants' claims do not concern the Claimants' investment in Meritage. So, you know that here again, the double-barrel ICSID Convention Article 25, your jurisdiction extends to any legal dispute arising directly out of an investment. And you know from CMS-Argentina that this provision excludes disputes that do not arise directly out of the Investment concern. So, the Investment concern here is the

Meritage, and I will come back to that, and so that's ICSID.

Now, TPA, you know that the TPA is saying that the Article 10(1)--

PRESIDENT SACHS: David is asking for a five-minute break, and I think he's perfectly justified because this was very, very fast. So, please take a break, ten-minutes.

(Brief recess.)

PRESIDENT SACHS: So, we will resume now, and give you the floor again.

MS. BANIFATEMI: Thank you. Thank you, Mr. President.

I was discussing the TPA and how the TPA defines the relevance of the Investment, so you have Article 10.1.1 here, which is very close to the NAFTA provision measures relating to covered investment. This is what you see in the Methanex Decision where it was characterized as a requirement of a legally significant connection between the disputed measure and the investment. So, this is what the U.S. says on my next slide.

I have noted that our friends on the other side never refer to the submissions of the U.S., which is actually very relevant to how the U.S., as much as Colombia understand the Treaty, so you see here there's reference to, on the underline that you see on the screen, there must have been a legally significant connection between the Measure and the Investor or its investment. And you see at the end there's a quote: A legally significant connection requires a more direct connection between the challenge measure and the foreign investor or investment.

And on the facts at the next slide, you see the same chart, confidential, again. We have put in blue everything that relates to and, therefore, is a legally significant connection to the Asset Forfeiture Proceedings which concern the Meritage Lot. You see the Meritage in red on the bottom and you see in blue, the boxes in blue, these are the legally significant connections. Everything that is in yellow is not a legally significant connection to the Meritage, which is the substance of the dispute in this case.

And on my next slide, you see--this is based

on the Expert Report of BRG--only 31 percent of the Claimants' damages claim concern damages in connection with the Meritage Project. You see that there's, out of the total of 203 million, 64 million is the Meritage. The rest is of the other projects, and, therefore, those are not legally significant under the TPA to the Measures complained of.

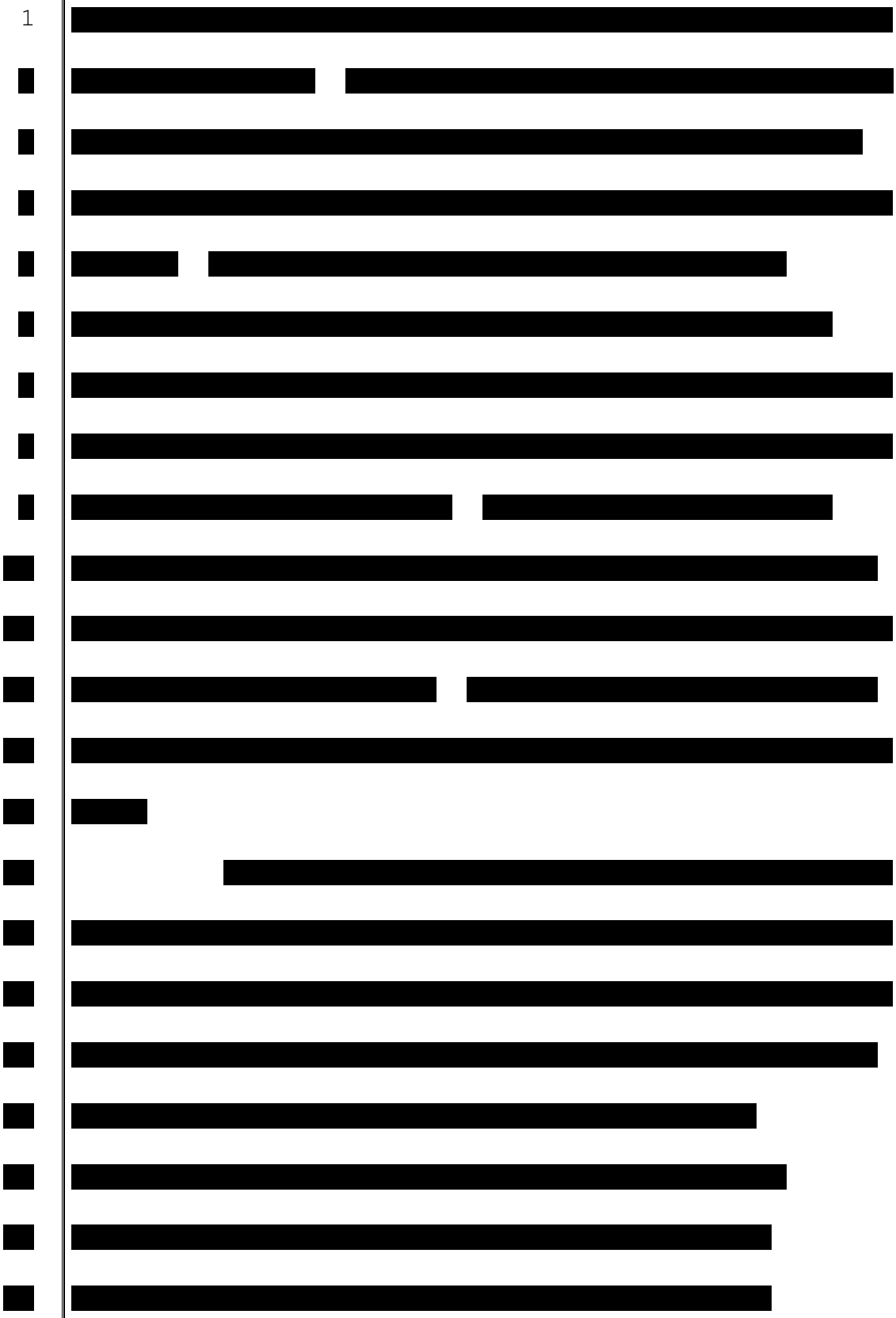
Quick word on Mr. Hass. As you know, this is an investment which is held through a discretionary trust incorporated in the Bahamas. What is important is that here you see, on my Slide 168, you see what are the powers of the Trustee.

It is important to recognize what type of trust we're talking about. If it's discretionary and the Trustee can withhold distributions, which you see in the second box and in the third box it can exclude classes of beneficiaries for the purpose of the settlement, this does not mean that Mr. Hass controls. The control is with the Trustee, and so we say that, because of that, it's not the relationship that's required by the Treaty.

And on my next slide you see that the

tribunals have considered the discussion of beneficiaries of discretionary trusts cannot be deemed as having investment; that is the Agarwal Uruguay decision. And again, for lack of time, I will not quote. You have the relevant excerpt on the screen.

[redacted]



[redacted]

Now, moving to the merits, for lack of time, with apologies to the Tribunal to really be a bit more superficial than I would--I hoped to do, but I want to start with one remark.

You heard first Ms. Champion said this morning the Claimants are not entitled to protection in Colombia's view, are not entitled to international protection. That's wrong. We're not saying that the Claimants are not entitled to international protection because, she says, they assumed, the Claimants assumed the risk of business. That's not the point. For the very technical reasons that we have developed, there is no jurisdiction, but it's not that they're not entitled generally to international protection.

Then Mr. Moloo says, how does this come to be? And feigning surprise that, you know, this investor coming to Colombia and be treated the way that they say he was treated, the point is that if as an investor someone comes to Colombia to invest in real estate in the region of Medellín, which is--and

it's historical. It's Colombia, and especially that region is engaged in a war on drugs, and drug-trafficking and money-laundering. The least that Investor could do is, an expectation that that investor should have, is that it will be subject to Colombian law. Colombian law will apply and Colombian law includes asset forfeiture in relation to assets, including in real estate, including in Medellín.

So the expectation is that Colombian law will apply. It's not that international will not apply. It's that you have to respect Colombian law, and you have to comply with what it says. And you have to go and invest within the legal framework that exists. And also, you have to--and that was addressed by Ms. Herrera Bernal, you also have an obligation of due diligence. So, you cannot then not do due diligence, going through a legal framework which is complex enough and with the conditions that we're seeing and what we're seeing unfolding in the criminal investigations, and then say, I'm going to go to an international tribunal and ask them to determine that I'm a bona fide buyer and therefore I'm entitled to

compensation. That's not the way it works.

The way it works is that they are engaged in a court proceeding. The courts in Colombia have the authority to determine under Asset Forfeiture Proceedings whether or not there is bona fide third-party buyer; and then if they have a problem, then they can go to arbitration to the extent that they can, but otherwise everything else is premature.

So, with that very brief introduction, I really will have to go fast. And with respect to the Tribunal, refer you back to both our written pleadings and also our slides where we try to summarize the position.

So, on expropriation, that's the first standard. Of course, you have Article 10.7 of the TPA, and you have the conditions under Article 10.7, but these are the conditions for the lawfulness of the expropriation. What we say is that there has to be an expropriation first. Before you determine whether it's lawful, you have to determine if there is an expropriation, and what we say is that the Asset Forfeiture Proceedings are not expropriatory in

nature. So, and this was addressed by Mr. Moloo, Annex 10-B. It's an important annex because it determines the framework that we're looking at.

First you see Annex 10-B(1) refers to actions cannot constitute an expropriation unless the action interferes with the tangible or intangible property right or property interests. This is the first condition.

And then Paragraph 3 determines the conditions for an indirect expropriation, and the allegation here is that there has been an indirect expropriation.

So, let's look at the requirement. It's a case-by-case, fact-specific inquiry, and you have the three conditions, and I will take them one by one.

Next slide. First factor, these are factors that are determined by the TPA: economic impact of the measure. Here again it's important to look at what the U.S. says in its submission. They don't discuss it at all. The U.S. says, in Paragraph 25, I quote: "The Claimant must demonstrate that the Government measure at issue destroyed all or virtually all of the

economic value of its investment or interfered with it to such a similar extent and so restrictively."

And you have the case law that we provided, Busta and AMF. AMF is particularly interesting because it refers to--on my next, Slide 180--it refers to temporary sequestration of disputed assets during bankruptcy proceedings, and the Tribunal in that case said that amounts to expropriation only if they were carried out unlawfully, in bad faith, or with an expropriatory purpose.

And so, these are the type of standards that you're looking at.

Here on my next slides, you see that there is no evidence that the Asset Forfeiture Proceedings had a permanent economic impact on the Meritage Project.

First of all, the Asset Forfeiture Proceedings did not and could not result in a permanent and irreversible deprivation of their alleged investment because the Claimants did not have any in rem rights over the Meritage Project that could have been subject to permanent and irreversible

deprivation.

The important point to note here is that under Annex 10-B(1), you remember it refers to property rights; right? So there has to be property rights, which is not the case here.

Then it's undisputed that the Asset Forfeiture Proceedings are ongoing before the Colombian courts, and there was discussion about the Corficolombiana confirming that it can't still go ahead. [redacted] That is the standard for you to find if there is expropriation or not.

The second factor, interference with reasonably investment-backed expectations, again, you have the submission by the U.S., and this is an objective inquiry says the U.S. of the reasonableness of the Claimants' expectations which may depend on the regulatory climate existing at the time the property

was acquired, and it's exactly what they say. You have to look at the regulatory climate at the time of the property is acquired in 2012.

So, here again, on my next slide, the Claimant could not have reasonably expected that the Colombian authorities would refrain from initiating Asset Forfeiture Proceedings against a lot that is tainted by illegality.

And you look at the framework here. So the Claimants knew or should have known that Asset Forfeiture Proceedings are not subject to any statute of limitations. This is important. There is no statute of limitations and cannot be waived by the State.

If you look at how this has worked in the past years, between 2011 and 2014, you see that there is almost 150 decisions issued on Asset Forfeiture Proceedings in connection with almost a thousand assets. This is the legal framework we're looking at. And again, as we said, the Claimants' own due diligence was highly deficient, so it cannot given rise to objective and reasonable expectation.

So, this is what you have to look at in order to determine whether or not there has been expropriation.

The third factor, the character of the government action, this is, and referring again to the U.S. submission, it is regulatory in nature, and CME, you remember, discusses the distinction between deprivation on one hand and I quote "ordinary measures of the State and its agencies in proper execution of the law." This is what you are looking at here: proper execution of the law; and ordinary measures, which are the Asset Forfeiture Proceedings when you have situations as the one we have here.

Again, the U.S. also says that domestic--decisions of domestic courts do not give rise to claim for expropriation under Article 10.7.1, and here the proceedings are bona fide and non-discriminatory measures. They were initiated and conducted in accordance with the law and the Constitution in Colombia

As you know, and you have here Article 34 of the Constitution, which makes the distinction between

asset forfeiture on the one hand and confiscation. So, under Colombian law the two are different, so it's not by nature expropriatory.

And finally, the Asset Forfeiture Proceedings are pending before the Court, as you know. If the Court's decision cannot give rise to claim for expropriation, as the U.S. has mentioned, a fortiori the decision of prosecutors in relation to proceedings that are still pending cannot be an expropriation because it's not final. It's not even before the judge yet, so we are at the stage where we are going to have a decision by the courts in the future.

The second point in Annex 10-B of the TPA is the legitimate exercise of regulatory powers. This is what you have on my next slide, you have, Paragraph 3(b) of Annex 10-B, except in rare circumstances, non-discriminatory regulatory actions to protect legitimate public welfare objectives, such as public health, safety and environment, do not constitute indirect expropriations and this also is confirmed in the case law. You have an excerpt from Suez versus Argentina, so it's the legitimate public

welfare objective and the case law has also looked at other factors, such as due process of law, non-discrimination and bona fide conduct.

If we look at them quickly, the first legitimate public welfare objective, the Experts of the Claimant acknowledged that the purpose of Asset Forfeiture Law is to fight organized crime. This is an excerpt from Dr. Medellín, First Report. Principle of Asset Forfeiture expressly in Article 34 of the Convention, as an instrument for the pursuit of assets acquired through illicit enrichment at the expense of public treasury or to the serious detriment of social morals. The purpose of such forfeiture was to attack illegal activities such as drug-trafficking and consequently obtain social and economic stability of the country. So, you see again, this is a very legitimate objective, public objective, that Colombia is pursuing, and again it's doing so in accordance with the law and in a proportionate and justified manner, and you have here references to the exhibits that show that.

On due process, the proceedings were

initiated and conducted according with due process. Again, this is in reference to Dr. Medellín and the law as you said Mr. Chairman, was determined that there's--there--there are fundamental guarantees in the law, and we say--and that is referenced to our Slide 47--there have been multiple opportunities for the Claimant to present their case and submit evidence through Newport they could do before, they can do now. They are admitted as an affected party, so the proceeding will continue, and they will have a full opportunity to make their claims before the--the--the courts in Colombia.

The third factor is the non-discriminatory basis. Again, this is a fact-specific assessment that looks into similar cases, and whether there is a difference in treatment without reasonable justification.

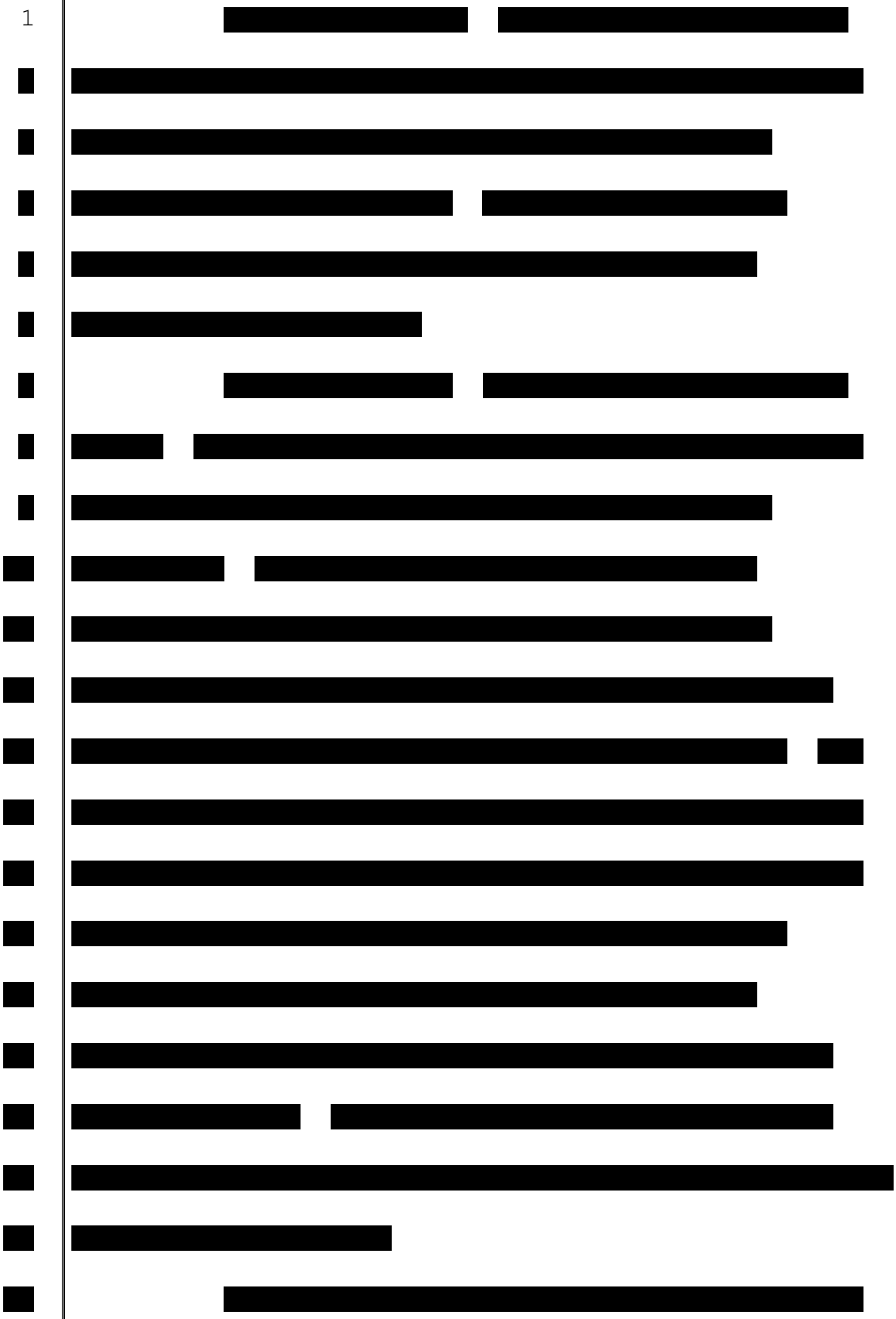
[redacted]

[redacted]

You see that by 2018, there were close to 3,500 ongoing Asset Forfeiture Proceedings in Colombia.

And you see that between 2011 and 2016, 292 decisions were issued on Asset Forfeiture Proceedings in Colombia resulting in 1,405 assets being forfeited. And you see the number of Precautionary Measures taken in that context, more than 13,900 assets subject to Precautionary Measures.

So--so, this is the similar context and the similar circumstances than the last circumstances, so the Claimants are not mistreated or treated any differently as compared to--to these circumstances.



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And the final point is that if there is any difference--differential treatment that has to be justified, despite Mr. López Vanegas's claims over the

Meritage Lot, the Claimants continued with the Project of selling units to third parties. This is important because again, they have an obligation of due diligence. And at the very least in 2014, when Mr. López Vanegas made claims at that point in time, there was an obligation to raise that issue with the Fiscalía, which was not done.

The final point is the bona fide application of the Asset Forfeiture Law. This is what we say--and this relates to the corruption allegations by the Claimants about the Fiscalía. This is a very serious matter, in fact. First of all, if they're making an allegation of corruption, they have the burden of showing corruption. They can't just make allegations in--vaguely and just say you have to find corruption. At the very least, you have to find compelling circumstantial evidence, and here we refer to ECE versus Czech Republic about direct evidence or compelling circumstantial evidence.

On my next slide, I want to address the fact that the standard precisely--arbitrators enjoy a wide discretion to evaluate evidence regarding corruption,

and in light of the circumstances of the case, here there's a reference to Professor Gaillard's article on the Emergence of Transnational Responses to Corruption. In the case at hand, the issue is that the seriousness of the accusations. You heard earlier that there is an allegation, essentially, that the entirety of the Fiscalía is tainted by corruption, but because two persons, Ms. Malagón and Ms. Ardila, supposedly engage in some type of wrongdoing, but they cannot make this allegation generally and say you have to find corruption. This is a very serious accusation, and here you have a reference to Karkey versus Pakistan involving officials at the highest level of the Government, and so you just cannot do it lightly. It has to be clear and convincing evidence, and they have not brought that clear and convincing evidence at all.

So, the highest thresholds of proof of corruption in this type of situation is justified by the seriousness of the accusation. And in the context of collusion with criminal organizations, specializing in drug-trafficking, and also what is at stake here,

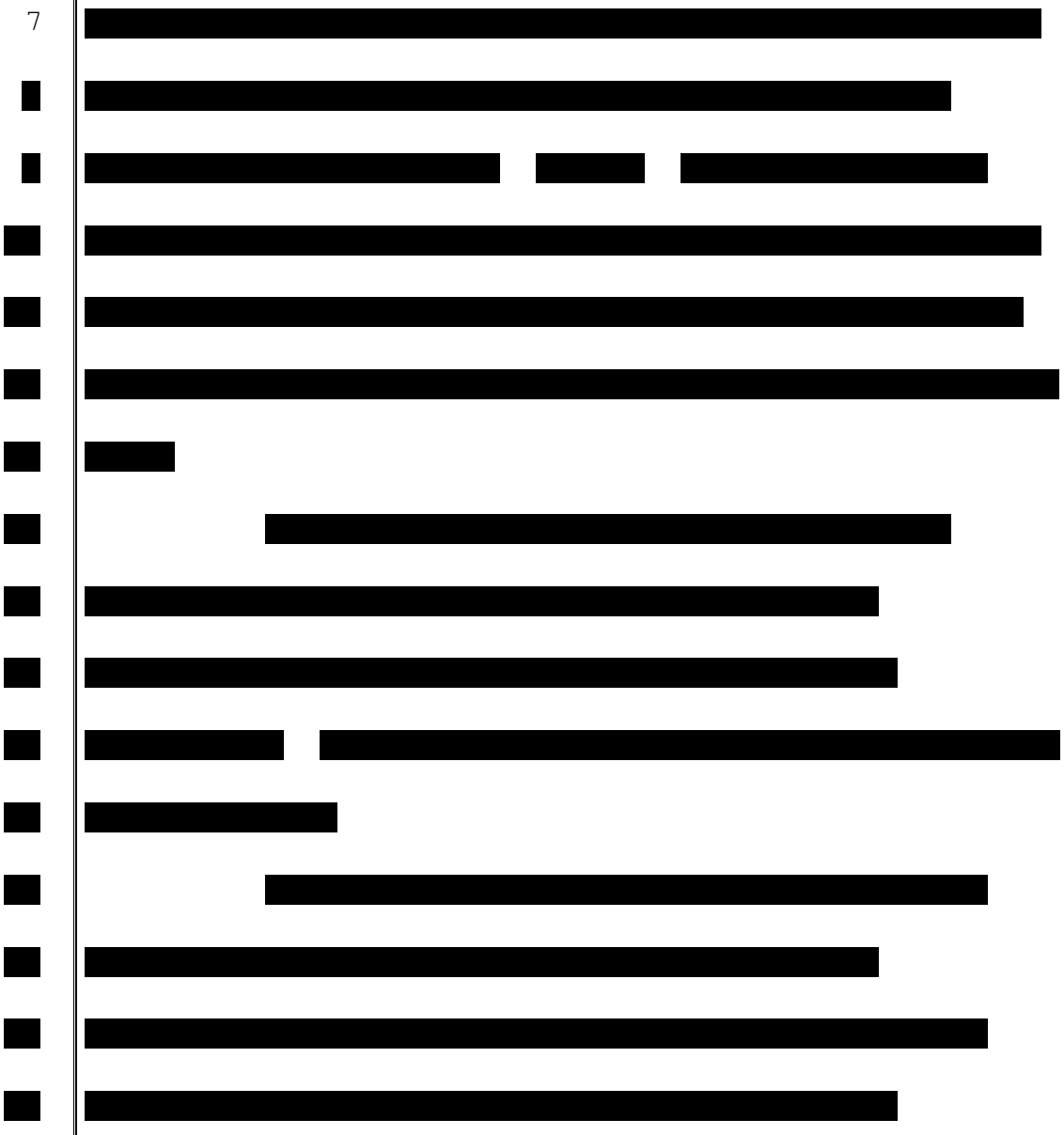
as you know, is the fact against organized crime, money-laundering and drug-trafficking.

It's important to emphasize here that there has been no finding of corruption. This is a very important circumstance to keep in mind. And the fact that they never say in all of their innuendos, they never say what benefit the Fiscalía could ever have had by assisting or helping Mr. López Vanegas. You just have thrown at you a number of, you know, circumstances or allegations, and they just referred to coincidences. Coincidences is not proof, it's not evidence. You cannot, just based on--based on coincidences which are not explained, find corruption in the entirety of the Fiscalía. This is a very serious matter.

So, here, on my next slide, you have references to the case law, even if--and this is our alternative--even if you were to look at red flags, the red flags have to exist in the first place and they don't; right? This is--this is Union Fenosa. There have to be dots. You cannot--you have to link the dots, but there have to be dots and the same thing

in ECE versus Czech Republic.

And on my next slide, we have this--this table, Ms. Herrera Bernal didn't have time to go through it. I will have to go through it quickly. The purported red flags. Under the left side, you have the allegation and the reality on the right side.



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The second red flag, so-called "red flag," "coincidences in timing between Asset Forfeiture Proceedings and alleged extortion attempts." With respect, and here you will have to go back to the timeline and you will have heard Ms. Champion say that some facts remain illusive, yes, to say the least, illusive. So, you actually looking at the facts, you actually look at the timeline, and this is that the initiation of asset proceedings pre-dated the alleged extortions that Mr. Seda complains being a victim of--by Mr. Iván López Vanegas and his lawyers. So, the timing doesn't match.

[redacted]

Now, on national treatment, Article 10(3), again, the U.S. submission here on my next slide refers to this being a prevention of discrimination on the basis of nationality. This is also confirmed by Total v. Argentina. There has to--here on my next slide, investment tribunals have found that the treatment is not breached when the investor is not targeted because of his nationality but because of his conduct of the host State.

And this is an interesting precedent. You look at, at the bottom line of 467 on this slide, the Tribunal in that case found that the Claimant was targeted, not because of his nationality, but because rather than adhering to the terms of his permit, he decided to embark on a materially different operation outside the Jebel WASA. This is Al-Tamimi versus Oman, so it has to be a discrimination based on nationality, which is not the case here.

And the Claimants have acknowledged the four elements that must be considered for the breach of national-treatment standards. You have them on this slide, and I will go through them again quickly, with

apologies.

The first two, which are there has to be a foreign investor having received treatment that's less favorable. Again, the Asset Forfeiture Proceeding you now know are targeting the Meritage Lot as an asset, they're not targeting the Claimants or the Claimants as nationals, so it's an asset that's targeted.

And second, the Asset Forfeiture Proceedings were initiated and are being conducted in accordance with Colombian law, which applies equally to the asset, regardless of nationality of the owner. So, it is important when you determine national treatment.

And again, the Claimant did not receive less favorable treatment than other investors in less circumstances. This is the standard again. The submission by the U.S. shows that the treatment--you look at the treatment accorded to foreign and domestic investment or investor in like circumstances. This is also ADM versus Mexico. And here, the Meritage Lot has been treated similarly to other assets in the like circumstances. I refer you back to what we said earlier.

And the Claimants are in like circumstances as many Colombian nationals actually, and this is on my next confidential chart again, you see in red boxes on the left, you have a Colombian Shareholder, Ms. Daniel Correa, and you have also--so he's Colombian, so he's treated the same way. And you also have on the bottom Corficolombiana, La Palma Argentina, and Unit Buyers. These are Colombian entities that have rights in the assets, so they're treated similarly. So, there is no mistreatment of foreign nationals as compared to Colombian nationals. They're all treated the same. Again, because it simply follows the assets.

And finally, any differential treatment is justified in light of the circumstances. Here I refer you to the--to the case law, of course, Parkerings and Pawlowski, and we have references to why these are necessary and justified in the circumstances and you have references to our Rejoinder. We respectfully refer you back to those.

On fair treatment, 10.5, again, next slide. You see that this U.S. submission refers--and you

heard some comments about this--the reference in the U.S. submission to the fact that this Article 10.5 refers to the minimum standard of treatment under customary international law. There was issue taken by that, that we say that this concerns only the Investments, not the Investor.

So--and the fact that this--the minimum standard is confirmed by the Al-Tamimi Decision, which refers to the Oman-U.S. FTA. And on my next slide you have the U.S.--the U.S. submission that confirms that Article 10.5 required the Parties to accord fair and equitable treatment and full protection and security only to covered investments, not investors.

So, the point made by Mr. Moloo earlier is that you have Annex 10-A, which defines customary international law by reference to aliens. Again, this is neither here nor there first of all, because Article 10.5 itself refers to investments, so you cannot rewrite the provision.

And second of all, because Annex 10-A says that the customary international law protects the economic rights and interests of aliens, so it's not

protection of aliens. It's a protection of their economic rights and interests. So again, it's the investments and their argument fails.

So as to the facts, the Respondent did treat the alleged Investment fairly and equitably. And again, these are all of the standard or substandard of the FET. The proceedings were not arbitral or reasonable. The threshold is that there has to be due process of law in juridical propriety. ELSI at the ICJ and Cargill. And again, we refer you back to our written submissions about why the Measures were justified, reasonable and proportional.

It has to be conducted in accordance with due process of law.

And what is important here is that a breach of due process only amounts to a breach of 10.5 if it results in denial of justice, and this is what you have in Aven versus Costa Rica, and this is also what you have in my next slide of what the U.S. says. And the U.S. says that the threshold for denial of justice is very high, and you see here in the Paragraph 46 of the U.S. submission, they say that a fortiori,

domestic courts performing their ordinary function in the application of domestic law as neutral arbiters of the legal rights of litigants before them are not subject to review by international tribunals absent the denial of justice under international law. And that's a very high threshold as the Eiendom-Latvia Tribunal decided.

And here, frankly, they have admitted, on the next slide, that they're not advancing a denial-of-justice claim in name or content, so they confirm it. And they actually rely on decisions of the Courts when they're happy with them, and that's the April 22 Decision that they have referred to earlier.

So--and then even if it were not a standard of denial of justice, even if you were to look at due-process violations, again, this is a high threshold and the case law today here in AES show you that is has to be serious defects in the due process such as violation of equal treatment, right to be heard and core rights of litigants. And again, we refer you respectfully to our submissions about the

fact that these proceedings were conducted in accordance with due process of law.

Discrimination, the important point is that, under Article 10.5 of the TPA, there is no prohibition of discrimination. This is confirmed by the U.S. submission here on my next slide, so you see the--just starting at the beginning, the customary international law minimum standard does not incorporate a provision on economic discrimination against aliens or a general obligation.

And the threshold here again is a high one. This is Sempra versus Argentina. It is a fact-specific assessment, and you have to look again at like circumstances when you determine discrimination. And, as we know, they have not been treated any differently as compared to others in like circumstances.

And finally, the transparency, again, the U.S. submission confirms that the standard does not include transparency. This is also Merrill versus Canada. And in any event, even if there were a requirement of transparency, the threshold is very

high. This is Urbaser versus Argentina. Again, for lack of time, I apologize, Tribunal, I cannot go through the case law, but you have that for when you have time on your own.

And finally, this time the expectation. So, the concept of legitimate expectation again, is not included in Article 10.5. Again, this is the submission of the U.S. I quote "the concept of legitimate expectation is not a component element of fair and equitable treatment." And you see at the end, again, I quote, an investor may double-up its own expectations about the legal regime governing an investment, but those expectations impose no obligations on the State under the minimum standard of treatment. Again, because this is all the customary international minimum standard of treatment.

But in any event, even assuming a frustration of the Investor's expectation, that does not, without more, amount to a breach of the fair-and-equitable-treatment standard that is the Infracapital Decision, which confirmed that it's a high threshold and only--on my next slide, only the

Investor's expectation that are objectively reasonable can be afforded protection under the high threshold, and this is Investmart versus Czech Republic that confirmed that this is a high objective threshold. It is not enough I quote, "that the Claimant has sincerely held an expectation, the expectation must be reasonable."

And also my next slide, legitimate expectation may arise only from specific promises or commitments. This is the Crystallex Decision, and the Investor's expectation on my next slide, must be assessed in the light of the overall conditions of the host State at the time the Investment was made including the existing legal framework. This is my introductory point.

This is a very important issue. You look at Duke versus Ecuador, and you see that the Tribunal there said that the assessment of the reasonableness or legitimacy must take into account all circumstances including not only the facts surrounding the Investment but also the political, socioeconomic, cultural and historical conditions prevailing in the

host State. And again, this is including the legal framework in Colombia, in Medellín, in relation to a fight and war against drug-trafficking. And the Investor's expectation must be assessed in light of the State's legitimate regulatory interests. This is Saluka and Mamidoil.

And as to the facts, very briefly, my next slide, the Claimants could not have legitimately expected to be exempted from Asset Forfeiture Proceedings. First, Colombia did not and could not make any specific representation or commitment that it would refrain from initiating Asset Forfeiture Proceedings should the legal grounds for such proceedings arise. The Claimants did invest in a region marred by drug-trafficking activities and controlled by the Oficina de Envigado. They cannot, and they do not contest this.

Their own due diligence was highly deficient, so when you enter a country in that legal framework and in those circumstances, the least you could do is to have a proper due diligence which they didn't do. And they like to rely on responses given

by the Attorney General's Office, but that is not--that is not a certification of legality. It cannot create or give rise to a legitimate expectation.

And finally, as Ms. Herrera Bernal emphasized, Mr. Seda was approached by Mr. López Vanegas in July 2014 at the very least at that time he should have adopted due diligence measures and raised the issue with the authorities, and he didn't do.

Very quickly, the same applies to the other projects. The Respondent treated the Claimants' other projects fairly and equitably. Here it's important to realize that there has to be a causal link between the State's conduct and the harm allegedly suffered by the Investor. This is in relation to Bosch versus Ukraine. And again, if you look at my next confidential slide, that's the chart, there is no link between the asset forfeiture proceedings and the Claimants' other projects. And therefore, Colombia cannot be held liable for any of the Claimants' alleged losses in relation to the other projects, and this is what you have in the green boxes. You are

concerned with the Meritage, and we think that concerns the Meritage, but for the other projects -- simply there is no causal link between the other projects and the Asset Forfeiture Proceedings which do not concern those projects and the alleged harm.

On full protection and security, again this covers Investments, as we have seen earlier. This is also the submission by the U.S. We also have a reference to Al-Warraq versus Indonesia which covers only investment. As you know, full protection and security offers protection against physical attacks. This is the case law that we have put here, Gold Reserve, but it's also what the U.S. says about this Treaty, the obligation to provide full protection and security does not provide for legal security and so it has to be physical attacks.

And it requires, on my next slide and this is also reference to the case law, that the host State exercise due diligence in light of the circumstances.

And so, on my next slide, Colombia did not breach its obligation to accord full protection and security. First of all, the allegations that the

Respondent failed to protect the Claimants from an extortion scheme by officials is wrong. The allegations fall outside the scope of the full protection and security, which only obliges as we just mentioned--due diligence, physical security, and the Investments--which is not the case here, but in any event, on the facts and the evidence shows that this is not the case.

Regarding the threats or alleged threats and attacks by third parties, again the same standards apply, due diligence, and it has to concern the Investment, which is not the case. And in any event, Mr. Seda engaged in extensive negotiations with Mr. López Vanegas and his lawyers and Mr. López Vanegas is a Colombian drug-trafficker who has been extradited to the U.S., and again, you have to be careful who you deal with and not to engage in extensive negotiations with them, which he did.

The Colombian authorities adopted measures to protect Mr. Seda's family. This is --you have more details of this in the fact section that Ms. Herrera didn't have full time to address, but again, given

more time we are more than happy to go through these.

And finally, Mr. Seda failed to collaborate in the investigations conducted by the Colombian authorities. Again, we're more than happy to expand on this if given the time.

And finally, the allegations that the Respondent harassed Mr. Seda and chased him out of Colombia, again, that's wrong. Mr. Seda reported the alleged threats by third parties against him and his family when he did that, the Attorney General's Office took immediate action. Importantly, the U.S. Department of Treasury confirmed that it has not received any request by the Attorney General's Office to include Mr. Seda in the OFAC list. So, the allegations that's made that it came somehow from Colombia is wrong. You have that statement from the U.S. Department of Treasury, which is on the record.

[redacted]

[redacted]

This ends my submission on merits, jurisdiction and merits. Thank you for your patience. And I hand over now to Ms. Ribco Borman.

PRESIDENT SACHS: Time-wise, how many minutes are left? I'm afraid not many.

SECRETARY MARZAL: 15 minutes.

PRESIDENT SACHS: Okay. Will you be able to deal with that within 15 minutes?

MS. RIBCO BORMAN: I think that should be

enough. Thank you. I'm not sure I can speak as fast as Dr. Banifatemi, but I will do my best to be brief.

PRESIDENT SACHS: David will be relieved.

MS. RIBCO BORMAN: Good afternoon, Members of the Tribunal. I will now address some issues related to the Claimants' damages claim.

I will start with a quote from Pawlowski which contains the two elements that the Claimants have the burden to prove, and these are the Quantum that was actually suffered by the Claimants, and second, that the damages flowed from the host State conduct, in this case Colombia, and that the causal relationship was sufficiently close.

In this case, I will start with the second element which is causation. We have seen already a bit of it. And it's not disputed by the Claimants that this element is required. It's also not disputed that customary international law under Article 31 of Articles on State Responsibility, states that the responsible State is under an obligation to make full reparation for the injury caused by the Internationally Wrongful Act. And this is stated as

well in the commentary where it says that this phrase is used to make clear that the subject matter of reparation is globally the injury resulting from and ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act.

It's also undisputed that the TPA, in Article 10.16.1(a)(ii) contains the requirement that damages only when they are by reason of or arising out of the State's unlawful conduct are compensable. This is explained in the submission of the United States of America which says that any loss or damage cannot be based on an assessment of acts, events or circumstances not attributable to the alleged breach.

What does this mean? This mean that damages that are too indirect, remote or uncertain are not compensable. We have here a reference to S.D. Myers which I will skip because we have very little time, but in BG versus Argentina, for example, the Tribunal stated the damages that are too indirect, remote and uncertain to be apprised are to be excluded, so these are not compensable.

In this case, and this is not disputed, it's in fact a table containing the Second Expert Report of BRG, the Claimants damages expert. It is clear that only 31 percent of the total damages claim concerned the Meritage. All the rest concern other projects. If you see now this chart that is confidential that we have seen a couple of times already, you can clearly see that there is no legal connection between the Meritage Project, which is the one in red and any of the Claimants' other projects. In fact, you see the yellow ones, so the yellow Claimants don't even have a connection to the Meritage. They are only connected to the Luxé, and there is absolutely no legal connection between the Luxé and the Meritage.

So, what do they claim? And this is when the dispute points in. The Claimants said earlier today that the construction of Luxé came to a halt because the Colpatria Bank did no longer want to finance the Project after the Preliminary Measures were imposed on the Meritage Lot. They also say that they met their prima facia burden to prove that there has been a causality here.

We dispute that they have met this prima facie burden and that the burden would have shifted to the Respondent. But in any case and for completeness, we would like to take you through the evidence to show what is the real cost of the alleged damages.

So, this first point, and you see here it's a report, a work progress report from Luxé from 29 September 2015, on Slide 252. So, this is a report one year--dated one year before the Preliminary Measures were adopted, and you see that there were already significant delays in the construction. You see, for example, Paragraph 5, it says that the number of staff members on-site is insufficient. There are cash-flow difficulties, and the project lacks the resources required to move ahead. Nothing to do with any of Colombia's measures.

If we go to the next slide, you see that before the Precautionary Measures were adopted, the Luxé Project had also experienced severe cost overruns. So this is Paragraph 10 of the same report, and it says that direct costs overruns of 500 million resulted delays in the Project and that this value of

cost overruns is expected to raise.

And if you see the next slide--and this is a statement in--a Statement of Defense in a case before the Colombian courts--we can see that, by the time that the Precautionary Measures were adopted against the Meritage Lot, the Colpatria Bank had disbursed over 90 percent of the credit it had granted for the construction of the Luxé. The Luxé was far from being completed.

Now, if we go to my next slide, and in any case, you have heard from the Claimants of the alleged success of the Project that was—that of the Luxé Project. Now, what the Claimants did not say is that they failed to--is that they did not procure financing through alternative means to finalize the Luxé Project. So, even if Colpatria stopped disbursing money--they could have--if the Project would have been successful, they could have obtained alternative financing to conclude the Project. However, they did not even attempt to show that they intend—they tried to obtain these alternative means.

And this is a quote from Dr. Hern--this is

the Respondent's damages expert--that says that even if, that the Claimant should have been able to sell these projects to another investor for a value equivalent to BRG's DCF valuation of these projects.

So, assuming it is true that Colombia--that Colpatria Bank stopped disbursement of funds, they could have, but did not, obtain financing through alternative means to complete the Project. And this has nothing to do again with Colombia's actions.

Now, the Claimants' own legal representatives have also acknowledged that the damages suffered in connection with the Luxé Project were caused by reasons other than Colombia's measures vis-à-vis the Meritage Project, and this is a quote from Dr. Tatiana Londoño. She's the legal representative of Luxé and Seda, and she says "that the delay between the December 2014 approval letter and the start of disbursements in January 2016 caused a cost overrun in the project which led my clients -- being Luxé--to bankruptcy and to abort the construction of the Luxé Project".

Now, if we go to Tierra Bomba, you also

heard this morning that the sellers of the land did no longer want to work with Royal Realty due the reputational issues, as a result, of the Preliminary Measures adopted against the Meritage Lot.

Now, let's see what the evidence says. So, the first thing you have in Slide 257 is an excerpt of one of the three promise to purchase agreements signed between Mr. Seda and prospective sellers. The first thing you see is that this was a fraudulent transfer, meaning that the prospective sellers were about to sell a piece of land or a lot of land over which they did not have legal title. And this is what Mr. Seda bought in Tierra Bomba, or promised to buy in Tierra Bomba, in order to develop the Project.

Again, if we look at the cancellation agreements, the Claimant said that they were canceled because of the Preliminary Measures, what we see here in Slide 258 is that the Contracts were terminated by mutual consent and without any dispute whatsoever, upon reciprocal benefit of the Parties.

We also see that, if we analyze further the Contract, that they were--there were two other

possible reasons which are not attributable to the Respondent for these Contracts to be terminated. One is that the Lot by August 2017 had not been regularized, which means that the prospective sellers still did not have property of the Lot. And the second one is that Mr. Seda had failed to pay the full price for the Lot as per the Contract.

If you see, for example, Exhibit C-134, it says that, by August 2017, Mr. Seda should have paid the full price. But, in fact, in this termination agreement, which is 3 August 2017, he had paid less than half of the price.

Now, the Claimants had also alleged that--or claimed damages because they alleged that Mr. Seda lost his ability to run the business in Colombia. One of the reasons why they say that Mr. Seda cannot conduct business in Colombia is because he was chased out of Colombia.

[redacted]

[redacted]

In addition--and we heard that this morning as well--he still continues to operate and manage The Charlee Hotel. Which means he could absolutely manage other hotels in--or any other projects in Colombia.

We have also seen this morning a WhatsApp message that counsel for Claimants showed. What they did not show is that, in the same message that Carlos sent to Mr. Seda, he said that "we would like to invite you to work with us as a consultant if we need to call up on you." This is on 13 September 2017, one year after the Preliminary Measures had been adopted, which means he was still trusted and Project Manager still wanted to count on Mr. Seda as a consultant for their projects.

Now, very quickly, our second point on

damages is that the Claimants are not entitled to compensation in connection with the alleged breach of obligations that only extend to covered investments. This --if we go--this is confirmed by the U.S., the legal principle that says in the submission Paragraph 62 that, for TPA obligations that only extend to covered investments, for example, minimum standard of treatment in Article 10.5, a tribunal may only award damages for it violations where the current investment incurred damages. A tribunal has no authority to award damages that a claimant allegedly incurred in their capacity as an investor for violations of obligations that only extend to covered investments.

Now, if we see again--and this is the table contained in Paragraph 24 of BRG's Second Expert Report, the Claimants are claiming--or 70 percent of the Claimants' claim concern other projects that are not the Meritage, and they only claimed damages in connection with these projects for breaches of FET minimum standard of treatment. So, they're not entitled to these damages, and that is another reason

in addition to the lack of causation.

Now, very quickly, if we go to the first element that they had to prove which is the quantum of damages suffered, the Claimants' assessment is speculative and exaggerated. First of all, the DCF method is not appropriate. The Claimants' own damages experts recognize that there is three methods for valuing the Fair Market Value. In this case, they opted for the DCF, but it is not appropriate in this case because all of the Projects were at early stages, and they have no track record of successful operations. You can then read--Deutsche Telekom, the principle is stated there, amongst many other cases, exceptionally--and we see that in Rusoro--DCF method may be applied to investments that are not going concern but under very specific factors or conditions, which are not met in this case. For example, it requires historical record of financial performance. In this case, the Claimants did not have a track record of successful projects in Colombia. The only allegedly successful project, which is The Charlee Hotel, is irrelevant because it's a very different

project in nature and targeted audience than the projects with respect to which the Claimants are claiming damages.

Then there is no reliable projections or detailed plan verified by impartial experts. And like commodities in the hotel and real-estate businesses, there is no available Market Price forecast. There is also no evidence that the Claimants have secured sufficient funding to develop the Project, and the enormous risk with respect to the development of the Claimants' project.

Now, even if the DCF method were to apply, the Claimants' valuation is grossly exaggerated. Dr. Hern has gone through the exercise of correcting BRG's assumptions for DCF, even when Dr. Hern clearly explains why DCF is not applicable, but his result of redoing the DCF method with reasonable assumptions are consistent with a historical Cost Approach. So, we see that the Claimants are claiming 199.6 million. The corrected DCF performed by Richard Hern from NERA results in a range between 27 and minus 1.8, depending on certain assumptions; and the historical cost

valuation resulting in damages of 7.6 million.

You will hear from Richard Hern on this on Friday. For the sake of time, I will pass to our last point on damages, which is moral damages.

As you know moral damages can only be awarded in exceptional circumstances, and the two main elements is when there is severe State conduct, for example, OI versus Venezuela, refers to physical threat, illegal detention, other ill treatment which is in contravention of the norms according to which civilized nations are expected to act. And the second element is the serious damage to the physical health, grave mental suffering or substantial loss of reputation.

In this case, we have already seen that there is no such exceptional circumstances. The Respondent has acted at all times in accordance with Colombian and international law. It's undisputed that Mr. Seda was not subject to physical threat, illegal detention or other ill treatment and intervention of the norms according to which civilized nations are expected to act.

And, on the contrary, we have seen that the record belies that he--the Claimants' claims--of harassment. I think we have seen them, and they're in the slide, so I will just jump to my last slide, which is that the amount claimed for moral damages is excessive and arbitrary. It's arbitrary because it depends or--it's linked to the full amount claimed which is between 23.9 and 29.6, depending on where we look at, the Memorial or the Reply, and whether it only refers--or whether we look at the damages claimed only by Mr. Seda or by all the Claimants.

But it's also excessive and in this table you can see that Mr. Seda is requesting between 23.9 and 29.06 just for conduct of the State which is ongoing forfeiture proceedings against a lot on which Mr. Seda intended to develop a real-estate project, whereas in other cases, for example, in Desert Line versus Yemen, there was malicious physical duress of the executives of the claimant. There was shown impact on their physical health and on their credit and reputation. The amount of award was only 1 million. In Von Pezold versus Zimbabwe, there were

humiliation, death threats, assaults, kidnapping, et cetera. The amount awarded for legal damages – for moral damages, sorry, was 1 million.

And then we have two cases on which Colombia, human rights cases, in which Colombia was condemned to pay. One is --concerns the execution of 19 adults, one minor, four children and 17 people were forced to move their cattle and lost their property by paramilitary groups. The amount awarded by the Inter-American Court of Human Rights was 1.25 million.

And in Bedoya versus Colombia for the failure to protect a journalist and her mother in a case involving the kidnapping, torture, and sexual abuse of the journalist, the amount awarded by the Inter-American Court of Human Rights was only $110,000.

So, you see that in comparison with the State conduct and with the amounts granted the amount claimed by the Claimants for moral damages is just exaggerated, and even outrageous.

So, just to finish the Pre-Award will be addressed on Friday by--Pre-Award Interests, sorry,

will be addressed on Friday by NERA, by Dr. Hern, and this concludes my presentation. Thank you very much. I hope I was fast enough.

PRESIDENT SACHS: Thank you.

MS. HERRERA: Mr. President, if I --just a small clarification so that there is no--the translation on the page, I think it's 257, reads "fraudulent transfer." False tradition in Colombia means when you don't have the actual title --it could be a squatter that passes and registers it, so I just wanted to clarify that.

PRESIDENT SACHS: Okay. Thank you.

You may comment on that.

MR. MOLOO: No comment.

PRESIDENT SACHS: Now, this is an end to the openings, thank you very much. We now need to address the pending procedural issues. Shall we start with the new documents that the Respondent intends to submit into the proceedings?

Okay. Let's have a comfort break of five minutes, yes? Before we continue.

(Brief recess.)

PRESIDENT SACHS: Alright, now, the first pending procedural issue is about the documents that the Respondent requested the Tribunal authorize to be submitted, and there is a list of 30 documents attached to that request. Now, we already touched upon certain type of documents--the travaux préparatoires--but, of course, we want to hear you first.

What is your position to this request?

MR. MOLOO: So, thank you, Mr. President.

Very briefly, there were four categories of documents, documents that were purported to rebut Mr. Seda's Third Witness Statement, and two categories, documents relating to allegations against Mr. Hernández, which we allowed into the record, so those are--we had agreed that earlier.

[redacted]

[redacted]

The second category is documents the Respondent had an obligation to produce as a result of the Tribunal's Order from many months ago, which are just delayed productions to the Claimant. I'm not sure it's never been the case that when you produce documents to the other side that all of a sudden that just ends up in the record. In fact, if it's a delayed production of documents they were ordered to produce several months ago, it should be our option to introduce those new documents into the record, if we so wish, or some subset of them, but they wish simply not to produce them late to us but to enter them into the record. There is no basis, obviously, for that, so we objected to those. And again, same caveat, we have not reviewed all of those documents.

The third category are documents rebutting Claimants' Essential Security submission, and the fourth--and that includes the travaux préparatoires, which I will deal with in a moment.

And the fourth is a document that their damages expert wish to admit which we consented to. There was one document, and we consented to it.

So, let me deal specifically with the documents that are alleged to rebut the Essential Security submission. In our submission, those are documents that Colombia should have submitted with its Rejoinder--that was already late--but, for example, with the travaux, you heard Ms. Banifatemi said--say in response to a question, well, why do we need the travaux? She says this is what we always do when we interpret the Treaty. We always refer to the travaux. If that's what they always do, then why was it not submitted when they initially interpreted the Treaty, which was with respect to the Essential Security provision, which was with the Rejoinder? And so, it's clearly late.

And second of all, it's prejudicial, and the

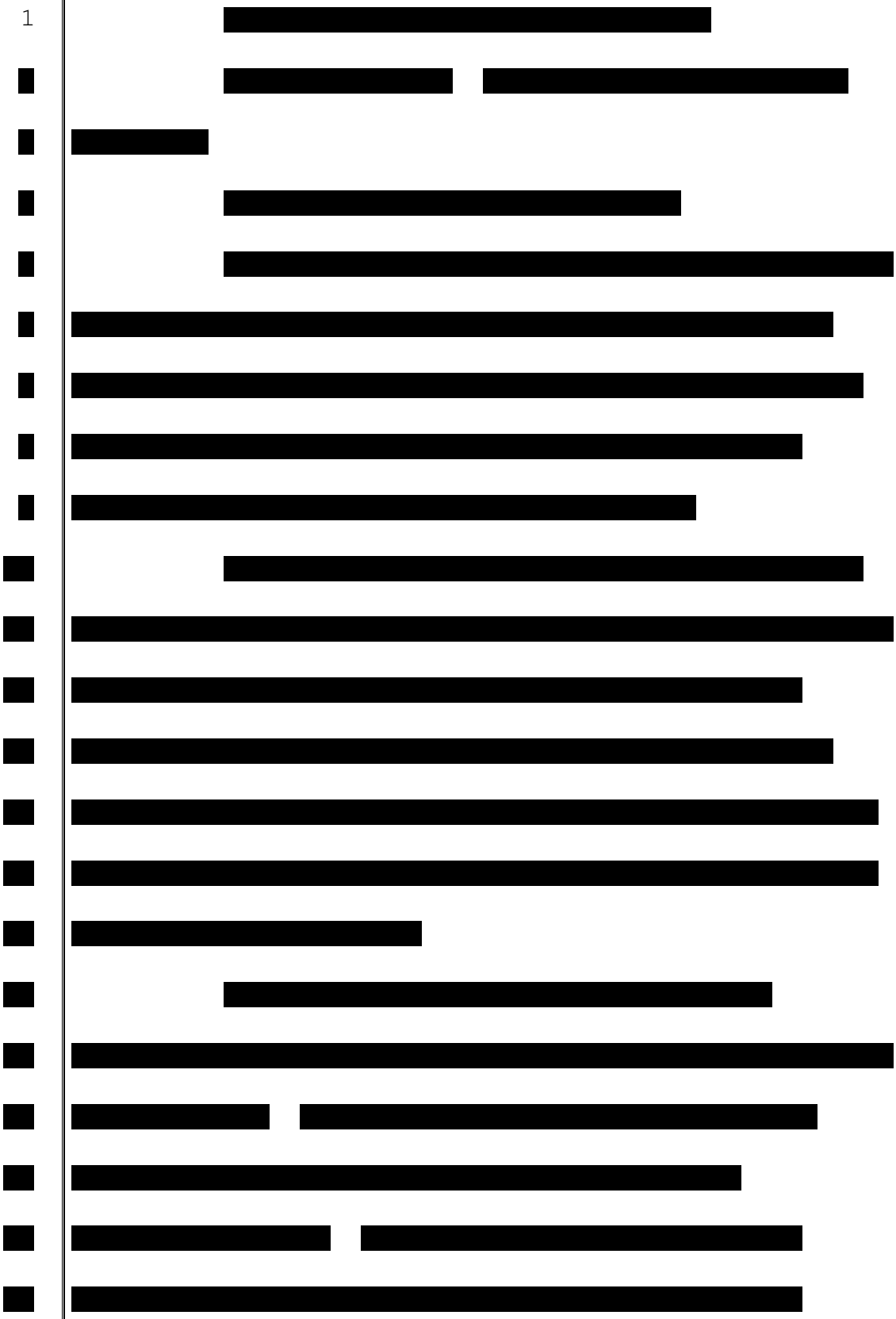
reason why it's prejudicial is because, first of all, the volume, as you heard today, there is total of 3,000 pages. We have been given 186 of those pages, all in Spanish. So, please forgive me, I cannot read in Spanish. I have no idea, but I have not had an opportunity to review it. But, in any event, what we received is only a subset, clearly, of minutes from the Colombian Government.

So, it's not—it's not even what the U.S. Government's minutes say. So, it's 186 pages of 3,000 pages that they clearly have. It's both late. They gave it to us the Wednesday before the hearing, when they made this argument several weeks ago for the first time with respect to the Essential Security submission, and it's a subset that's been selected solely by them. And the volume of it, even if they gave us the full 3,000 pages, we're at the Hearing. I mean, to receive—even if we were to get the full amount, 3,000 pages now is hugely prejudicial.

So, for that reason, we're not in a position to accept those, either, into the record.

PRESIDENT SACHS: You addressed the

specifically the rebuttal documents regarding Essential Security issue. [redacted]

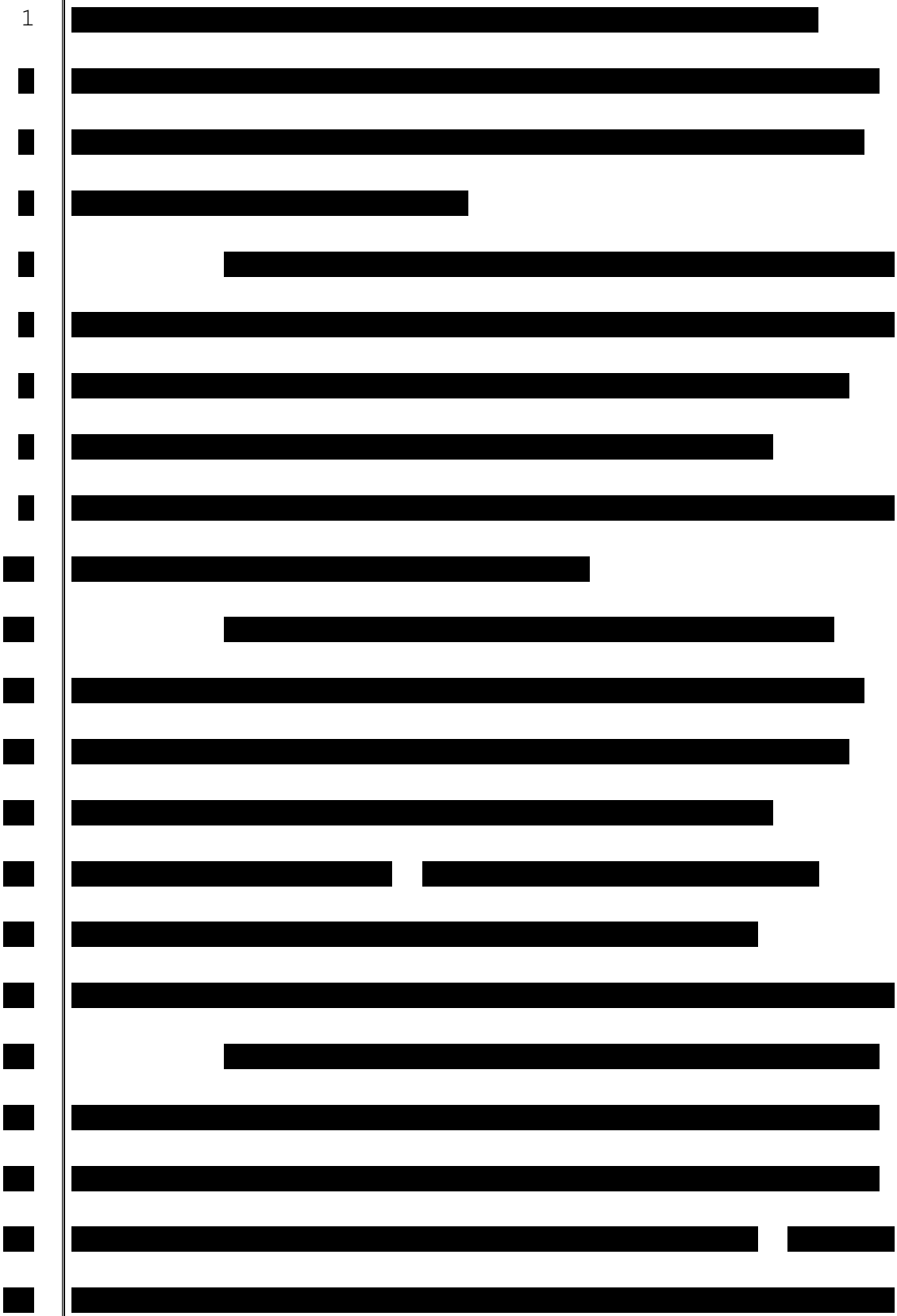


[redacted]

On the second category, on the Essential Security, we know that they provided, if I'm not mistaken, 31 Legal Authorities in rebuttal. Again, we had reserved our rights. We had proposed to have 19 Legal Authorities total of 1,509 pages, all of which are publicly available. The only category that is not publicly available is the travaux. But, as I mentioned, we have identified to the Claimant, when we shared those documents, the 14 pages that discuss the Essential Security.

Now, issue is taken with the fact these are in Spanish, well, this is a dual-language arbitration, this is English and Spanish, so they cannot take issue

with us providing documents in Spanish. They're supposed to read Spanish. This is the Agreement. And as a gesture of courtesy, Colombia accepted that we use English in this Arbitration; otherwise, it would be Spanish.



[redacted]

And there was some point made on the damages document accepted. I mean we have not made a fuss about it, but we also accepted, there was a swap of documents. So they accepted some of ours, we accepted some of them, so I'm not even raising that. So, these are all the new documents. There is a separate issue of Mr. Amariglio and some documents related to that, but I'm happy to discuss that separately.

MR. MOLOO: Just a couple of brief points.

[redacted]

[redacted]

The second point is the Procedural Order does say all exhibits must be translated into English and Spanish, so it's not me asking for that. That's in the Procedural Order.

And the third thing, just very briefly, with respect to the case files, I don't think it's right, but [redacted]. So, I will come back to you, if I may, Mr. President, on that point, but I think again it's a question of selective production. On that point, though, I will come back to you, Mr. President.

PRESIDENT SACHS: I think one point should

be clear, whatever will be submitted, be allowed to be submitted to the file can't be used in cross-examination or examination during this week because these would be new documents, and it would be not appropriate, for example, to submit to Mr. Seda or vice versa to other witnesses any of those documents.

Maybe let's see whether we can--you can find common ground. We would appreciate that, if you could, in the evening, try to come up with a joint solution as to these three categories.

Let me just say that, as far as the legal documents are concerned, so rebutting the Essential Security interest. It seems to us that there shouldn't be--they should be allowed into the record because we said that you would have the opportunity to deal with that aspect in your Post-Hearing Briefs, in any event.

As far as the travaux préparatoires are concerned, our tendency is that we would indeed like to have them part of the record because the argument of the Essential Security was raised rather late; it played an important role in your oral argument,

respective oral arguments, and we still need to hear the U.S. on that, but our tendency would be to allow this to go to the record.

Obviously, yes, the whole lot because it would be difficult to ascertain whether it is correct that only 42 pages deal with the precise exception. I mean, there are a lot more in order to verify whether this is correct. There may be lots of pages that are completely irrelevant for a dispute, and I don't think this would be such an exercise to check whether the relevant part is the one that was indicated by the Respondent.

MR. MOLOO: May I ask one clarification question, Mr. President, on that?

PRESIDENT SACHS: Yes.

MR. MOLOO: By "the whole lot," we're talking about the full 3,000 pages; correct?

PRESIDENT SACHS: Yeah, but there is an index, and you could go through this.

MR. MOLOO: Understood.

(Tribunal conferring.)

PRESIDENT SACHS: So, this would also mean

that we reserve the possibility to have another virtual hearing on that very issue because it is relevant, and we now have new material on which you have to comment, which you have to review, which we have to review. We think that this could be appropriate. We just wanted to flag this, as we have not yet decided this, but this would be the way to deal with that.

MR. MOLOO: Understood.

MS. BANIFATEMI: Mr. President, just a clarification: The travaux préparatoires excerpts discussing Essential Security, I understand, are 14 pages; and we have identified those.

[redacted]

Thank you.

[redacted]

[redacted]

MR. MOLOO: Mr. President, we're in your hands, but to be getting this many documents this late in the proceedings is highly prejudicial. Obviously, we prepared a lot over the last two-and-a-half years

for this Hearing. We're now getting 3,000 pages of travaux [redacted] I don't know if we're getting them tonight or when, but this is highly irregular, in my experience.

(Tribunal conferring.)

[redacted].

Are we then clear, or do you need to discuss among yourselves further? We said the legal exhibits are admitted, and you may comment on them in your Post-Hearing Briefs.

As to the travaux préparatoires, we said you may submit them, you may review them, you may comment on them in the Post-Hearing Briefs; and, if we think that we need to hear you and to discuss this exemption further, we will let you know and have a short virtual hearing on that issue.

MR. MOLOO: That's understood.

Mr. President, may I ask that there was

obviously a negotiation about which documents to let in. These are not ones that did not we agree to, but if we're going to allow certain documents, additional documents, for the Respondent, I would ask that at least this evening we be allowed to consider whether there are other documents we might want to also admit into the record.

PRESIDENT SACHS: Sure. Sure. Fair enough.

All right. Then we have the second issue, namely the request that was made in relation to Mr. Amariglio, so there were two requests. One is, in our view, the same that was already decided previously, namely the financial details on the arrangement. And the second one was a bit broader namely to explain the precise connection of Mr. Amariglio and his fund with the Claimants.

So, Mr. Amariglio, we allowed you to be present. We were told that you are not a party representative, so may we take it that you are not sitting on the Board of one of the Claimants or of Newport, and that you are not a shareholder either?

MR. AMARIGLIO: Thank you, Mr. President.

Yes, I can make this statement and representation to you that I'm not a Board Member with any of the Claimants.

Was there another sub-question?

PRESIDENT SACHS: Yes. Is your funding company Shareholder or are you Shareholder in any of the companies that are among the Claimants or Newport?

MR. AMARIGLIO: We're not Shareholders. We provided capital in the form of debt.

PRESIDENT SACHS: And do you have security interest in shares of the Claimants or of Newport?

MR. AMARIGLIO: As part of the deal, that again, is in the form of debt and equity. We do have security that we will expect, are very common in this type of financial arrangements.

PRESIDENT SACHS: I turn to the Respondent.

Is that satisfactory?

MS. BANIFATEMI: Thank you, Mr. President.

It clarifies some things, but it's not clear exactly what the role is and the financial stake, so we continue to reserve our rights in relation to jurisdiction information to Tenor until we know

exactly what the situation is.

ARBITRATOR PONCET: The way I understood Mr. Amariglio—although I may have misunderstood him, but what he seems to be saying is that he's here as a classical third-party funder?

MR. AMARIGLIO: Yes, correct.

MS. BANIFATEMI: We have explained that is in some of documents we wanted to put on record, and the Eco Oro President, so the President's question in regards to his role as a Shareholder or as sitting on a Board, that may not be the case now. We don't know what the case will be in the future in the event that there is an award. So, we are in the dark as to the real financial interest and what type of arrangement. There is a number of different arrangements, and funding arrangements are extremely diverse.

So, I'm not in a position today to say I'm fine with this because I do not know the precise stake here and who is the real party-in-interest financially.

ARBITRATOR PONCET: With respect, you're not more in the dark than any Respondent in the

third-party finance case, are you?

MS. BANIFATEMI: And it's not because in other cases it's being kept in the dark that is more appropriate. I think that it's quite appropriate that this Tribunal should know, and we are entitled to know what are the financial stakes and who is the real interested party financially. This is our position.

ARBITRATOR PEREZCANO: Could I ask a question?

PRESIDENT SACHS: Yes, sir.

ARBITRATOR PEREZCANO: Has there been any change in the relationship, the original relationship, as a funder, as a third-party funder, since the issue first came up at the outset of the proceeding until today? So is it--has the funding agreement changed in any way from what we discussed and decided initially at the outset of the case that we--yeah, has there been any change?

MR. MOLOO: No, I think there has been—I guess to answer your question, there has been additional funding that's been required because all of the various applications, et cetera, and I hope there

will not be any additional funding in light of the documents we're about to receive, but that's it. The underlying relationships have all remained the same since the initial request was made.

PRESIDENT SACHS: I'm sorry. We do not have to decide this tonight, but we have on the record now your declarations, and we will consider whether we think that they are sufficient, and you also said that you wanted to reflect on this. So, for the time being, the issue is still pending. We will decide on it, but not tonight.

MS. BANIFATEMI: That's understood, Mr. President.

I just would like to put something on the record which is I do take issue with the fact that somehow there is issue taken with the fact we somehow create procedural incidents. This case is a case where extremely serious allegations of corruption have been made against the Fiscalía, the entirety of the Fiscalía of Colombia. We take issue with that. This is the case where these allegations are made in the context of the war on drugs by Colombia in relation to

Oficina. This is not a minor matter. So, we're the ones having to constantly respond to procedural incidents.

So, I take issue with the fact that somehow in this very serious context we are the ones creating apparently procedural incidents. We're not. We're trying to respond. And an example is Mr. Seda, I understand the Tribunal's Decision and I respect that, but Mr. Seda provided a Third Witness Statement on 25 April. We reserved our right to put documents on the record that rebut the allegations made in there, we just have been denied that right, they're being given the right to make other responsive documents, but it has to go both ways. And those allegations are we--simply the documents that we sought to put on record were responding to Mr. Seda's allegation that he cannot comment because these are not transcripts, so you want transcripts, we're happy to give transcripts. We have nothing to hide. That's what we're saying. We're happy even to give the audio recordings. We're happy to give them the synopsis and say these are the relevant ones, but you can check.

So, this is a question of transparency, and we have been as transparent as we can.

And by the way, this has been taking a lot of resources within ANDJE, who has a lot of more important matters to attend to, so I do take issue with the criticism.

ARBITRATOR PONCET: But you don't take issue, do you, with the fact that Mr. Seda is on tomorrow; right? So, you shouldn't--you should--you would agree, won't you, that he shouldn't be confronted with documents that would arrive on the record tonight?

MS. BANIFATEMI: Dr. Poncet, we provided this days ago. Had they accepted because that's their criticism. They're saying we don't know what you're talking about. [redacted]. If they're serious about this, they can say "yes, yes, we can look at them," and then we would not be here today discussing about this going to happen tomorrow. So, this was provided as soon as we could because we received on 25 April the third Witness Statement with some allegations, there, so we have--and we reserve

the right to respond to that.

So, we did our very best, our very best, within the time that we had with extremely limited resources to respond to that and to rebut it. Had they said "yes" a few days ago, they would have had that a few days ago.

Now, I understand the Tribunal has made a decision. Fine, so we will proceed as the Tribunal has decided, but I am taking issue on the record about what criticism that is made of us.

(Tribunal conferring.)

PRESIDENT SACHS: Okay. That is on the record.

Do you want to react? I mean, we know that this is a very serious case and that it involves serious public considerations but also private investment considerations. So far you have very professionally dealt with this difficult case, and we would appreciate if you could continue in this fashion.

But you may, of course, react to what was just said.

MR. MOLOO: Professor Sachs, I think you know what I probably would say, so I don't think it's necessary to belabor that point.

PRESIDENT SACHS: Thank you.

So, this is the end of today's Hearing. It's been a long day. Thank you, David, and thank you all. We will continue tomorrow at 9:30 with the examination of you, Mr. Seda, and so we wish you a nice evening and see you tomorrow.

(Whereupon, at 7:24 p.m., the Hearing was adjourned until 9:30 a.m. the following day.)