

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

IN THE MATTER OF:

THE BANK OF NOVA SCOTIA

Claimant

and

REPUBLIC OF PERÚ

Respondent

ICSID Case No. ARB/22/30

CLAIMANT'S SCHEDULE OF DOCUMENT REQUESTS

19 September 2025



Torys LLP
79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario
Canada M5K 1N2
John A. Terry

T. Ryan Lax
Chris Kinnear Hunter
Emily Sherkey
Amanda Wolczanski
Natasha Williams

Payet, Rey, Cauvi, Pérez
Victor A. Belaunde 147, Torre Real 3
San Isidro, Lima Perú



José Antonio Payet Puccio
Julio César Pérez Vargas
Mayra Bryce Alberti
Alvaro Cuba Horna

Counsel for the Claimant

Table of Contents

I. CLAIMANT’S DOCUMENT PRODUCTION REQUESTS: MATTERS OF GENERAL APPLICATION TO ALL REQUESTS (15 AUGUST 2025)..... 1

II. PERU’S COMMENTS ON THE CLAIMANT’S GENERAL REMARKS AND SPECIFICATIONS (5 SEPTEMBER 2025)..... 8

III. CLAIMANT’S RESPONSE TO RESPONDENT’S COMMENTS ON CLAIMANT’S GENERAL REMARKS AND SPECIFICATIONS (19 SEPTEMBER 2025)..... 17

IV. SCHEDULE OF REQUESTS 21

A. Requests relating to the Constitutional Court’s deliberations in the Scotiabank Amparo and other actions bearing on the Court’s decision making 21

1. Drafting history leading to the Leaked Decision, communications relating to the Leaked Decision and the 2021 Decision [ORDER SOUGHT] 21

2. Discussions and deliberations concerning the Scotiabank Amparo [ORDER SOUGHT] 33

3. Distribution of the Scotiabank Amparo file within the Court [ORDER SOUGHT] 39

4. The distribution of the case files associated with the Parties’ Combined Domestic Comparators [ORDER SOUGHT]..... 45

5. Deliberations leading to the Clarification Order [ORDER SOUGHT] 49

6. The Court’s changes to the quorum requirements [ORDER SOUGHT]..... 51

7. The Court’s prioritization of its case load [ORDER SOUGHT] 57

B. Requests relating to the Constitutional Court and Government’s interactions with the media in connection with the Scotiabank Amparo and the Parties’ Combined Domestic Comparators..... 60

8. Interactions between the Court and journalists regarding the Scotiabank Amparo [ORDER SOUGHT] 60

9. Transmission of draft judgments in the Parties’ Combined Domestic Comparators to third parties [ORDER SOUGHT] 66

10. Interactions between SUNAT and the media regarding the Scotiabank Amparo and the Parties’ Combined Domestic Comparators [ORDER SOUGHT] 70

11.	Interactions between government officials and the media regarding the Scotiabank Amparo [ORDER SOUGHT]	75
12.	Interactions between government officials and the media regarding the Parties' Combined Domestic Comparators [ORDER SOUGHT].....	81
C.	Requests relating to interactions between the Constitutional Court and other arms of the Peruvian Government regarding the Scotiabank Amparo and domestic default interest cases	84
13.	<i>Ex parte</i> meetings between SUNAT and the Court relating to the Scotiabank Amparo and the Parties' Combined Domestic Comparators [ORDER SOUGHT]	84
14.	Interactions between the Court and government officials regarding the Scotiabank Amparo and the Parties' Combined Domestic Comparators [ORDER SOUGHT]	89
15.	Interactions between government officials regarding the Scotiabank Amparo and the Parties' Combined Domestic Comparators [ORDER SOUGHT]	96
16.	Government commission evaluating large tax debts [NO ORDER SOUGHT].....	100
D.	Requests relating to Justice Espinoza-Saldaña's testimony at the Inter-American Court of Human Rights regarding governmental interference in the Scotiabank Amparo and associated investigations	101
17.	The Inter-American Court of Human Rights (<i>IACHR</i>) hearing on the independence of the Constitutional Court [ORDER SOUGHT]	101
18.	Government investigations into the Leaked Decision and Justice Espinosa-Saldaña's IACHR testimony [ORDER SOUGHT].....	107
19.	Investigations and/or allegations of undue Government interference in any of the Parties' Combined Domestic Comparators [ORDER SOUGHT]	112
E.	Requests relating to the calculation of Scotiabank and Scotiabank Perú's Losses	116
20.	The interest rate applicable to the SUNAT's return of funds. [ORDER SOUGHT]	116
21.	Periods of suspension of default interest [NO ORDER SOUGHT]	117
F.	Request relating to interpretation of the Treaty	119
22.	Negotiation of the Treaty [NO ORDER SOUGHT].....	119

I. CLAIMANT’S DOCUMENT PRODUCTION REQUESTS: MATTERS OF GENERAL APPLICATION TO ALL REQUESTS (15 AUGUST 2025)

1. The Requests for the Production of Documents appearing in Section II below (the *Requests*) are made in accordance with Article 43(a) of the ICSID Convention, Rules 33 and 34 of the ICSID Arbitration Rules, section 15 of Procedural Order No. 1 dated 28 February 2024 (*POI*), and the Tribunal’s Revised Procedural Calendar dated 29 May 2025.
2. By these Requests, Claimant seeks voluntary production by the Republic of Perú (*Perú*) of certain documents and categories of documents, failing which the Tribunal will be requested to order their production.
3. Before setting out the Requests, Claimant addresses below general matters that apply to all of its Requests.

A. THE INFORMATIONAL ASYMMETRY BETWEEN THE PARTIES

4. In its Counter-Memorial, Perú attempts to characterize Claimant’s claims in this arbitration as reflecting a conspiracy theory founded on “baseless accusations”, “inflammatory accusations”, “distortion”, “hearsay”, “misrepresentations”, “shocking” accusations and allegedly “without . . . an iota of actual evidence.”¹
5. Perú’s hyperbole—however strenuously pursued—is no answer to facts that even Perú cannot and does not dispute in its Counter-Memorial. Importantly, the following facts are undisputed and indisputable:
 - a. a copy of a judgment in Scotiabank Perú’s Amparo case against SUNAT at the Constitutional Court was leaked to the press in June 2017 (as defined in greater detail below in Section I.B, the *Leaked Decision*);²
 - b. one of the justices of the Constitutional Court [REDACTED], who dissented from the Leaked Decision, met with a journalist from the publication that publicized the Leaked Decision in the days prior to the issuance of the news article;³
 - c. the June 2017 news article reporting on the Leaked Decision displayed multiple images of the Leaked Decision;⁴
 - d. the Leaked Decision was going to find in Scotiabank Perú’s favour;⁵

¹ See, e.g., Memorial, ¶¶ 78–79; Counter-Memorial, ¶¶ 4–5, 131–132.

² Memorial, ¶¶ 78–83; Counter-Memorial, ¶¶ 133, 136–142; C-0200.

³ Memorial, ¶ 83; Counter-Memorial, ¶¶ 133, 142, 155–164; C-0198.

⁴ Memorial, ¶ 79; Counter-Memorial, ¶¶ 136–142; C-0200.

⁵ Memorial, ¶¶ 78–79; Counter-memorial, ¶¶ 156–159; C-0200.

- e. immediately following the June 2017 news article, SUNAT spoke out publicly against the Leaked Decision invoking populist sentiment that the decision in Scotiabank Perú’s favour would mean depriving the State of collecting “money of all Peruvians, of those who need health, education and work”;⁶
- f. other government officials subsequently followed suit in speaking out against the Constitutional Court in light of the Leaked Decision finding in Scotiabank Perú’s favour;⁷
- g. a justice of the Constitutional Court testified to the Inter-American Court of Human Rights that the Court experienced some form of governmental interference by reference to the Scotiabank Perú case that was before the Constitutional Court;⁸
- h. following the Leaked Decision, the Constitutional Court failed to decide on the Scotiabank Perú case for more than four years;⁹
- i. during the intervening years, SUNAT submitted applications calling for the recusal of the justices who had voted to find in Scotiabank Perú’s favour in the Leaked Decision;¹⁰
- j. one of the justices of the Constitutional Court (the same ██████████ who had had the meetings with the press referred to above) subsequently explained to the same publication that had published the Leaked Decision that the delay in resolving the Scotiabank case was connected to the political turmoil associated with the leaking of the Leaked Decision;¹¹
- k. in late 2021, shortly after Claimant submitted its Notice of Intent to Commence Arbitration, the Constitutional Court suddenly lowered the quorum requirement for the number of justices necessary to issue a judgment;¹² and
- l. subsequently, the Constitutional Court issued a final decision in the Scotiabank Perú case that was diametrically opposed to the Leaked Decision that had been leaked four years earlier.¹³

⁶ Memorial, ¶¶ 96, 291; Counter-Memorial, ¶¶ 174–178; C-0221; C-0222; C-0204; C-0205; C-0207; C-0208; C-0210; C-0220; C-0221; C-0222; C-0232.

⁷ Memorial, ¶¶ 96–108, 291; Counter-Memorial, ¶¶ 180–190; C-0219; C-0226; C-0227; C-0257; C-0260; C-0266; C-0267; C-0270; C-0279; C-0280; C-0281; C-0283; C-0303; C-0304; C-0321; C-0323.

⁸ Memorial, ¶¶ 100, 239; Counter-Memorial, ¶¶ 192–196; C-0262; C-0263.

⁹ Memorial, ¶ 153; Counter-Memorial, ¶ 410; C-0200 (*Hildebrandt in sus Trece* article leaking the Leaked Decision, dated June 9, 2017) with R-0008 (2021 Decision, dated November 9, 2021).

¹⁰ Memorial, ¶¶ 125, 128; Counter-Memorial, ¶¶ 150, 163; C-0216; C-0242; C-0243.

¹¹ Memorial, ¶ 109; Counter-Memorial; C-0298.

¹² Memorial, ¶ 151; Counter-Memorial, ¶¶ 214–219; C-0333.

¹³ Memorial; ¶¶ 153, 226, 245; Counter-Memorial, ¶¶ 159, 210; C-0200; R-0008.

6. Accordingly, Scotiabank’s case is not founded on fantasy, but on a fact pattern that even Perú does not deign to dispute. Based on a thorough assessment of the public record, Scotiabank understands that the Peruvian Government’s treatment to which it was subjected, reflected in the fact pattern above, is treatment that no Peruvian with a similar claim relating to default interest associated with disputed tax liabilities was subjected. That comparison is at the heart of Claimant’s case.
7. Yet, despite the existence of such strong evidence of government misconduct, Perú criticizes Scotiabank for not having more direct evidence of State wrongdoing. That is absurd for two reasons:
 - a. *First*, improprieties of the variety at issue here often are not accompanied by a vast paper trail. It is obvious that leaking a judgment of a court to the media prior to its official publication is improper. Such conduct is not ordinarily taken by individuals in a way that leaves a vast paper trail, let alone a public one that would be accessible to Claimant. The fact that there was a leak should have resulted in an investigation by the Peruvian Government into the genesis of the leak. Yet, it is telling that Perú fails to refer to the existence of any such investigation in its Counter-Memorial (and so such investigations are the basis of Claimant’s Request 18).
 - b. That leads to the *second* point. Further (and direct) evidence relating to the workings of the Constitutional Court regarding the Scotiabank Amparo and its interactions with media and government are uniquely in Perú’s possession. Indeed, there is a profound informational asymmetry present between the parties. For example, Scotiabank has led extensive evidence about how the Leaked Decision had to originate from the Constitutional Court and the strong circumstantial evidence that it was from Justice Ledesma, who—after the leak took place—still took an official visit with the very journalist who published the Leaked Decision. Any further evidence demonstrating the source of the leak must come from Perú. It will not lie with Perú to deny such documents and criticize Scotiabank for not having them. Furthermore, only documents that are in Perú’s possession, custody or control could assist in connecting the dots or in a further understanding whether similarly situated Peruvian investors with default interest cases before the Constitutional Court faced even remotely comparable treatment.
8. The Claimant elaborates on the above themes in justifying the relevance and materiality of each of its Requests. When it comes to deciding on the Requests, Claimant respectfully requests that the Tribunal bear in mind the informational asymmetry that is apparent here. Only Perú’s documents can provide a more complete record.

B. GENERAL SPECIFICATIONS RELATING TO ALL REQUESTS

9. The Requests seek production of the documents listed in the Schedule as soon as possible on a rolling basis, and in any event no later than 31 October 2025, as contemplated by the Revised Procedural Calendar. Should Perú locate any additional responsive documents after this date, Perú should produce them immediately. All documents should be produced together with any attachments, enclosures, or annexes.
10. Each Request in the Schedule is justified by reference to its relevance and materiality in accordance with section 15.4.2 of PO1.
11. As required by sections 15.4.3 and 15.4.4 of PO1, Claimant confirms that the requested documents are reasonably believed to exist based on their subject matter as described in the Schedule; that they are not within Claimant’s possession, custody or control; and that they are, or logically should be, within the possession, custody or control of Perú.
12. Documents in Perú’s possession, custody, or control include documents in the possession, custody, or control of State organs, including the executive branch and its agencies, ministries, and departments, the legislative branch, the judicial branch, and the Constitutional Court, Autonomous Bodies and/or State-owned entities, parent entities, holding companies, affiliates, subsidiaries, and any company or other entity or person controlling, under common control and/or controlled by, managed by or otherwise affiliated with such organs and companies, including their respective State organs, principals, officers, directors, employees, representatives, or agents during the time periods relevant to these Requests.
13. Peruvian law imposes strict archiving and disclosure obligations on the Constitutional Court and the Government entities from which Claimant seeks the production of Documents. In accordance with Article 21 of the Transparency and Access to Public Information (Law 27806 approved by Supreme Decree 021-2019-JUS) “it is the responsibility of the State to create and professionally maintain public records so that the right of access to information may be fully exercised”. Thus, every incoming or outgoing document created in the conduct of official business must be registered in the relevant Government entity’s document-management systems and preserved. For example, Article 43(f) of the Constitutional Court’s Regulation on Organization and Functions (approved by Administrative Resolution 084-023-P/C¹⁴), obliges the Court to “organize and safeguard” the Court’s Central Archive.¹⁵ To the extent that any of the requested documents did exist but are said no longer to exist and/or no longer to be in Perú’s possession, custody or control, Perú shall identify such documents and the circumstances

¹⁴ The same provision was contained in the previous Constitutional Court’s Regulations on Organization and Functions, which were in force during Scotiabank Amparo. *See* Administrative Resolution 196-2022-P/TC, art. 43(f); Administrative Resolution 233-2018-P/TC, art. 43(f); Administrative Resolution 209-2018-P/TC, art. 43(f); Administrative Resolution 078-2016-P/TC, art. 43(d).

¹⁵ Additionally, Articles 266(11) and 266(14) of the Judiciary Organic Law oblige the Judiciary to safeguard files of the cases files (*expedientes*) and, after five years, send the files of concluded cases to the Judicial Archive.

in which they are said to have been lost and/or destroyed and/or to have left Perú's possession, custody or control. To the extent that any of the requested documents ought to have been created by or for Perú in the ordinary course of business or as required by law (Peruvian or otherwise), but were not so generated, or were generated but were not preserved, Perú shall identify such documents and any reason they were not so generated or preserved.

14. Claimant requests that responsive documents be produced by Perú with a numbering system and produced in an electronic form sufficient to identify each separate document, document families (e.g., e-mails and their attachments) and the relationship between documents within a family (e.g., multiple attachments to an e-mail). In addition, in the event that the native files of the requested documents exist (e.g., files with Microsoft Excel or Microsoft Outlook format), Claimant requests that Perú produce said files in their native format.
15. To the extent that any document(s), or any portions of any document(s), responsive to any of the Requests are withheld or redacted by Perú from its production of documents based on the invocation of any privilege that would apply in these proceedings, Claimant requests that Perú provide a privilege log that lists each document withheld or redacted together with the following information with respect to each such document: (i) the custodian (with job title); (ii) the author (with job title); (iii) the sender(s) (with job title(s)); (iv) the recipient(s), including noting the recipients in the “to”, “cc”, and “bcc” fields (in all cases, with job titles); (v) the legal basis for the claim of privilege, including the applicable law and/or jurisdiction under which the claim for privilege is made; and (vi) a description of the document or portion thereof with details sufficient to substantiate the privilege invoked. Each document shall be logged individually. To the extent that a family of documents is withheld, each individual document should be logged in a manner showing the interrelationship between the documents. To the extent that only part of a family of documents is withheld on privilege grounds, those document(s) should nevertheless be logged in a manner that cross-references to the document(s) from that family that were produced.
16. For the avoidance of doubt, the scope and extent of these Requests do not signify any acknowledgement by Claimant that Perú satisfied its evidential burden with respect to any factual or legal issue merely because certain allegations of fact or law are not the subject of specific requests in these Requests.
17. Capitalized terms in the Requests have the meaning attributed to them in Claimant's previous pleadings. The following definitions and explanatory notes apply to Claimant's Requests:
 - (a) “**Clarification Order**” means the order published by the Constitutional Court on 30 November 2021, titled Order of the Constitutional Court in Case No. 0222-2017-PA/TC (C-0356), following the 2021 Decision.

- (b) “**Constitutional Court**” or “**Court**” means the Constitutional Court of Perú, including the Court acting in plenary or in chamber, the individual justices, and all staff of the Court acting in any official capacity either internally or with parties or third parties.
- (c) “**Documents**” means a writing or recording of any kind, whether recorded on paper, electronic means, audio or visual recordings, or any other mechanical or electronic means of storing or recording information, including, but not limited to, e-mails, faxes, correspondence, memoranda, working and final drafts, loose and pad notes, presentations, internal files and forms, guidelines, charts, agendas and calendars, contemporaneous meeting minutes and call notes, visitor logs, minutes and analyses, advice or recommendations, records of discussions or deliberations, draft decisions or assessments, orders or instructions, however retained, and whether or not prepared by Perú. Documents recorded on “electronic means” include Documents that are readily accessible from computer systems and other electronic devices and media, Documents stored on servers and back-up systems, electronic Documents that have been deleted, and additional information stored and associated with electronic Documents known as metadata.
- (d) “**Government**” means the executive and legislative branches of the Peruvian State, including all sub-divisions, agencies, and any other department thereunder, including but not limited to the MEF, SUNAT, Tax Court, and the Peruvian Congress and its congresspeople individually.
- (e) “**Leaked Decision**” means the decision of the Constitutional Court finding in Scotiabank Perú’s favour, which was leaked to newspaper *Hildebrandt en sus Trece* and published on 9 June 2017 (*see* C-0200).
- (f) “**MEF**” means the Peruvian Ministry of Economy and Finance.
- (g) “**Parties’ Combined Domestic Comparators**” means the combined list of comparator cases identified by both Claimant (Memorial, ¶ 260; Annex II, Tab 2: Domestic Comparators, CER-Landra/Neyra) and Respondent (Counter-Memorial, ¶¶ 370, 373, 381 and nn.516, 519, 531) involving Peruvian investors relevant to the National Treatment inquiry under Article 803 of the Canada-Perú Free Trade Agreement (the **Treaty**), *i.e.*, those cases in which Peruvian investors, allegedly in like circumstances to Claimant, brought *amparo* proceedings between 23 January 2017 and 7 February 2023, challenging the Peruvian Government’s application of accrued default interest beyond the maximum legal term.¹⁶
- (h) “**Relating to**” includes containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or

¹⁶ By using this definition, Claimant is not accepting that the Respondent has, necessarily, properly identified relevant comparators for purposes of the National Treatment test under Article 803 of the Treaty.

reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in all events directly or indirectly or in whole or in part.

- (i) “**Scotiabank Amparo**” means the proceeding before the Constitutional Court that began with Scotiabank’s filing of a special constitutional appeal (*Recurso de Agravio Constitucional*) on 14 October 2016, and ended with the Constitutional Court’s issuance of the Clarification Order on 30 November 2021, registered under file number 0222-2017-PA/TC.
- (j) “**SUNAT**” means the Superintendencia Nacional de Aduanas y de Administración Tributaria, the Peruvian authority within the MEF that is responsible for the collection and control of taxes in Perú.
- (k) “**Tax Court**” means the administrative tribunal of the Peruvian Ministry of Finance.
- (l) “**2021 Decision**” means the published decision of the Plenary Session of the Constitutional Court dated 9 November 2021, which dismissed Scotiabank’s *amparo* by three votes to one (R-0008).

II. PERU’S COMMENTS ON THE CLAIMANT’S GENERAL REMARKS AND SPECIFICATIONS (5 SEPTEMBER 2025)

18. Prior to providing its comments on each of the Claimant’s requests for production of documents, the Republic of Peru addresses below the Claimant’s comments on “Matters of General Application to All Requests”, as set forth in the Claimant’s Schedule of Document Requests of 15 August 2025 (the “**Claimant’s Document Requests**”). The Republic of Peru will first address the Claimant’s improper submissions on the merits, made under the guise of describing “The Informational Asymmetry Between The Parties” (**Section A**), to then provide its comments on the Claimant’s “General Specifications Relating to All Requests” (**Section B**).

A. THE CLAIMANT HAS IMPROPERLY TAKEN ADVANTAGE OF ITS DOCUMENT REQUESTS TO PLEAD THE MERITS OF ITS CASE AND MISREPRESENT THE RELEVANT FACTS

19. The Republic of Peru briefly addresses the Claimant’s general remarks on its Document Requests which, for the reasons set out below, are procedurally improper, and factually and legally flawed:

20. *First*, the Claimant’s use of its Document Requests to make unauthorized submissions on the merits of the case and to present as undisputed facts, facts that have been either disproven by the Respondent or are contested, is in violation of the ICSID Arbitration Rules, Procedural Order No. 1 and standard arbitral practice. In accordance with Article 30 of the ICSID Arbitration Rules, the parties are to make four substantive written submissions, namely: a memorial, a counter-memorial, a reply, and a rejoinder.¹⁷ As expressly provided in Rule 30(3), “[a] party may file *unscheduled written submissions, observations or supporting documents only after obtaining leave of the Tribunal*”.¹⁸

21. In line with Article 30 of the ICSID Arbitration Rules, Procedural Order No. 1 provides for four written pleadings containing the Parties’ substantive written submissions, which “shall be filed and exchanged by the date indicated in the *Procedural Calendar*”.¹⁹ As a separate procedural act, Procedural Order No. 1 provides that the Parties may serve requests for production of documents on the other party, which shall be submitted “in the format of a Redfern Schedule”, containing (i) a description of each requested document; (ii) a statement as to how this is relevant material to the outcome of the dispute (which, per the Tribunal’s instructions, should be made by reference to the Parties’ pleadings); (iii) a statement that the documents are not in the requesting party’s possession, custody or control, and (iv) a statement of the reasons why the requesting party believes that the requested documents are in the possession, custody or control of the other disputing party.²⁰

¹⁷ See ICSID Arbitration Rules, Rule 30(1).

¹⁸ ICSID Arbitration Rules, Rule 30(3) (emphasis added).

¹⁹ Procedural Order No. 1, ¶ 14.2.

²⁰ See Procedural Order No. 1, ¶ 15.4.

Therefore, Procedural Order No. 1 is clear in that the Parties' written submissions must be reserved for scheduled pleadings or for any pleadings that may be authorized by the Tribunal following a reasoned application by one of the Parties. Conversely, the Parties' document requests must be circumscribed to establishing the elements for such requests to proceed, by reference to the submissions on record.

22. The foregoing is also in line with arbitral practice, as established in the 2020 IBA Rules, which shall guide the Tribunal and the Parties throughout document production in this case.²¹ According to Article 3(3) of the IBA Rules, the content of a party's Requests to Produce is limited to the elements identified in Procedural Order No. 1 and described above.²² Allowing substantive submissions in the parties' Requests to Produce would be contrary to the rationale of the IBA Rules, which are intended to provide "*an efficient, economical and fair process for the taking of evidence in international arbitrations*".²³
23. Contrary to the clear framework established by the Arbitration Rules, Procedural Order No. 1 and the IBA Rules on the Taking of Evidence in International Arbitration (the "**IBA Rules**"), the Claimant has utilized its Document Requests to make submissions on the merits, and unsuccessfully to rebut the arguments made by Peru in its Counter-Memorial.²⁴ This includes, *inter alia*: (i) a list of allegedly "*undisputed and indisputable*" facts which, as Peru addresses below, is deeply flawed; (ii) a restatement of its position on the merits;²⁵ (iii) substantive arguments concerning Peru's conduct vis-à-vis the alleged leak of the draft judgment, as well as the "*strong circumstantial evidence*" of who Scotiabank claims was responsible for the alleged leak.²⁶
24. The Claimant's improper procedural conduct is prejudicial to the Respondent, as it places on it the undue burden of having to respond to allegations on the merits of the case, detracting from its ability to address the Claimant's Document Requests. Additionally, the Claimant has created an imbalance that is contrary to Peru's due process rights and to the principle of equality of arms, as the Claimant will have one more opportunity to address the substantive arguments that it has made in its Document Requests. Accordingly, Peru fully reserves its rights in relation to the Claimant's improper conduct, including the rights to: (i) request that the Tribunal strike the Claimant's submissions, particularly those contained at paragraphs 4-8 of its Document Requests, (ii) seek leave from the Tribunal to provide a fulsome response to the Claimant's allegations, and (iii) seek reimbursement for the costs generated by the Claimant's conduct.

²¹ See Procedural Order No. 1, ¶ 15.2.

²² See IBA Rules on the Taking of Evidence in International Arbitration ("**IBA Rules**"), Article 3(3)

²³ IBA Rules, Preamble, ¶ 1.

²⁴ See above, ¶¶ 4-8.

²⁵ See above, ¶¶ 6-7.

²⁶ See above, ¶ 7(b)

25. **Second**, the Claimant’s characterization of its account of the facts as “*undisputed and indisputable*” is demonstrably false.²⁷ Peru is compelled briefly to address the Claimant’s most salient misrepresentations:²⁸

Claimant’s misrepresentation	Correction
[A] copy of a judgment in Scotiabank Perú’s Amparo case against SUNAT at the Constitutional Court was leaked to the press in June 2017 (as defined in greater detail below in Section I.B, the Leaked Decision);	As explained by Peru in its Counter-Memorial, the document that was reproduced in the June 2017 article published by <i>Hildebrandt en sus Trece</i> (the “ Published Document ”) was not a “judgment”. Under Peruvian law, a judgment must be voted on, signed, and published by the Constitutional Court for it to be valid and binding, none of which occurred in the case of Scotiabank’s <i>amparo</i> over the amounts paid as default interest to SUNAT, registered as file No. 00222-2017-PA/TC (“ File 222-2017 ”). ²⁹ As also explained by Peru, the Claimant failed to provide any evidence that the Published Document had been “leaked” by the Constitutional Court. ³⁰ For these reasons, the use by the Claimant of the term “Leaked Decision” is, in and of itself, a misrepresentation, which Peru rejects in the strongest terms.
[O]ne of the justices of the Constitutional Court (██████████), who dissented from the Leaked Decision, met with a journalist from the publication that publicized the Leaked Decision in the days prior to the issuance of the news article;	It is wrong to state that Justice Ledesma “dissented” from the “Leaked Decision”, given that, contrary to the Claimant’s misrepresentations, File No. 222-2017 had not been voted on by the Plenary by June 2017. ³¹
[T]he June 2017 news article reporting on the Leaked Decision displayed multiple images of the Leaked Decision;	As explained, the Claimant’s use of the term “Leaked Decision” is disingenuous.
[T]he Leaked Decision was going to find in Scotiabank Perú’s favour;	A demonstrated by Peru, a draft judgment, which has not been voted on by the Court, is not susceptible of “finding” in either sense, given that it lacks any legal value. ³²

²⁷ See above, ¶ 5.

²⁸ For the avoidance of any doubt, the Respondent’s choice not to address any of the Claimant’s stated “undisputed” facts does not entail an acceptance of their accuracy.

²⁹ See Counter-Memorial, ¶¶ 136-139.

³⁰ See Counter-Memorial, ¶¶ 133, 407.

³¹ See Counter-Memorial, ¶¶ 143-144, 406.

³² See Counter-Memorial, ¶¶ 136-139, 142, 343.

Claimant’s misrepresentation	Correction
<p>[I]mmediately following the June 2017 news article, SUNAT spoke out publicly against the Leaked Decision invoking populist sentiment that the decision in Scotiabank Perú’s favour would mean depriving the State of collecting “<i>money of all Peruvians, of those who need health, education and work</i>”;</p>	<p>Peru rejects the Claimant’s characterization of the SUNAT’s public statements as “<i>invoking populist sentiment</i>”. Rather, as explained by the Respondent, the SUNAT spoke out publicly—as is its right—to explain the real economic consequences that a finding against the SUNAT would have. This is consistent with the SUNAT’s position throughout the proceedings before the Constitutional Court and in no way entails arbitrary treatment or discrimination.³³ Scotiabank’s statement also implies that the SUNAT was capable of exercising pressure over the Justices of the Constitutional Court which, as explained by Peru, holds no water.³⁴</p>
<p>[O]ther government officials subsequently followed suit in speaking out against the Constitutional Court in light of the Leaked Decision finding in Scotiabank Perú’s favour;</p>	<p>Similarly, the “other government officials” to which the Claimant refers, which include five members of Congress, merely exercised their constitutional right to free speech.³⁵</p>
<p>[A] justice of the Constitutional Court testified to the Inter-American Court of Human Rights that the Court experienced some form of governmental interference by reference to the Scotiabank Perú case that was before the Constitutional Court;</p>	<p>As explained by Peru, Justice Espinosa Saldaña’s complaint before the Inter-American Court of Human Rights <u>did not</u> concern the case of Scotiabank Peru, but rather the <i>Frontón</i> case, in which he denounced political pressure from Congress that threatened judicial independence. His passing and vague reference to Scotiabank--made jointly with a reference to the <i>Perubar</i> case, involving a Peruvian company—did not relate to the substance of his complaint, which was centered exclusively on the political pressure surrounding the <i>Frontón</i> case,³⁶ and in no way constitutes evidence that the Constitutional Court’s decision in File No. 222-2017 was vitiated by undue pressure or duress.</p>
<p>[F]ollowing the Leaked Decision, the Constitutional Court failed to decide on the Scotiabank Perú case for more than four years;</p>	<p>The Claimant’s statement, read out of context, suggests that the delay in the issuance of a judgment in respect of Scotiabank Perú’s <i>amparo</i> was atypically long. As explained by</p>

³³ See Counter-Memorial, ¶¶ 174-178.

³⁴ See Counter-Memorial, ¶¶ 174-178, 184, 186.

³⁵ See Counter-Memorial, ¶¶ 187-191.

³⁶ See Counter-Memorial, ¶¶ 193-194.

Claimant's misrepresentation	Correction
	Peru, this is not true. Conversely, the time that it took for the Constitutional Court to issue a judgment in File No. 222-2017 was well within the standard at the time which, to recall, was during the restrictions imposed by the COVID-19 pandemic. ³⁷
[D]uring the intervening years, SUNAT submitted applications calling for the recusal of the justices who had voted to find in Scotiabank Perú's favour in the Leaked Decision;	As explained, File No. 222-2017 had not been voted on by June 2017. Additionally, the Claimant's statement implies that SUNAT recused Justices Blume and Espinosa <u>because</u> of the content of the Published Document. This is incorrect. Peru has explained the legitimate concerns that motivated SUNAT's request that Justices Blume and Espinosa recuse themselves, which included personal meetings with Scotiabank Perú's representatives. ³⁸
[I]n late 2021, shortly after Claimant submitted its Notice of Intent to Commence Arbitration, the Constitutional Court suddenly lowered the quorum requirement for the number of justices necessary to issue a judgment;	The Claimant misrepresents the facts. The Constitutional Court's decision to lower the quorum required to issue a valid judgment was not "sudden". Rather, it was the Court's legitimate way of addressing the difficulties occasioned by Justice Ramos' sudden passing, in exercise of its autonomy. ³⁹
[S]ubsequently, the Constitutional Court issued a final decision in the Scotiabank Perú case that was diametrically opposed to the Leaked Decision that had been leaked four years earlier.	The Claimant misrepresents the facts. The judgment issued in November 2021 in File No. 222-2017 was not a "final decision", but rather the <u>only valid and binding judgment that was voted on and published by the Constitutional Court, as required by Peruvian law.</u> Furthermore, it is not true that the judgment was "diametrically opposed" to the Published Document. As explained by the Respondent, Justices Blume, Ledesma and Miranda voted in line with the statements in the document published in June 2017. ⁴⁰ Only Justice Espinosa voted differently as from what was stated in the June 2017 article. Far from being suspicious, Espinosa's vote was in line with his

³⁷ See Counter-Memorial, ¶ 229; [REDACTED]

³⁸ See Counter-Memorial, ¶¶ 150, 163.

³⁹ See Counter-Memorial, ¶¶ 215-218.

⁴⁰ See Counter-Memorial, ¶ 344.

Claimant's misrepresentation	Correction
	position in at least 56 other cases between October 2021 and May 2022. ⁴¹

26. **Third**, the Claimant's emphasis on the alleged "*profound informational asymmetry present between the parties*" is misconceived.⁴² Any alleged "informational asymmetry" does not dispense the Claimant from its burden to comply with the requirements established by the IBA Rules, namely: (i) the need for a sufficiently specific description of a document or category of documents that may be reasonably presumed to exist, which (ii) must be shown to be relevant to the case and material to its outcome, (iii) are not in the possession of the requesting party, and (iv) may be reasonably presumed to be in the possession of the other party. As Peru explains further below, with the exception of those Requests to which Peru has voluntarily agreed, the Claimant has largely failed to meet this burden.

B. THE CLAIMANT'S "GENERAL SPECIFICATIONS" IMPLY EXCESSIVELY BURDENSOME TERMS FOR PERU

27. In this section, Peru briefly sets out its comments on the Claimant's "General Specifications":

28. **First**, the Republic of Peru's agreement to any of the Claimant's Requests shall not entail its agreement to produce documents "*as soon as possible*".⁴³ Conversely, the Republic of Peru will in good faith produce any responsive disclosable documents, either voluntarily or as ordered by the Tribunal, by the date provided to this effect in the Procedural Calendar, *i.e.* 31 October 2025. The Respondent may, if it deems it feasible, produce documents it voluntarily agrees to produce at an earlier date but does not undertake any obligation to do so.

29. **Second**, Peru rejects the Claimant's allegation, at paragraph 12, that "[d]ocuments in Peru's possession, custody, or control" include documents in the possession of a vast number of entities which may or may not be under Peru's control, including "*Autonomous Bodies and/or State-owned entities, parent entities, holding companies, affiliates, subsidiaries, and any company or other entity or person controlling, under common control and/or controlled by, managed by or otherwise affiliated with such organs and companies, including their respective State organs, principals, officers, directors, employees, representatives, or agents during the time periods relevant to these Requests*".⁴⁴ Pursuant to the IBA Rules, it is for the Claimant to prove that any requested Documents are within Peru's possession, custody or control, which must be demonstrated on a request-specific basis.

⁴¹ See Counter-Memorial, ¶ 374; Annex 1, Tab 2 "Oct. 2021-May 2022".

⁴² See above, ¶ 7(b).

⁴³ See above, ¶ 9.

⁴⁴ See above, ¶ 12.

30. **Third**, the Claimant’s argument that “*Peruvian law imposes strict archiving and disclosure obligations on the Constitutional Court and the Government entities from which Claimant seeks the production of Documents*” is based on an inaccurate portrayal of Peruvian law.
31. In this regard, the Claimant first relies on Article 21 of the Transparency and Access to Public Information Act (“**Transparency Law**”), which imposes on State entities the obligation to maintain public records “*so that the right of access to information may be fully exercised*”.⁴⁵ However, the Claimant obviates that the same Act recognizes several categories of information protected from disclosure, including information that is classified,⁴⁶ restricted,⁴⁷ or confidential.⁴⁸ Any documents falling under each of these categories would be exempted from public disclosure, and hence from the scope of Article 21 of the Transparency Law.
32. Furthermore, the Claimant’s reliance on the Organic Law of the Judicial Branch to illustrate the archival obligations of the Constitutional Court is misplaced.⁴⁹ As explained by the Respondent, the Constitutional Court does not belong to the Judicial Branch, but is rather an autonomous body subject to a separate legal regime, set forth by its own Organic Law.⁵⁰ The Organic Law of the Judicial Branch is therefore not applicable to the Constitutional Court, except as regards the application of the procedural rules set forth therein, which may supplement other specific procedural regimes.⁵¹
33. The Claimant’s reference to the Rules for the Organization and Functions of the Constitutional Court also fails to provide support for the Claimant’s allegations. In this regard, the Claimant alleges that “*every incoming or outgoing document created in the conduct of official business must be registered in the relevant Government entity’s document-management systems and preserved*”, which it bases *inter alia* on Article 43(g) of the Constitutional Court’s Regulation on Organization and Functions, which tasks the Court’s Department of Documentary Management and Archive (“**Archival Department**”) with “*organiz[ing] and safeguard[ing] the Court’s Central Archive*”.⁵² This is wrong. The Central Archive of the Constitutional Court does not contain “*every incoming or outgoing document created in the conduct of official business*”, as the Claimant avers. Not only is this not required by the law (indeed, the Claimant has failed to identify any provision in this regard), but it would also be impracticable considering the workload of the Court and the limited resources available to its Archival Department.⁵³ Rather, the Archive of the Constitutional Court is mainly tasked with keeping the official case files for the decisions

⁴⁵ See above, ¶ 13. See also, Transparency Law (Law 27806, approved by Supreme Decree 021-2019-JUS), Article 15 (**Annex A**)

⁴⁶ See Transparency Law (Law 27806, approved by Supreme Decree 021-2019-JUS), Article 16 (**Annex A**).

⁴⁷ See Transparency Law (Law 27806, approved by Supreme Decree 021-2019-JUS), Article 15(A) (**Annex A**).

⁴⁸ See Transparency Law (Law 27806, approved by Supreme Decree 021-2019-JUS), Article 17 (**Annex A**).

⁴⁹ See above, ¶ 13.

⁵⁰ See Counter-Memorial, ¶ 199. See also, Organic Law of the Constitutional Court (**C-0118**).

⁵¹ See Organic Law of the Judicial Branch, Final and Transitional Provision Twenty-Third (**Annex B**).

⁵² See above, ¶ 13.

⁵³ See Administrative Resolution 048-2024-P/TC, Annual Working Plan of the Archives of the Constitutional Court 2023, Table No. 5, pp. 13-14 (PDF Document).

issued by the Constitutional Court, including *(i)* written submissions by the parties, and their annexes, *(ii)* procedural decisions by the Constitutional Court, *(iii)* notices issued by the Administrative Secretary, and *(iv)* the official judgment issued by the Constitutional Court for each case.⁵⁴ While the Archive of the Constitutional Court also stores other internal documents of the Court such as Resolutions, personnel files, financial and accounting documents, and minutes, the Court does not have as a policy to store each and every document generated within it, which, as stated, would not be either feasible or reasonable.

34. **Fourth**, as regards the Claimant’s request that “*responsive documents be produced by Perú with a numbering system and produced in an electronic form sufficient to identify [...] document families [...] and the relationship between documents within a family*”, in addition to the production of documents in native form,⁵⁵ the Respondent recalls that these requirements do not arise from the IBA Rules, which provide that “[d]ocuments that a Party maintains in electronic form shall be submitted or produced in the form most convenient or economical to it that is reasonably usable by the recipients”.⁵⁶ This notwithstanding, the Respondent is willing to produce in native format, identifying document families and the relationship between documents within a family, any business-type files (Word, Excel, Power Point, Outlook) that are reasonably made available to Counsel in said native format, provided that: *(i)* the Claimant reciprocates these efforts, in the understanding that both parties must be on equal footing as regards document production, and *(ii)* any documents that must be redacted will be produced as images.
35. **Fifth**, as regards the Claimant’s request that any documents that Peru must withhold or redact be individually listed in a privilege log, Peru reserves the right to register groups of documents as such when reasonable and appropriate. Complying with the Claimant’s request that “[t]o the extent that a family of documents is withheld, each individual document should be logged in a manner showing the interrelationship between the documents” may be excessively burdensome for the Respondent and unnecessary to adequately identify the documents and indicate the ground on the basis of which confidentiality is being invoked. That would be the case, for instance, of any files such as administrative or judicial files, where a group of documents may be reasonably identified with a single entry.⁵⁷
36. **Sixth**, Peru objects to certain definitions utilized by Scotiabank in its Document Requests, as specified below:
37. **“Leaked Decision”**: as explained by Peru, there is no evidence on the record that the document reproduced by *Hildebrandt en sus Trece* in June 2017—which was not a

⁵⁴ See Administrative Resolution 048-2024-P/TC, Annual Working Plan of the Archives of the Constitutional Court 2023, Table No. 5, pp. 13-14 (PDF Document).

⁵⁵ See above, ¶ 14.

⁵⁶ IBA Rules, Rule 3(12)(b).

⁵⁷ This shall not entail an acceptance that any administrative or judicial files are responsive to any of the Claimant’s Document Requests, unless otherwise specified below.

“Decision”, as it had not been voted, signed, nor published—was “leaked” by the Constitutional Court or any of its members. Throughout these Document Request, Peru shall refer to the document reproduced by *Hildebrandt* as the “Published Document”.

38. **“Parties’ Combined Domestic Comparators”**: the Respondent rejects the Claimant’s representation that the Respondent identified any comparator cases “*relevant to the National Treatment inquiry under Article 803 of the Canada-Peru Free Trade Agreement*”. As explained by the Respondent in its Counter-Memorial, the Claimant has failed to identify any relevant comparators, for which reason its claim for a breach of the National Treatment standard under the FTA must fail.⁵⁸ For the avoidance of any doubt: the cases identified by the Respondent, and which the Claimant failed to report on in its Memorial, are not relevant comparators to determine a purported breach of the National Treatment standard, as none of them is in like circumstances with Scotiabank Perú.⁵⁹
39. **“Relating to”**: the definition provided by the Claimant is overly broad and would create excessively burdensome obligations for the Respondent.⁶⁰ The Respondent’s acceptance to voluntarily produce any documents requested by the Claimant using such language shall not be interpreted as an acceptance of the broad interpretation of the term “relating to”. Instead, in line with the IBA Rules’ purpose to ensure efficiency and requirement that the Parties describe any requested documents with a degree of specificity, the Respondent shall interpret the term “relating to” in accordance with its ordinary meaning, i.e. to mean “reasonably connected to”.

⁵⁸ See Counter-Memorial, Section V.D.

⁵⁹ See Counter-Memorial, Section V.D.

⁶⁰ The Claimant defines “relating to” as “containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in all events directly or indirectly or in whole or in part”.

III. CLAIMANT’S REPLY TO RESPONDENT’S COMMENTS ON CLAIMANT’S GENERAL REMARKS AND SPECIFICATIONS (19 SEPTEMBER 2025)

A. INTRODUCTORY MATTERS RELATING TO ALL REQUESTS

40. With its Document Requests, Claimant provided a brief (five paragraph) introduction that:
- a. contained a set of key factual predicates that feature throughout Claimant’s Document Requests, with parenthetical references to where those factual matters are already addressed in Claimant’s Memorial (*i.e.*, all factual assertions that are already on the record and that are directly related to Claimant’s Document Requests);
 - b. reflected Claimant’s understanding that the factual assertions were not disputed based on what Respondent had said regarding each issue in its Counter-Memorial (and included pin cite references to where those factual assertions are addressed in Respondent’s Counter-Memorial); and
 - c. identified two key cross-cutting themes bearing on Claimant’s Document Requests, including importantly the informational asymmetry between the parties, and in Respondent’s favour, to further connect the dots between Claimant’s factual showing.
41. Claimant requested that the Tribunal “bear in mind” the overarching themes presented by Claimant in deciding upon Claimant’s Requests. There is nothing remotely improper with Claimant providing a brief introduction to themes otherwise reflected throughout Claimant’s Document Requests, with the intention of streamlining the Document Requests and the explanation of the relevance and materiality of each Request. Claimant did so exclusively by reference to factual assertions already on the record and with reference to both parties’ submissions. It would have been far less efficient and more repetitive to repeat the themes, where applicable, across each of the Document Requests.
42. Respondent’s responsive observations can be addressed summarily.
43. *First*, Respondent pedantically characterizes the five-paragraph introduction as an “unauthorized submission[.]” that purportedly violates the Tribunal’s directions and “standard arbitral practice.” The Respondent’s principal argument is that anything that does not fit within the table format of the document production requests is impermissible. However, both parties address certain matters outside of the document production request tables by providing each other with guidance on general matters that apply to all document requests. Accordingly, Respondent’s own approach deviates from the standard that it says applies to document production requests. An introduction containing themes that bear directly on all document production requests is simply not a “submission”; it is what it purports to be, an introduction to issues featuring throughout the Document Requests.

44. *Second*, Respondent contends that the five-paragraph introduction, containing a set of facts that already appear in Claimant’s Memorial and that in any event feature throughout the document production requests, is “prejudicial to the Respondent, as it places on it the undue burden of having to respond to allegations on the merits of the case, detracting from its ability to address the Claimant’s Document Requests.” That is not a serious allegation. Respondent has not been prejudiced whatsoever as it has been provided the ability to provide responsive comments. And responding to five paragraphs cannot seriously have prevented it from responding to each individual Document Request. In any event, the matters that it responded to are matters that directly bear on all of Claimant’s Document Requests. Accordingly, by addressing Claimant’s five-paragraph introduction, Respondent addressed issues germane to Claimant’s Document Requests and not a gratuitous restatement of Claimant’s case, as Respondent contends.
45. *Third*, Respondent contends that Claimant’s characterization of certain facts as being “‘undisputed and indisputable’ is demonstrably false” and Respondent provides a lengthy table setting out what it *now* says is its position on each of the facts. Claimant considers that the footnotes in its introductory paragraphs above, which cite directly to Respondent’s Counter-Memorial for each of the factual assertions, unequivocally support the conclusion that the facts, as presented by Claimant above, are not genuinely in dispute. Nevertheless, to the extent that they are now in dispute, that only further supports the need to grant Claimant’s document production requests. That is to say, if these key and central factual assertions that are plainly at the heart of Claimant’s case are ones that now generate such vehement disagreement from Respondent, then there is all the more reason for Claimant’s Requests to be granted to help resolve the parties’ factual disagreements.
46. *Fourth*, Respondent contends that Claimant’s emphasis on the profound informational asymmetry present between the parties is “misconceived” because it does not “dispense the Claimant” from establishing its need for documents in accordance with the requirements of the IBA Rules. Claimant never sought to substitute the informational asymmetry for its obligation to establish a need for each of its Requests. Notably, though, Respondent does not (and cannot) quibble with the fact that there is an “informational asymmetry” between the parties and it is “profound”. As Claimant has noted previously, that informational asymmetry should bear on the Tribunal’s conclusions regarding the parties’ document production requests.

B. GENERAL SPECIFICATIONS RELATING TO ALL REQUESTS

47. Each party sought to provide the other with specifications applicable to all of its document production requests. Claimant addresses here Respondent’s comments, set out at paragraphs 27 to 39 above, to Claimant’s general specifications.
- a. Claimant has no comment on Respondent’s statement (at paragraph 28) as to the date by which it will complete its voluntary production of documents.
 - b. At paragraph 29, Respondent disagrees with Claimant’s characterization of the State instrumentalities that are sufficiently within Respondent’s “control” for

document production purposes. Notably, however, Respondent has not endeavored to provide any specificity regarding the instrumentalities within its control, providing the vague response that certain entities “may or may not be under Perú’s control”. That is not illuminating or useful. Claimant has, as far as possible, sought to identify the relevant State instrumentality(ies) to which each Request is directed. However, in certain instances, Claimant has left the identity of the relevant instrumentalities open-ended as—for certain requests (*e.g.*, Request Nos. 18 and 19 regarding investigations conducted by the State)—Respondent alone will be able to discern all relevant State instrumentalities that may possess Documents responsive to Claimant’s Requests.

- c. At paragraph 30, Respondent disputes Claimant’s statement that “Peruvian law imposes strict archiving and disclosure obligations on the Constitutional Court and the Government entities from which Claimant seeks the production of Documents.” In particular, Respondent emphasizes that the Transparency and Access to Public Information Act (*Transparency Law*) protects from public disclosure certain categories of information. Respondent then tries to use provisions of the Transparency Law to contend that categories of documents sought by Claimant are “privileged” and protected from disclosure. However, the Transparency Law, which applies domestically to defend against freedom of information act requests by any member of the public, is not applicable to govern document production request standards between litigating parties, especially in an international forum such as an ICSID arbitration. Accordingly, Respondent cannot rely on provisions in the Transparency Law to avoid producing documents to Claimant. If anything, the Transparency Law may be relevant in determining redactions of arbitration documents before they are published.⁶¹ Moreover, according to Respondent, the Organic Law of the Judicial Branch—which Claimant relies on in explaining applicable archiving obligations—does not apply to the Constitutional Court because of its autonomy and independence. Respondent is incorrect. The Court’s autonomy has nothing to do with its obligations to maintain archives relating to its work. Once a judgment has been published, the Constitutional Court is obliged to transfer the case file to the Judicial Branch’s archives for long-term retention.⁶²
- d. At paragraph 33, Respondent disputes Claimant’s reliance on the Rules on the Organization and Functions of the Constitutional Court to further illustrate the Court’s Archival Department’s obligations to preserve documents. However, Respondent cannot escape the fact that Article 43(g) of the Constitutional

⁶¹ Claimant’s **Annex G**, Transparency and Access to Public Information Law, Law No. 27806 (Consolidated text approved by Supreme Decree No. 021-2019-JUS), 11 December 2019.

⁶² Claimant’s **Annex F**, Rules on the Organization and Functions of the Constitutional Court, 1 March 2016, art. 46(o) (“The Secretariat Rapporteur has the following functions: Supervise and send correctly and promptly to the Department of Documentary Management and Archive the files resolved after the judgment is published for notification and return to the judges of origin.”). This provision is also included in Administrative Resolution No. 196-2022-P/TC, art. 46(n); Administrative Resolution No. 084-2023-P/TC, art. 46(n).

Court’s Rules on the Organization and Functions requires the maintenance and safeguard of the Court’s Central Archive.⁶³ As Respondent accepts, the Archival Department not only retains official case files but also “stores other internal documents of the Court such as Resolutions, personnel files, financial and accounting documents, and minutes”. Furthermore, the 2024 Annual Plan elaborated by the Constitutional Court affirms that the Court preserves documents created between 1982 and 2022 and explicitly states that it “has not made proposals to eliminate documents in recent years.”⁶⁴

- e. As for the form of production addressed at paragraph 34, Claimant agrees to the Respondent’s proposal that the parties produce documents to each other in reciprocal form.
- f. As for the form of privilege logs addressed at paragraph 35, Respondent should not be afforded discretion (whenever it considers it “reasonable and appropriate”) to determine when to log individual documents as opposed to groups of documents. Respondent’s approach is particularly concerning given that it appears to intend to withhold documents generated by the Constitutional Court on the basis of domestic “confidentiality” concerns and, in doing so, it proposes to log with a single entry entire “administrative or judicial files”. Such an unwieldy approach would not allow Claimant to properly understand what materials have been withheld and why, which is essential information to enable any challenges to improperly withheld documents. In other words, it would defeat the entire purpose for which privilege logs are created. Accordingly, Claimant requests that the Tribunal direct the parties to issue privilege logs providing the specificity requested by Claimant at paragraph 15 above.
- g. Finally, at paragraph 36, Respondent disputes and disagrees with Claimant’s use of certain definitions. Respondent establishes its own definitions for its responses to Claimant’s Document Requests. For the avoidance of doubt, Claimant continues to maintain the use of its own definitions first established above.

* * *

- 48. For the reasons set out below, Claimant requests that the Tribunal issue an order requiring Respondent to produce Documents responsive to Request Nos. 1 to 15 and 17 to 19. No order is sought in connection with Request Nos. 16 and 20–22.

⁶³ Additionally, Articles 266(11) and 266(14) of the Judiciary Organic Law oblige the Judiciary to safeguard files of the cases files (*expedientes*) and, after five years, send the files of concluded cases to the Judicial Archive. See Respondent’s **Annex B**, Organic Law of the Judicial Branch, 2 June 1993.

⁶⁴ Claimant’s **Annex A**, Administrative Resolution No. 049-2024-P/TC, Annex, Annual Working Plan of the Archives of the Constitutional Court 2024, 27 February 2024, pp. 11, 18.

IV. SCHEDULE OF REQUESTS

A. REQUESTS RELATING TO THE CONSTITUTIONAL COURT’S DELIBERATIONS IN THE SCOTIABANK AMPARO AND OTHER ACTIONS BEARING ON THE COURT’S DECISION MAKING⁶⁵

Document Request No	1. Drafting history leading to the Leaked Decision, communications relating to the Leaked Decision and the 2021 Decision [ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>The following Documents relating to the Constitutional Court’s drafting of the decision in the Scotiabank Amparo:</p> <ul style="list-style-type: none"> (i) all electronic and paper copies of the Leaked Decision and all communications copying or enclosing the Leaked Decision; (ii) all communications within the Constitutional Court (<i>i.e.</i>, among any justice, clerk, advisor or other employee) regarding the fact that the Leaked Decision was leaked and reported by the press; (iii) all electronic copies of all drafts of Documents intended or designed to become all or a component part of the decision of the Court in the Scotiabank Amparo or any individual or dissenting opinion, from the first draft of any such document through to the 2021 Decision and the Clarification Order, and whether prepared by a justice of the Court or a clerk, advisor or other Court employee, as well as all communications copying or enclosing all such Documents; and (iv) all paper copies of all drafts of Documents intended or designed to become all or a component part of the decision of the Court in the Scotiabank Amparo or any individual or dissenting opinion, from the first draft of any such document through to the 2021 Decision and the Clarification Order, and including those copies reflecting any signatures, hand-written comments or annotations. <p><u>Time period:</u> between 14 October 2016 (date <i>agravio constitucional</i> was filed with Constitutional Court) and 30 November 2021 (date on which the final Clarification Order was issued in connection with the 2021 Decision).</p>
B. Relevance and materiality (requesting Party) (1) para ref to submissions	<p><u>Background and relevance & materiality:</u></p> <p>An important element of Scotiabank’s case is the fact that a copy of the Court’s judgment in the Scotiabank Amparo ruling in Scotiabank Perú’s favour was leaked in June 2017, in the form of the Leaked Decision, and that the Court then reached a polar opposite outcome when it issued the 2021 Decision four years later (Memorial, ¶¶ 78–79, 153; C-0200). Based on a plain reading of the news article reporting on the Leaked Decision (C-0200), Claimant observes that the Leaked Decision was reported to be fully reasoned</p>

⁶⁵ Headings are being used for organizational purposes only and should not be construed as limiting in any way the scope of any Request.

<p>(2) comments</p>	<p>and had already been voted upon by the justices of the Court (Memorial, ¶¶ 79–83). Claimant further contends that the reversal in the outcome of the Scotiabank Amparo (as between the Leaked Decision and the 2021 Decision) shows that the Constitutional Court succumbed to political pressure and interference (Memorial, ¶¶ 226, 245).</p> <p>Perú does not dispute that a draft judgment in the Scotiabank Amparo was leaked. Perú also does not dispute that the news article displays authentic snapshots of the draft judgment in the Scotiabank Amparo. Instead, it disputes that the Leaked Decision was as advanced as reported in the relevant news article (Counter-Memorial, ¶¶ 136–142). Accordingly, Perú contends that, in rendering the 2021 Decision, the Constitutional Court did not “succumb” to any improper interference but instead that the 2021 Decision reflected the ordinary course outcome of the Scotiabank Amparo based on a legitimate procedure and the Court’s deliberations (Counter-Memorial, ¶¶ 210–230, 403–404).</p> <p>The requested documents are relevant to the dispute and material to its outcome because they will show how the Court’s ruling in the Scotiabank Amparo evolved over time—especially in showing the status and degree of progress of the draft judgment as reflected in the Leaked Decision and how and when the Leaked Decision evolved in the subsequent four years resulting in the diametrically opposed 2021 Decision. Given the disputed factual issues between the parties as to how and when the Court’s evaluation of the Scotiabank Amparo evolved, the Tribunal likely will be called upon to determine the aforementioned matters in resolving the dispute. The requested documents will substantially assist the Tribunal in that regard.</p> <p><u>Belief that Documents exist:</u></p> <p>The requested Documents relate to the preparation of documents that are known to exist: the Leaked Decision, the 2021 Decision, and the Clarification Order. Multiple drafts must have been prepared in connection with each of those documents. The requested Documents are therefore ones that would have been created in the Constitutional Court’s ordinary course of business. Indeed, the requested Documents are part of the regular proceeding and file records of the Constitutional Court in June 2017 (<i>see</i> Counter-Memorial, ¶¶ 136–142; CER-Landa/Neyra, ¶¶ 106–112).</p> <p>The requested Documents are not in the possession, custody, or control of Claimant. With respect to the Leaked Decision, Claimant only has access to the screenshots that appear in the news report exhibited as C-0200.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>Preliminarily, Peru is compelled to rectify the Claimant’s characterization of Peru’s position. Contrary to the Claimant’s assertions, Peru <u>does</u> dispute that “<i>a draft judgment in the Scotiabank Amparo was leaked</i>”, and that “<i>the news article displays authentic snapshots of the draft judgment in the Scotiabank Amparo</i>”. The Claimant has failed to provide any evidence for either of these</p>

allegations, both of which form part of the Claimant’s burden of proof in this arbitration.⁶⁶ Peru is also compelled to correct the Claimant’s repeated misrepresentation that the Published Document had been voted on by the Court, for which it provides no evidence and which is factually and legally incorrect. As the Minutes of the Plenary of the Constitutional Court show, the draft judgment resulting in the 2021 Decision was not voted on until 9 November 2021.⁶⁷

Furthermore, the Republic of Peru objects to the Claimant’s Request on the following grounds:

The requested documentation is not material to the outcome of the case (IBA Rules, Rules 3(3)(b); 9(2)(a)):

As explained by Peru in its Counter-Memorial, absent a claim for denial of justice, the Claimant is precluded from questioning the legality of the decisions adopted by the Constitutional Court in exercise of its adjudicatory function, as a matter of international law.⁶⁸ For this reason alone, its claim for National Treatment must fail. In any event, even if the Claimant’s claim were to be entertained by the Tribunal, the only act of the Peruvian State susceptible of being questioned by the Claimant is the decision issued by the Constitutional Court in File No. 222-2017, on 9 November 2021 (the “**2021 Decision**”). As a matter of Peruvian law, only a judgment that has been voted on, signed and published has legal effects and may therefore constitute the impugned “treatment” for purposes of deciding a claim for an alleged breach of the National Treatment standard. Accordingly, all unvoted and unsigned drafts of any given judgment, including the 2021 Decision, are immaterial.

The category of documentation requested is insufficiently narrow and specific. The request is excessively broad (IBA Rules, Rule 3(3)(a)(ii)):

The Claimant’s Request that Peru produce (i) “*all communications copying or enclosing the Leaked Decision*” and (ii) “*all communications within the Constitutional Court (i.e., among any justice, clerk, advisor or other employee)*” is exceedingly broad and could potentially comprise all communications (either official or unofficial) between any of the more than 200 employees that conform the Constitutional Court.

The Claimant’s Request that Peru produce “*all electronic copies of all drafts of Documents intended or designed to become all or a component part of the decision of the Court in the Scotiabank Amparo or any individual or dissenting opinion*” is unclear and lacks specificity. The Claimant cannot rely on vague language such as “intended” or “designed” to elude its burden to request specific documents. If the Claimant seeks the partial or complete

⁶⁶ See e.g. Counter-Memorial, ¶ 404.

⁶⁷ See Counter-Memorial, ¶¶ 144-151.

⁶⁸ See Counter-Memorial, ¶ 319.

drafts leading to the 2021 Decision, it should formulate its request accordingly. It has failed to do so.

There is no basis to assume the requested documentation is in the possession, custody, or control of the Respondent (IBA Rules, Rule 3(3)(c)):

As explained above,⁶⁹ the Constitutional Court does not have the policy, nor the capacity, to store in its archives all working documents and official communications, let alone any communication between its employees. In this regard, while some drafts of the final decisions may have been stored, there is no reason to believe that all working documents that may have been elaborated in preparation of a given decision remain in the Respondent’s possession, custody or control.

It would be an unreasonable burden for the Respondent to produce the requested documentation (IBA Rules, Rule 9(2)(c)):

Complying with the Claimant’s Request would potentially require Peru to review the communications of each of the employees of the Constitutional Court to identify and collect any responsive documents, some of which have been described in ambiguous or unclear terms. Such efforts would be unreasonable and disproportionate.

The requested documentation is protected from disclosure by legal impediment or privilege (IBA Rules, Rule 9(2)(b)):

It is a widely accepted principle, both in the international and municipal sphere, that the deliberations and decision process of the courts are confidential.⁷⁰ This protection serves as a guarantee of the independence of courts and tribunals. Peru is no exception, as provided in Article 16(5) of Law 28301 of 2004 (Organic Law of the Constitutional Court).⁷¹

As upheld by the Constitutional Court in its decision No. 325/2024 (File No. 01742-2022-PHD/TC (*hábeas data*)) “*the process regarding the study and the debate of each case have confidential quality*” and concluded that “*therefore, it is only the final product of said deliberations, that is, the actual approved judgement with the votes rendered, that acquires the quality of public document, as it is the final judicial decision in the case*”.⁷² The Minutes of the Plenary concern the process of study and deliberations of the cases and are thus confidential.

In the same vein, the Plenary of the Constitutional Court in its decision No. 125/2025,⁷³ rendered pursuant to an “*agravio constitucional*” concerning a

⁶⁹ See above, ¶¶ 32, 33.

⁷⁰ See Arman Sarvarian and Maria Louca, “Secrecy of Deliberations” (Max Planck Encyclopaedia of International Procedural Law, 2019) (Annex F), p. 1.

⁷¹ C-0118 (“*The office of the Justice of the Court vacates for any of the following causes: [...] For violating the duty of confidentiality*”).

⁷² See Constitutional Court Decision No. 325/2024 (File No. 01742-2022-PHD/TC) (Annex D).

⁷³ See Constitutional Court Decision No. 125/2025 (Annex E).

	<p>request for “<i>habeas data</i>”, held as “<i>doctrina jurisprudencial</i>” the following Rules:</p> <p>[I]n accordance with Article VII of the Preliminary Title of the New Constitutional Procedural Code “it does not constitute public documentation”:</p> <p>Rule 1</p> <p>a) The drafts, texts, or notes in progress, preliminary notes or similar utilised in the public sector, regardless of the means in which they are recorded”</p> <p>Rule 2</p> <p>b) The drafts, texts, or notes in progress, preliminary notes, minutes, audios, videos, and specialised non-binding legal opinions or similar, utilised in the deliberative processes or unipersonal or collective organs that administer justice and the Prosecutors’ Office [“Ministerio Público”], regardless of the means in which they are recorded [...]</p> <p>The above is directly relevant to determine the confidentiality of information in these proceedings. According to Procedural Order No. 2, the information that is protected from disclosure under a party’s laws shall be considered Confidential Information for purposes of this arbitration (<i>see</i> Procedural Order No. 2, ¶ 6). This is also in line with Article 835 (Public Access to Hearings and Documents) and Article 2204 (Disclosure of Information) of the Treaty, which protects the confidentiality of deliberative processes.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p>Claimant preliminarily reiterates that, despite Perú’s unfounded objections addressed in full below, Claimant’s Requests undeniably seek Documents relevant to the dispute and material to its outcome. Specifically, the requested Documents in requests 1-7 will illuminate the evolution of the Court’s ruling in the Scotiabank Amparo—especially in showing the status and degree of progress of the draft judgment as reflected in the Leaked Decision and how and when the Leaked Decision evolved in the subsequent four years resulting in the diametrically opposed 2021 Decision. (<i>see</i> Memorial, ¶¶ 213, 245, 296). Only Respondent has access to Documents responsive to the Request and—given the areas of factual disagreement between the parties around the characterization of the Leaked Decision—the Request should be granted.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>Respondent opens with two clarificatory assertions regarding factual matters. Claimant notes the following in response:</p> <ul style="list-style-type: none">• <i>First</i>, Perú’s claim that it disputes that “a draft judgment in the Scotiabank Amparo was leaked” and that “the news article displays authentic snapshots of the draft judgment in the Scotiabank Amparo” is difficult to reconcile with the Counter-Memorial. Nowhere in

Perú’s Counter-Memorial does it dispute that the *Hildebrandt* article published on 9 June 2017 (C-0200) contains images of an unsigned judgment of some form belonging to the Constitutional Court relating to the Scotiabank Amparo. Nowhere does Perú contend that the images are in fact fabricated.

- *Second*, Perú disputes that the Leaked Decision had been voted on by the Court, accusing the Claimant of a “repeated misrepresentation” to that effect. There is no merit to that accusation: the *Hildebrandt* article itself reports that the images of the judgment in the Scotiabank Amparo that it was leaking had indeed been voted on by the justices of the Constitutional Court (C-0200).

Respondent proceeds to make five individual objections, all of which are uniformly without merit.

Claimant’s requested Documents are relevant to the dispute and material to its outcome:

Both of Respondent’s arguments on relevance and materiality are baseless.

Respondent’s first argument on relevance and materiality is that the “legality . . . as a matter of international law” of actions of the Constitutional Court can only be questioned within the framework of a “denial of justice” claim. In the absence of such a claim by Claimant, Respondent contends that the requested Documents regarding the Constitutional Court’s decision-making are irrelevant. Perú is mistaken. As Claimant established in its Memorial, judicial acts can attract international liability outside of a claim for denial of justice (Memorial, ¶ 224).⁷⁴ Insofar as there is a genuine disagreement between the parties regarding matters of international law, Respondent cannot self-servingly use its own position regarding a disputed issue to undermine the relevance and materiality of requested Documents. That would call for an impermissible pre-judgement from the Tribunal. Moreover, notably, Respondent did not pursue this line of defence in its Article 41(5) application.

Respondent’s second argument is that documents regarding the work of the Constitutional Court leading up to the Leaked Decision and the 2021 Decision are irrelevant because “the only act of the Peruvian State susceptible of being questioned by the Claimant is the [2021 Decision].” Again, Perú cannot assume the correctness of its position on the merits to defeat a claim to produce relevant and material documents. The Claimant has put forward its position that “treatment” entails conduct beyond the 2021 Decision.

In support, Perú mistakenly refers to “Peruvian law” to establish what might constitute impugned “treatment” under international law. The merits of that

⁷⁴ CL-0079, Andrew Newcombe & Lluís Paradell Trius, *Law and Practice of Investment Treaties: Standards of Treatment* (Kluwer Law International: 2009), p. 184.

issue are not to be determined now. In any event, Perú is mistaken for multiple reasons. *First*, in its Counter-Memorial, Perú itself has put documents pre-dating the publication of the 2021 Decision relating to the Constitutional Court’s work on the Scotiabank Amparo onto the record.⁷⁵ Accordingly, Respondent’s position on the relevance and materiality of the Court’s work on the Scotiabank Amparo is belied by its own prior submission. *Second*, Peruvian law is not relevant to determine what may constitute unlawful treatment under international law. The International Law Commission’s Articles on State Responsibility confirms that any “conduct” attributable to organs of a State, including those exercising “judicial” functions, may attract state responsibility “regardless of its origin or character”.⁷⁶ Accordingly, there is no support for Respondent’s contention that the Court’s conduct in considering the Scotiabank Amparo and leading up to the 2021 Decision is irrelevant.

Claimant’s Request encompasses a narrow and specific category of Documents:

Perú argues that Claimant’s Request “could potentially comprise all communications (either official or unofficial) between any of the more than 200 employees that conform the Constitutional Court.” This assertion is incorrect and misrepresents Claimant’s Request. Perú misquotes Claimant’s Request part (ii) above, which seeks not simply “all communications within the Constitutional Court,” but only those “*regarding the fact that the Leaked Decision was leaked and reported by the press*” and only during the pendency of the Scotiabank Amparo (emphasis added). This level of granularity satisfies the “narrow and specific” threshold under the IBA Rules, Rule 3(3)(a)(ii).

Only Perú will be in a position to determine the relevant custodians within the Constitutional Court at the relevant time, who might be in possession of responsive material. Once those custodians have been identified, searching for responsive Documents will be a straightforward matter because the subject matter of the Request is narrow and targeted. Perú will be able to conduct reasonable searches for responsive Documents using targeted keyword and file number searches, especially in light of the explanation by

[REDACTED], that the Court’s files from 1996 to date have been

⁷⁵ See, e.g., R-0200, R-0206, R-0207, R-0220 (meeting minutes of the Plenary); R-0201, Certification issued by the Secretary-Rapporteur of the Constitutional Court on the composition of the Court in the Scotiabank Amparo, 29 March 2017; R-0204, Avocamiento Justice Marinella Ledesma, 5 April 2017; R-0208, Communication No. 178-2017/SUNAT-L0000, SUNAT’s Request for Access to Public Information pursuant to Transparency Law No. 27806 on the identity of the Rapporteur of the *Medina De Baca* case, Case No. 04082-2012-PA/TC, 13 June 2017; R-0212, Communication No. 205-2017-DIGA/TC, Constitutional Court’s rejection of SUNAT’s Request for Access to Public Information, 3 July 2017.

⁷⁶ International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, Annex, 56 U.N. GAOR Supp. (No. 10) at 13, U.N. Doc. A/56/10 (2001), arts. 4, 12.

digitalized [REDACTED] *see also* CER-Landa/Neyra, ¶¶ 52, 69).

Perú also argues that the parts of the Request seeking drafts “intended” and “designed” to form part of a decision in the Scotiabank Amparo are too vague. However, that phrasing is simply intended to capture the entirety of the drafting process so as not to omit responsive Documents simply because they do not bear formalistic *indicia* of a draft judgment, or simply because they are only a partial draft. Such Documents will be easy to identify, given that Respondent will be able to conduct searches using party names (*i.e.*, Scotiabank Perú). It is obvious from the text of Claimant’s Request that Claimant seeks, without limitation, all drafts associated with the drafting of the Leaked Decision and the 2021 Decision in whatever form.

The requested Documents are reasonably believed to exist and should be in Perú’s possession, custody or control:

Perú argues that “the Constitutional Court does not have the policy, nor the capacity, to store in its archives all working documents and official communications, [nor] any communication between its employees.” Respondent’s argument is not a reasonable objection to justify a rejection of the Request. Respondent does not contend that all requested Documents are no longer available. Accordingly, Respondent should conduct reasonable searches and produce whatever responsive Documents remain available and provide an explanation for whatever Documents are no longer available.

Moreover, Respondent’s argument is in any event inconsistent with Peruvian regulations governing the retention of documents.

First, the Constitutional Court is required under Peruvian law to preserve public information, unless it complies with the legal requirements for eliminating public information. According to Resolution No. 242-2018-AGN-J, the Constitutional Court must obtain authorization from the General Archive of the Nation to destroy and eliminate documents, by submitting a document elimination schedule to the General Archive of the Nation, as part of its Annual Archival Work Plan (*Annual Plan*).⁷⁷

The 2024 Annual Plan prepared by the Constitutional Court recognizes that the Court preserves documents created between 1982 and 2022 and states that it “has not made proposals to eliminate documents in recent years.”⁷⁸ Further, the Constitutional Court recently established in Case No. 04792-2017-PHD/TC that public entities—which would include the Constitutional Court—must conserve and back up the institutional emails of public officials

⁷⁷ Claimant’s **Annex B**, Resolution No. 242-2018-AGN-J, Annex, Directive No. 001-2018-AGN/DAI, 24 October 2018, pp. 4, 6.

⁷⁸ Claimant’s **Annex A**, Administrative Resolution No. 049-2024-P/TC, Annex, Annual Working Plan of the Archives of the Constitutional Court 2024, 27 February 2024, pp. 11, 18.

and public servants, as these emails are part of the institutional record.⁷⁹ Accordingly, Respondent should still have available to it a substantial number of Documents responsive to the Request and should be able to provide an explanation of any Documents responsive to the Request that were impermissibly eliminated.

Second, the Constitutional Court does have a policy and the capacity to store working documents and communications. Indeed, Article VII of the Preliminary Title of the New Constitutional Procedural Code, which Perú cites in presenting its confidentiality objection, confirms the Court’s practice of creating “drafts, texts, or notes in progress, preliminary notes, minutes, audios, videos, and specialised non-binding legal opinions or similar, utilised in the deliberative processes or unipersonal or collective organs that administer justice” (*see* Respondent’s objections to Request No. 1). Perú’s witness and [REDACTED]

[REDACTED] explained that the Court has undertaken a “comprehensive digitalization of the [Court’s] jurisdictional documentation . . . from 1996 to date” and has commissioned an “integrated case management system” (“*Sistema Integrado de Gestión de Expedientes*” or “SIGE”) [REDACTED]⁸⁰ The 2023 Annual Working Plan of the Constitutional Court’s Archives, cited by Perú, acknowledges the implementation of the digitalization process advanced by [REDACTED] and asserts that the Court’s archive possesses “good and ample” infrastructure for its repositories.⁸¹ In this line, Article 39(k)[ii] of the Rules on the Organization and Functions of the Constitutional Court, in force at the time of the Leaked Decision, states that the Court’s Information Technology Office is responsible for “[m]anaging the existing information in databases, establishing and applying security mechanisms for its custody, integrity, and recovery and authorized access, in accordance with current technical and legal standards”.⁸²

Third, Perú received Claimant’s notice of dispute for this arbitration on 1 September 2021, before the Constitutional Court published the 2021 Decision on 9 November 2021 (*see* C-0021; C-0340). Thus, Perú should have taken active steps to preserve the Scotiabank Amparo file and related Documents upon being put on notice of the dispute. Should Perú insist that it does not possess the requested Documents, it must explain what steps it took

⁷⁹ Claimant’s **Annex C**, Case No. 04792-2017-HD/TC, 28 October 2022, ¶¶ 37–40.

⁸⁰ Additionally, [REDACTED] explained that the Court’s policy is to affix a bar code to a case file at inception, which “greatly facilitated the registration and tracking process” [REDACTED]—not only of some “final decisions,” as Perú avers, but of “files and related documents (such as briefs, draft resolutions, among others)” [REDACTED]

⁸¹ Claimant’s **Annex D**, Administrative Resolution No. 048-2024-P/TC, Annex, Annual Working Plan of the Archives of the Constitutional Court 2023, 27 February 2024, pp. 14–15, 18.

⁸² Claimant’s **Annex F**, Rules on the Organization and Functions of the Constitutional Court, 1 March 2016, art. 39(k). Claimant notes that the original text erroneously lists two subsections (k). Claimant refers to the second of the two.

	<p>to preserve relevant documentation upon receiving Claimant’s notice of dispute.</p> <p><u>Claimant’s requested Documents would not impose an excessive burden on Perú:</u></p> <p>Perú asserts that the production of the requested Documents would be unreasonably burdensome and disproportionate, but does not provide any reason to justify such an assertion. The Constitutional Court has a dedicated IT department, which—by virtue of [REDACTED] “comprehensive digitalization of the [Court’s] jurisdictional documentation”—could search the Court’s databases and archives, using key words, file numbers, and date ranges [REDACTED]. Contrary to Perú’s assertion, it need not search the records of “each of the employees of the Constitutional Court”, but only those who would have prepared and/or received the requested Documents pursuant to the targeted search methodology described immediately above, such as clerks, advisors and secretaries to the Court’s justices.</p> <p>Perú’s objection also fails to contextualize the claimed burden against the high materiality of the requested information. The IBA Rules require a balance between the burden of production and the relevance and materiality of the documents sought.⁸³ The information concerning the Constitutional Court’s drafting history of the decision in the Scotiabank Amparo is directly relevant and highly material to a central factual dispute in this arbitration.</p> <p><u>Perú has failed to prove that the requested Documents are protected by privilege:</u></p> <p>Perú argues that the deliberations and decision process of courts are confidential under Peruvian law, and therefore the requested Documents would be protected from disclosure “by legal impediment or privilege”. Respondent’s fifth and final objection to the Request can be dismissed for several reasons.</p> <p><i>First</i>, Perú invokes privilege in the abstract that “might” apply to the requested Documents, but does not identify which privilege it actually considers to apply to the Documents sought by the request. This is no ground for wholesale refusal. If Perú believes specific passages of the requested Documents are confidential, it should redact the part that it considers to contain privileged content while producing the remainder, as contemplated by IBA Rules 9(2) and 9(4)–(5).⁸⁴ To the extent that Perú redacts the</p>
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⁸³ IBA Rules, arts. 3(7), 9(2)(c).

⁸⁴ See IBA Task Force for the Revision of the IBA Rules on the Taking of Evidence in International Arbitration, Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, January 2021, p. 29 (“[I]nstead of excluding the entirety of the document from the production or evidence, the arbitral tribunal may order appropriate measures to preserve confidentiality of the evidence under Article 9.5.”).

requested Documents, it should include a privilege log explaining the basis of each redaction.

Second, Perú has already submitted certain Plenary session minutes involving the Constitutional Court’s deliberations of the Scotiabank Amparo.⁸⁵ The Tribunal should not permit Perú to cherry-pick. To the extent that any domestic law privilege attaches, Respondent has waived it by voluntarily submitting to the record (without any privilege reservation) documents relating to the Court’s deliberations. Respondent therefore cannot hide behind any alleged privilege defense to avoid producing the remainder of the Court’s working materials.

Third, Perú fails to acknowledge that under international law, case law has consistently held that the confidentiality of the State’s deliberative process must necessarily be balanced against the opposing party’s need for the document to advance its case.⁸⁶ Notably, tribunals have rejected privilege objections when, such as in this case, Claimant’s need has overridden Respondent’s assertion of privilege,⁸⁷ for example due to the absence of other evidence available to Claimant to establish the fact for which disclosure is sought.⁸⁸

Fourth, Perú proceeds to misstate the application of Peruvian law on this issue. In particular, Perú’s reliance on Article 16(5) of the Organic Law of the Constitutional Court (*Organic Law*)⁸⁹ is unfounded. Contrary to Perú’s claim, Article 16(5) does not regulate an exception to the right of access to

⁸⁵ See, e.g., [REDACTED]

⁸⁶ *Glamis Gold, Ltd v. United States of America* (UNCITRAL) Decision on Requests for Production of Documents and Challenges to Assertions of Privilege, 21 April 2006, ¶ 14 (“The Tribunal recognizes that ‘[t]he deliberative process privilege is a qualified one. A litigant may obtain deliberative materials if his or her need for the materials and the need for accurate fact-finding override the government’s interest in non-disclosure.’”). See also *TC Energy Corporation and TransCanada Pipelines Limited v. United States of America (II)* (ICSID Case No. ARB/21/63) Procedural Order No. 4, 11 December 2003, ¶ 19 (“The Tribunal however considers that whether protection should be afforded should be assessed by balancing the legitimate interest of the other party to access certain information and that of the government to protect the integrity of the deliberative process.”); *William Ralph Clayton and others v. Canada* (UNCITRAL) Procedural Order No. 13, 11 July 2012 ¶¶ 24–26.

⁸⁷ *Glamis Gold, Ltd v. United States of America* (UNCITRAL) Decision on Requests for Production of Documents and Challenges to Assertions of Privilege, 21 April 2006, ¶¶ 14, 30; *Glamis Gold v. United States of America* (UNCITRAL) Procedural Order No. 13, 21 March 2008, ¶ 20. See also *TC Energy Corporation and TransCanada Pipelines Limited v. United States of America (II)* (ICSID Case No. ARB/21/63) Procedural Order No. 4, 11 December 2003, ¶¶ 21–22; *William Ralph Clayton and others v. Canada* (UNCITRAL) Procedural Order No. 13, 11 July 2012, ¶¶ 40–45.

⁸⁸ *Glamis Gold, Ltd v. United States of America* (UNCITRAL) Decision on Requests for Production of Documents and Challenges to Assertions of Privilege, 21 April 2006, ¶ 14 (“In this situation, although the Tribunal recognizes the assertion of and interests in the deliberative process privilege, it finds the statement of Claimant’s need, particularly given the apparent absence of other documents or other means of proof available to the Claimant, to be sufficiently great to override those interests. Therefore, the Tribunal requests Respondent to produce the ten documents at issue at its earliest opportunity.”).

⁸⁹ C-0118, Law No. 28301, Organic Law of the Constitutional Court, July 1, 2004.

public information. Instead, it establishes a disciplinary cause for vacating a justice in the event of a breach of confidentiality.

Additionally, Perú may not rely on Article 17 of the Transparency Law.⁹⁰ The Transparency Law governs Respondent’s obligations to fulfill freedom of information requests from any member of the general public, and does not set out standards relating to the production of documents in an international arbitration. If anything, the Transparency Law is relevant to redactions that might need to be made in the future, under Procedural Order No. 2 (**PO2**), in connection with arbitration documents that rely on documents covered by the Transparency Law. Moreover, Article 17 refers to a “government decision” and does not apply to judgments from the Constitutional Court. Further, Article 18 of the Transparency Law establishes that the limited exceptions for denying access to public information (such as Article 17) must be interpreted restrictively.⁹¹ As the Constitutional Court stated in Case No. 0950-00-HD/TC, Perú must demonstrate that the information is confidential or protected under principles of reasonableness.⁹² Here, Perú has not demonstrated that the requested Documents would be confidential under Article 17 of the Transparency Law.

Finally, Perú attempts to rely on principles of confidentiality that apply by virtue of this Tribunal’s PO2 and other provisions of the Treaty. In particular, with respect to PO2, Perú says that “information that is protected from disclosure under a party’s laws shall be considered Confidential Information for purposes of this arbitration” and, therefore, subject to redaction before publication (*see* PO2, ¶ 6). But that precisely supports the production of Documents responsive to the Request, because it recognizes that Perú might be called upon to produce in this international ICSID arbitration Documents that might be “protected from disclosure” domestically. Rather than deprive the Tribunal of the benefit of such materials, PO2 envisages that such materials might form part of the record and then provides a mechanism for ensuring appropriate redactions before files that are prepared in this arbitration by relying on such materials are made public.

Perú goes on to misleadingly cite Article 2204 of the Treaty, which—contrary to Perú’s averment—does not “protect[] the confidentiality of deliberative processes” generally, but refers only to “the deliberative and policy-making processes *of the executive branch*” (C-0001, art. 2204) (emphasis added). Perú’s reference to Article 835 of the Treaty is likewise unavailing, as that article refers to arbitral hearings under the Treaty and says nothing about whether *domestic* judicial proceedings and related documents

⁹⁰ Claimant’s **Annex G**, Transparency and Access to Public Information Law, Law No. 27806 (Consolidated text approved by Supreme Decree No. 021-2019-JUS), 11 December 2019, art. 17.

⁹¹ Claimant’s **Annex G**, Transparency and Access to Public Information Law, Law No. 27806 (Consolidated text approved by Supreme Decree No. 021-2019-JUS), 11 December 2019, art. 18.

⁹² Claimant’s **Annex E**, Case No. 950-00-HD/TC, 13 December 2000, ¶ 6.

	<p>are confidential. In any case, the language of Article 835 suggests that “hearings held under this Section [835] shall be open to the public” and that “all documents submitted to, or issued by, the Tribunal” are presumptively non-confidential, further undercutting Perú’s objection (C-0001, art. 835(3)).</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 1.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Request granted as to sub-Requests (i) and (ii). Sub-Requests (iii) and (iv) denied as overbroad and unduly burdensome.</i></p>

<p>Document Request No</p>	<p>2. Discussions and deliberations concerning the Scotiabank Amparo [ORDER SOUGHT]</p>
<p>A. Documents or category of documents requested (requesting Party)</p>	<p>The following Documents relating to proposed, planned or actual discussions and/or deliberations within the Constitutional Court concerning the Scotiabank Amparo, whether prepared by the justices of the Court, their clerks, advisors, secretaries or any other employee of the Court:</p> <ul style="list-style-type: none"> (i) the entire case file (<i>i.e.</i>, the <i>expediente interno</i> or similar compilation) of the Scotiabank Amparo as maintained by the Constitutional Court; (ii) all Documents concerning requests to schedule and/or the actual scheduling of meetings involving justices of the Constitutional Court to discuss and/or deliberate on the Scotiabank Amparo; (iii) all Documents containing meeting agendas of the Constitutional Court and/or drafts of judgments to discuss and/or deliberate on the Scotiabank Amparo; (iv) all Documents demonstrating the voting history with respect to the Scotiabank Amparo, including but not limited to voting on the Leaked Decision; (v) all audio, video or written records of all meetings held by justices of the Constitutional Court, including but not limited to Plenary or Chamber sessions, at which the Scotiabank Amparo was discussed, including (but not limited to) minutes, attendance sheets, voting sheets (<i>cédulas de votación</i>) and notes recording agreements on issues relating to the case (<i>acuerdos</i>); (vi) to the extent that the redacted content relates in any way to the Scotiabank Amparo, all unredacted copies of the [REDACTED] [REDACTED] exhibited by the Respondent with its Counter-Memorial (R-0200; R-0203; R-0206; R-0207; R-0220);

	<p>(vii) all Documents bearing the bar code appearing at the top of the images of the Leaked Decision (<i>i.e.</i>, the bar code associated with case “00222-2017-PA/TC”); and</p> <p>(viii) all other Documents relating to the Constitutional Court’s discussions or deliberations on the Scotiabank Amparo to the extent not captured by any of the requests enumerated above.</p> <p><u>Time period</u>: between 14 October 2016 (date <i>agravio constitucional</i> was filed with Constitutional Court) and 30 November 2021 (date Clarification Order was published).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality:</u></p> <p><i>See</i> Request 1.</p> <p>Among the key factual issues in dispute are the timing and nature of the Court’s deliberations on the Scotiabank Amparo. Based on the news report through which the Leaked Decision was publicized (C-0200), Claimant contends that the Constitutional Court was well advanced in its decision-making at the time the Leaked Decision was leaked (Memorial, ¶¶ 79–83). Claimant also contends that, after the leak, the Court unreasonably delayed deciding on the Scotiabank Amparo for more than four years (Memorial, ¶¶ 212–214). Respondent, for its part, accepts that the nature and timing of the Court’s deliberations are important factual issues in dispute as it has submitted to the record a selection of redacted Court meeting minutes reflecting some of the Court’s discussions regarding the Scotiabank Amparo (<i>see, e.g.</i>, R-0203, R-0206). Respondent also denies that there was anything abnormal about the delay in the Court’s issuance of a final decision in the Scotiabank Amparo (Counter-Memorial, ¶¶ 409–410).</p> <p>The Requested Documents will speak to the timing and nature of the Court’s deliberations on the Scotiabank Amparo. Accordingly, they are relevant to the case and material to its outcome because they will enable the parties to make submissions on and the Tribunal to comprehensively assess those key disputed factual issues.</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody or control. The requested Documents would have been created in the Constitutional Court’s ordinary course of business. Perú has already produced meeting minutes reflecting deliberations of the Constitutional Court on the Scotiabank Amparo (<i>see, e.g.</i>, R-0203; R-0206). Accordingly, Respondent has access to Constitutional Court records of the variety that are the subject of the present Request.</p>
<p>C. Reasoned objections to</p>	<p><i>See</i> Respondent’s comments on Request No. 1.</p> <p>The Respondent addresses each of the Claimant’s Request, as follows:</p>

<p>document request (objecting Party)</p>	<p><u>Requests 2(i) and 2(vii)</u>: The official case file for Scotiabank’s <i>amparo</i>, i.e., file No. 222-2017, already forms part of the record as R-0278. Furthermore, there is no such thing as an internal “file”, given that, as explained,⁹³ the Constitutional Court does not have the policy of systematically archiving any documents other than the official case files for each of its Decisions. Furthermore, any documents stored by the Court concerning the internal procedures followed by a given file—some of which may be identified with the respective bar code—these are subject to legal impediment and privilege, preventing their disclosure (IBA Rules, Rule 9(2)(e)), as they may reflect the substance of the Court’s deliberative process, or may contain legal advice. The Respondent refers in this regard to its response to the Claimant’s general remarks as regards the documents stored in the Central Archive of the Court, and to its comments on Request No. 1 above.</p> <p><u>Requests 2(ii) and 2(iii)</u>: The Respondent notes that no separate “requests to schedule” or “scheduling” documents exist. Rather, in accordance with the practice of the Court, the Clerk distributes ahead of each session of the Court agendas with the matters to be discussed therein. Without accepting the relevance or materiality of the information required in these Requests, as laid out by the Claimant, the Respondent agrees to endeavor to locate and produce, to the extent available, the agendas for the meetings of the Plenary in which file No. 222-2017 was discussed, namely: [REDACTED]</p> <p>[REDACTED] after applying the redactions required to preserve all information protected from disclosure as a matter of Peruvian law and the TPA.</p> <p>As regards the draft judgments sought by the Claimant under Request 2(iii), the requested documentation is protected from disclosure by legal impediment or privilege (IBA Rules, Rule 9(2)(b)). As explained by Peru, the deliberations of the Constitutional Court, and any working document associated therewith, are protected from disclosure as a matter of Peruvian law and the TPA (<i>see</i> Respondent’s comments on Request No. 1).</p> <p><u>Requests 2(iv) and 2(v)</u>: The Respondent notes that no “voting histories”, “attendance sheets”, “voting sheets”, or notes concerning the sessions of the Plenary of the Court exist. Rather, the Justices’ attendance and votes are documented in the minutes of the session of the Plenary in which a Decision is debated and voted on. Without accepting the relevance or materiality of the information required in these Requests, as laid out by the Claimant, the Respondent agrees to produce the meeting minutes of the sessions of the Plenary in which file No. 222-2017 was discussed, with the exception of those already in the record, namely: [REDACTED]</p>
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⁹³ See above, ¶ 33.

⁹⁴ Already in the record as **R-0200**.

⁹⁵ Already in the record as **R-0206**.

	<p>██████████</p> <p>██████████</p> <p>██████████</p> <p>██████████ after applying the redactions required to preserve all information protected from disclosure as a matter of Peruvian law and the TPA.</p> <p><u>Request 2(vi)</u>: The Respondent confirms that all references to File No. 222-2017 have been left unredacted.</p> <p><u>Requests 2(viii)</u>: The Respondent objects to the Request. The category of documentation requested is insufficiently narrow and specific. The Request is excessively broad and therefore in breach of the IBA Rules (<i>see</i> IBA Rules, Rule 3(3)(a)(ii)). The Claimant has the burden of providing a specific description of the document or category of documents that it seeks, which it has failed to do in relation to this Request. General “catch-all” categories, such as Request 2(viii), are not admissible under the IBA Rules, as allowing them would be tantamount to permitting a fishing expedition.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant parts (ii), (iii), (iv), (v), (vii) and (viii) of the Request. Subject to the observations below, Claimant accepts Respondent’s representations as to parts (i) and (vi) of the Request and seeks no order from the Tribunal on those parts of the Request.</p> <p>Perú refers generally to its objections to Request No. 1 in objecting to Request No. 2. Accordingly, Claimant refers to its response to those objections above, and incorporates those responses here.</p> <p>Claimant addresses below Perú’s specific objections to Request No. 2 (adopting for ease of reference the same grouping used by Respondent in its objections).</p> <p><u>Request Nos. 2(i) and 2(vii)</u>:</p> <p>Part (i) of the Request seeks “the entire case file (<i>i.e.</i>, the <i>expediente interno</i> or similar compilation) of the Scotiabank Amparo as maintained internally by the Constitutional Court”. Respondent’s answer appears to be that R-0278 is the only “case file”, “<i>expediente</i>” or “similar compilation” associated with the Scotiabank Amparo that exists in the Court’s files. Claimant invites Respondent to correct Claimant if it has misunderstood Respondent’s position. Given the contents of R-0278, which include documents contained in the official case files available to the parties during the Scotiabank Amparo (<i>i.e.</i>, the parties’ briefs and published Court decisions), Claimant has difficulty accepting the Respondent’s answer. By its nature, the official case file does not incorporate Documents relating to “proposed, planned or actual discussions and/or deliberations within the Constitutional Court concerning the Scotiabank Amparo” as sought by Claimant in Request No. 2. However,</p>

⁹⁶ Already in the record as R-0220.

as Respondent is not alleging that R-0278 contains the totality of Documents from the Court that would be responsive to Request No. 2, Claimant is willing to accept Respondent’s representation that there exists no other official “case file”, “*expediente*” or “similar compilation” relating to the Scotiabank Amparo within the Court’s files. But for clarity, Claimant seeks production of all files related to the discussions and deliberations from the Constitutional Court, whether or not they form part of the official “case file”.

Part (vii) of the Request seeks “all Documents bearing the bar code appearing at the top of the images of the Leaked Decision (*i.e.*, the bar code associated with case ‘00222-2017-PA/TC’)”. The Respondent’s response regarding the contents of R-0278 appears to be no answer to part (vii) of the Request, which calls upon Perú to search for and produce all Documents bearing that unique bar code. Claimant knows that such Documents must exist, given that the bar code appeared on the images of the Leaked Decision appearing in the *Hildebrandt* article (C-0200). And the Leaked Decision is not found in R-0278. Accordingly, there must be other responsive Documents in Respondent’s possession, custody and control. That is also supported by some of the documents referenced by Respondent in its response to Claimant’s Document Requests. For instance, Article VII of the Preliminary Title of the New Constitutional Procedural Code, which Perú cites in presenting its confidentiality objection to Request No. 1, confirms the Court’s practice of creating “drafts, texts, or notes in progress, preliminary notes, minutes, audios, videos, and specialised non-binding legal opinions or similar, utilised in the deliberative processes or unipersonal or collective organs that administer justice” (*see* Respondent’s **Annex E**, ¶ 29(b)). Additionally, ██████████ explained that the Court’s policy is to affix a bar code to a case file at inception, which “greatly facilitated the registration and tracking process” ██████████—not only of some “final decisions,” as Perú avers, but of “files and related documents (such as briefs, draft resolutions, among others)” ██████████. Perú itself recognizes that “documents concerning the internal procedures followed by a given file . . . may be identified with the respective bar code”.

Regarding the alleged confidentiality of “any documents stored by the Court concerning the internal procedures followed by a given file . . . as they may reflect the substance of the Court’s deliberative process, or may contain legal advice”, Claimant refers to and incorporates its response to Perú’s similar objections to Request No. 1, where it demonstrates why Perú’s objection is unsupported.

Request Nos. 2(ii) and 2(iii):

Claimant takes note of Perú’s commitment to locate and produce, to the extent available, the agendas distributed by clerks of the Constitutional Court for seven meetings of the Plenary dated ██████████

██████████
██████████ Yet, Perú should also produce any other agenda that might exist for any meeting of the Constitutional Court (not only Plenary sessions), among its justices and/or clerks and/or advisors, in which the Scotiabank Amparo was discussed. For example, without limitation, Claimant assumes, based on Perú's comments, that the Scotiabank Amparo was also discussed during the ██████████ session, and therefore the agenda for that session should also be produced.

Moreover, Respondent's voluntary production of certain agendas would not be comprehensive of Claimant's Request Nos. 2(ii) and (iii), which also include "Documents concerning requests to schedule and/or the actual scheduling of meetings" such as e-mails and internal correspondence within the Constitutional Court relating to the scheduling of deliberations and/or discussions of the Scotiabank Amparo; as well as "drafts of judgments to discuss and/or deliberate on the Scotiabank Amparo". Respondent should be ordered to conduct a reasonable search and produce responsive Documents.

Claimant notes that Respondent has not objected to the materiality and relevance of such Documents. Perú has only objected to the production of draft judgments sought under Request No. 2(iii) as they would allegedly be privileged under Peruvian law and the Treaty. Claimant refers to and incorporates its response to Perú's similar privilege objections to Request No. 1, where it demonstrates why Perú's objection is unsupported.

Request Nos. 2(iv) and (v):

Claimant takes note of Perú's comment that "no 'voting histories', 'attendance sheets', 'voting sheets', or notes concerning the sessions of the Plenary of the Court exist."

Claimant takes note of Perú's commitment to produce the meeting minutes of the sessions of the Plenary dated ██████████
██████████
██████████

██████████ However, Claimant's Request also extends to all other meeting minutes, audio, video, or written records for any other Constitutional Court meetings (beyond Plenary sessions), among its justices, clerks, and/or advisors, where the Scotiabank Amparo was discussed. Accordingly, Claimant reiterates its request that Perú produce the entirety of Documents responsive to parts (iv) and (v) of this Request (to which Respondent appears to have no legitimate objection).

Request No. 2(vi):

Claimant takes note of Perú's comment that "all references to [the Scotiabank Amparo] have been left unredacted." Claimant seeks no order from the Tribunal regarding part (vi) of the Request.

	<p><u>Request No. 2(viii):</u></p> <p>Respondent argues Request No. 2(viii) would be an inadmissible “fishing expedition” because it is a “[g]eneral ‘catch-all’ categor[y]”. However, Respondent conveniently ignores that Request No. 2(viii) is subordinate and limited by the narrow scope already established by parts (i) through (vii) of the Request. It is not a standalone request for any and all Documents, but rather a mechanism to ensure that any responsive Documents falling within the already defined, specific subject matter and source limitations (<i>i.e.</i>, Documents reflecting the Court’s deliberations in the Scotiabank Amparo), but not precisely fitting one of the preceding, specific Document types, are still produced. In this vein, Claimant’s Request accounts for Claimant’s lack of perfect knowledge of Perú’s internal record-keeping nomenclature or specific Document types as contemplated by IBA Rule 3(3)(a), and it aims to prevent artificial limitations within an already tailored request, not to enable a fishing expedition. Indeed, the IBA Rules expressly “permit requests for categories of documents” since “[t]he focus of disclosure should be on obtaining relevant and material evidence, not playing guessing games about filing systems or types of internal correspondence or records.”⁹⁷</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to parts (ii), (iii), (iv), (v), (vii) and (viii) of Request No. 2.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Noting the clarifications provided by the Respondent, Request granted as to sub-Requests (ii), (iii), (iv), (v) and (vii).</i></p>

<p>Document Request No</p>	<p>3. Distribution of the Scotiabank Amparo file within the Court [ORDER SOUGHT]</p>
<p>A. Documents or category of documents requested (requesting Party)</p>	<p>The following Documents relating to the circulation of the Scotiabank Amparo case file among justices, advisors, clerks and other employees of the Constitutional Court:</p> <ul style="list-style-type: none"> (i) all policies or guidelines relating to the use of bar codes associated with Constitutional Court case files; (ii) all document delivery receipt sheets (<i>cargo / hoja de ruta</i>), document processing sheets (<i>hoja de trámite de documentos</i>), file processing sheets (<i>hoja de trámite de expedientes</i>), routing entries—and other similar or analogous Documents created by the Constitutional Court to record the distribution of case files within the Court—showing the

⁹⁷ “Chapter 16: Disclosure in International Arbitration (Updated September 2022)” in: Gary B. Born, *International Commercial Arbitration* (3d ed.), p. 16.

	<p>chain of custody and distribution, by reference to custodians and dates, of the case file or other documents held by the Constitutional Court associated with the Scotiabank Amparo; and</p> <p>(iii) a full report issued from the Constitutional Court’s electronic document management systems (as described in the witness statement submitted by Perú from ██████████, the so called “SITRADO” and “SIGE” systems, or any similar or successor system) showing the evolution and internal distribution of the Scotiabank Amparo case file, including through the barcode assigned by the system to the Scotiabank Amparo case file.</p> <p><u>Time period</u>: between 14 October 2016 (date <i>agravio constitucional</i> was filed with Constitutional Court) and 30 November 2021 (date Clarification Order was published).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality</u>:</p> <p>See Requests 1 and 2.</p> <p>As noted above in connection with Requests 1 and 2, among the key factual issues in dispute are the timing and nature of the Court’s deliberations on the Scotiabank Amparo. Moreover, the parties have both made submissions regarding the significance to be ascribed (or not) to the use of the bar code in the Leaked Decision (<i>see</i> Memorial, ¶¶ 48, 80; Counter-Memorial, ¶¶ 153–154).</p> <p>Part (i) of the Request will show the policy within the Court as to the use of bar codes to enable the Claimant to elaborate on its arguments regarding the significance of the bar code appearing on the Leaked Decision. Parts (ii) and (iii) of the Request will yield Documents that show the dates on which justices of the Court, and other employees of the Court, were in possession of the Scotiabank Amparo case file and, in general, the work that was performed by them in connection with the case file. The requested Documents are therefore relevant to this dispute and material to its outcome because they will speak to the timing and nature of the Court’s deliberations on the Scotiabank Amparo. Moreover, they will provide information regarding the custodians of the Scotiabank Amparo case file in the days preceding the publication of the Leaked Decision.</p> <p><u>Belief that Documents exist</u>:</p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody or control. The requested Documents would have been created in the Constitutional Court’s ordinary course of business.</p> <p>There is no dispute between the Parties that the Constitutional Court registers the distribution of case files, including drafts and reports prepared by justices and/or their clerks, within the chambers of each justice. As Drs Landa and Neyra explain in their Expert Report and ██████████ agrees in ██████████</p>

	<p>Witness Statement, the Court had a system to record the circulation of case files, including physical document delivery receipt sheets (<i>hojas de ruta</i>), document processing sheets (<i>hoja de trámite de documentos</i>) and file processing sheets (<i>hoja de trámite de expedientes</i>) showing, among other data, custodian names (CER-Landa/Neyra, ¶¶ 52, 69; ██████████). Perú has submitted examples of such documents produced for unrelated case files but has not submitted the documents associated with the distribution of the Scotiabank Amparo case file (<i>see</i> ██████████ (citing R-0318; R-0319; R-0320); <i>see also id.</i>, ¶ 13 (citing file covers (<i>carátulas de expediente</i>) in other cases, R-0321; R-0322).</p> <p>The distribution of the case files circulating within the Constitutional Court are also registered electronically through the Constitutional Court’s electronic file management systems (such as “SIGE” (<i>Sistema Integrado de Gestión de Expedientes</i>)). As ██████████ describes in his Witness Statement, the function of the bar code stamped on the Leaked Decision is to facilitate the tracking of case files within the Court ██████████ <i>see also</i> CER-Landa/Neyra, ¶¶ 52, 69). Accordingly, the presence of the bar code means that there should be a complete paper trail relating to the Scotiabank Amparo case file.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p><i>See</i> Respondent’s comments on Requests No. 1 and 2.</p> <p>Preliminarily, the Respondent rejects the Claimant’s statement that “[t]here is no dispute between the Parties that the Constitutional Court registers the distribution of case files, including drafts and reports prepared by justices and/or their clerks, within the chambers of each justice”. As explained by the Respondent,⁹⁸ the Constitutional Court <u>does not</u> store all working documents prepared by Justices and/or clerks.</p> <p>The Respondent addresses each of the Claimant’s Requests, as follows:</p> <p><u>Request 3(i)</u>: No documented “<i>policies or guidelines relating to the use of bar codes</i>” exist within the Constitutional Court.</p> <p><u>Request 3(ii)</u>: The requested documentation is not sufficiently relevant to the outcome of the case (IBA Rules, Rules 3(3)(b); 9(2)(a)). The file processing sheets (<i>hojas de trámite de expedientes</i>) and document delivery receipt sheets (<i>hojas de cargo</i>) described by ██████████ in his witness statement⁹⁹ were used for the transmission of physical case files between different officials of the Constitutional Court. Specifically, these documents were signed by the public official making delivery of the documents and by the person who received these documents, in the spaces provided for this</p>

⁹⁸ See above, ¶¶ 32-33.

⁹⁹ See ██████████ ¶¶ 11-12.

	<p>effect at the bottom of each page.¹⁰⁰ Accordingly, these documents are merely internal receipts, which contain no relevant information concerning the management of the case files mentioned therein (including the office or department within the Court delivering or receiving the files, which is not reflected in the receipts). Therefore, the documents would simply not be helpful for the Claimant to obtain any information on the “<i>timing and nature of the Court’s deliberations on the Scotiabank Amparo</i>”.</p> <p>Moreover, these documents are not in the possession, custody or control of the Respondent (IBA Rules, Rule 3(3)(c)). As explained above,¹⁰¹ while the Constitutional Court systematically stores all concluded case files, it does not have the policy, nor the capacity, to store in its archives all working documents, including the internal receipts requested by the Claimant.</p> <p><u>Requests 3(iii)</u>: The requested documents may contain annotations reflecting the substance of the Court’s deliberative process, which is protected from disclosure as a matter of Peruvian law (<i>see</i> Respondent’s comments on Request No. 1) and under the Treaty. Accordingly, the Respondent objects to the Claimant’s Request, on the basis of Rule 9(2)(e) of the IBA Rules.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p>Perú refers generally to its objections to Request Nos. 1 and 2 in objecting to this Request. Claimant therefore refers to its responses to those objections, which are incorporated by reference.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request</u>:</p> <p>At the outset, Perú claims that “the Constitutional Court <u>does not</u> store <i>all</i> working documents prepared by Justices and/or clerks” (emphasis added), but that does not alter the fact that the Constitutional Court <u>does register</u> the “distribution of case files, including drafts and reports prepared by justices and/or their clerks”, as Claimant stated, and—although apparently not “all” working documents are stored on Respondent’s representation—Respondent impliedly concedes that <i>some</i> working documents are stored. It will therefore be incumbent upon Respondent to produce those responsive Documents that have been stored and explain which responsive Documents were not stored.</p> <p>Additionally, Claimant addresses below Perú’s specific objections to each part of Request No. 3.</p> <p><u>Request No. 3(i)</u>:</p> <p>Perú contends that there are “[n]o documented ‘policies or guidelines’” relating to the use of bar codes in the Constitutional Court’s case files. While Claimant accepts Respondent’s representation that no formally written</p>

¹⁰⁰ See R-318, R-319, R-320.

¹⁰¹ See above, ¶¶ 32, 33.

document that is marked “policy” exists, Claimant finds it difficult to accept that there are “[n]o documented . . . ‘guidelines’”. Guidelines, even if informal and distributed by email rather than in a written document labelled “guidelines”, must be given to employees to advise them when and how they should apply bar codes to documents received or generated by the Constitutional Court. Indeed, Perú submitted a witness statement from [REDACTED] which exclusively deals with the barcoding system at the Court. [REDACTED] states that this system “greatly facilitated the registration and tracking process” of files and documents [REDACTED]. If documents are tracked by barcodes, as [REDACTED] and Perú recognized, there must be rules regarding, at minimum, (i) when and how barcodes are assigned; (ii) what information is encoded within the barcode; (iii) who is responsible for scanning and updating barcode information; (iv) how errors or discrepancies in tracking are to be resolved; and/or (v) purposes for which the barcode data can be used (e.g., for reporting on case evolution and internal distribution, as requested in 3(iii)). Perú’s position would imply that the Constitutional Court abruptly began applying bar codes to its case files without any systematic direction or control regarding their implementation or relevance.

Accordingly, Claimant maintains that Respondent should be ordered to produce Documents responsive to part (i) of the Request. Aside from its representation, Respondent has not articulated any other objection to the Request.

Request No. 3(ii):

Perú argues that the file processing sheets (*hojas de trámite de expedientes*) and document delivery receipt sheets (*hojas de cargo*) would not be material or relevant to determine the timing and nature of the Court’s deliberations on the Scotiabank Amparo. Perú’s objection is undermined by its own explanation of Documents responsive to part (ii) of the Request.

Perú itself recognizes that the requested Documents “were used for the transmission of physical case files [such as the Scotiabank Amparo] between different officials of the Constitutional Court” and “were signed by the public official making delivery of the documents and by the person who received these documents”. Despite Perú’s contentions to the contrary, who received the Scotiabank Amparo case file, and when, is material to determine the “timing and nature of the Court’s deliberations”. For example, such records will provide crucial evidence of the movements of the case file between the hearing held in March 2017 and the Leaked Decision in June 2017, and subsequently, the movement (or lack thereof) of the case file between the Leaked Decision and the 2021 Decision.

Furthermore, Perú’s allegation is inconsistent with its own Counter-Memorial, where Perú submitted file processing sheets (*hojas de trámite de expedientes*) and document delivery receipt sheets (*hojas de cargo*)

concerning unrelated proceedings before the Constitutional Court (R-0318; R-0319; R-0320; R-0321; R-0322). Perú cannot credibly claim that the very same documents related to the Scotiabank Amparo would not be relevant and material.

For this very same reason, Perú's objection that the requested Documents would not be in its possession, custody or control is unfounded. Perú has already introduced file processing sheets (*hojas de trámite de expedientes*), document processes sheets (*hojas de trámite de documentos*), and file cover sheets (*carátulas de expedientes*) in cases from 2008, 2017 and 2020 (R-0318; R-0319; R-0320; R-0321; R-0322). The requested Documents are therefore plainly in Respondent's possession, custody or control. This expectation is further amplified by the fact that Perú received Claimant's notice of dispute before the 2021 Decision was published, and therefore should have taken affirmative steps to preserve all relevant Documents.

If the Documents previously did exist but were not maintained, then that is not an issue regarding the Respondent's possession, custody or control but rather one of spoliation of evidence. The "loss or destruction" of documents is governed by a provision of the IBA Rules not referenced by Perú (art. 9(2)(d)). If Respondent is no longer in possession of the requested Documents, then the Tribunal should order Respondent to provide an explanation regarding the loss or destruction of the Documents.

Request No. 3(iii):

Perú's only objection to part (iii) of the Request is that the requested Documents "may" contain annotations reflecting the substance of the Court's deliberative process and therefore "may" be privileged or contain privileged information. Respondent's conclusory and conditional assertion is entirely inadequate to establish a valid claim of privilege. The use of the conditional demonstrates that Perú's objection is speculative and hypothetical, rather than based on a concrete assessment of the Documents.

Additionally, Respondent has not explained how "a full report issued from the Constitutional Court's electronic document management systems . . . showing the evolution and internal distribution of the Scotiabank Amparo case file" could include confidential annotations. Such a report, generated from system data, would primarily detail factual information about document movements, timestamps, and custodians—metadata which is inherently non-privileged. If any system-generated report *could* contain annotations, Perú has a duty to explain the precise mechanism by which such annotations are incorporated into a data report and why they would be privileged.

In any event, Respondent's invocation of the privilege defense is misplaced. Respondent relies on and incorporates by reference its comments on privilege contained in Request No. 1. However, as explained in Claimant's response

	<p>to Perú’s objections to Request No. 1, Respondent’s privilege arguments are baseless and should be rejected.</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 3.</p>
E. Decision of the Tribunal	<i>Request granted as to sub-Requests (ii) and (iii). The Tribunal notes the Respondent’s representation that no documents responsive to sub-Request (i) exist.</i>

Document Request No	4. The distribution of the case files associated with the Parties’ Combined Domestic Comparators [ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>A full report issued from the Constitutional Court’s electronic document management systems (as described in the witness statement submitted by Perú from ██████████ the so called “SITRADO” and “SIGE” systems, or any similar or successor system) showing the evolution and internal distribution of each case file associated with the Parties’ Combined Domestic Comparators, including through the tracking of the barcode(s) assigned by the system(s) to each of the Parties’ Combined Domestic Comparators.</p> <p><u>Time period:</u> between 23 April 2013 (date the first of the Parties’ Combined Domestic Comparators reached the Constitutional Court) and 7 February 2023 (date the Constitutional Court published the <i>Maxco</i> binding constitutional precedent).</p>
B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments	<p><u>Background and relevance & materiality:</u></p> <p><i>See</i> Request 3.</p> <p>A significant issue in dispute concerns the nature and timing of the deliberations associated with the Scotiabank Amparo, both before the Leaked Decision and in the intervening more than four years until the 2021 Decision was rendered. Scotiabank’s case is that the significant delay between the Leaked Decision and the 2021 Decision reflects the Court’s having succumbed to political pressure as a result of the Leaked Decision (<i>see</i> Memorial, ¶¶ 213, 245, 296).</p> <p>The requested Documents are relevant to the dispute and material to its outcome because they will enable a comparative assessment between (i) how the deliberations progressed in the Scotiabank Amparo (the subject of Requests 2 and 3), and (ii) how the deliberations progressed in the comparable domestic cases (the subject of the present Request). The requested Documents will show whether the deliberations in the Parties’ Combined Domestic Comparators suffered from delays similar to those</p>

	<p>experienced in the Scotiabank Amparo, where (as per the news article reporting on the Leaked Decision, C-200) deliberations had been reportedly finalized but then where the decision was still delayed for four more years and then subject to reconsideration by a reduced <i>quorum</i> of the Court (Memorial, ¶¶ 212–213. That comparison is an essential component of the National Treatment analysis under Article 803 of the Treaty.</p> <p><u>Belief that Documents exist:</u></p> <p>See Request 3.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>See Respondent’s comments on Request No. 3.</p> <p>The Claimant’s Request is excessively broad. While the Claimant purports to obtain information on the so-called “Parties’ Combined Domestic Comparators”, the timeframe defined by the Claimant is almost four years longer than the period comprised by the alleged Comparators. Indeed, according to the Claimant, the alleged Comparators include “<i>those cases in which Peruvian investors, allegedly in like circumstances to Claimant, brought amparo proceedings between 23 January 2017 and 7 February 2023</i>” (emphasis added).¹⁰² In this light, the Claimant’s attempt to go back four additional years is entirely unjustified.</p> <p>Moreover, the Respondent addresses each of the Claimant’s requests, as follows:</p> <p><u>The requested documentation is not material to the outcome of the case (IBA Rules, Rules 3(3)(b); 9(2)(a)):</u></p> <p>As explained by the Respondent in its Counter-Memorial, none of the cases described by the Claimant as the Parties’ Combined Domestic Comparators are relevant comparators to determine a purported breach of the National Treatment standard, as none of them is in like circumstances with Scotiabank Perú.¹⁰³ Therefore, the distribution of these case files is neither relevant nor material to the outcome of the case. Moreover, the Claimant’s Request is premised on a wrong assumption, namely that, in the Scotiabank <i>amparo</i>, “<i>deliberations had been reportedly finalized but then where the decision was still delayed for four more years and then subject to reconsideration</i>”. As shown by the Respondent, [REDACTED]</p> <p>[REDACTED]¹⁰⁴</p> <p><u>It would be an unreasonable burden for the Respondent to produce the requested documentation or it would otherwise be disproportionate to do so (IBA Rules, Rule 9(2)(c)):</u></p>

¹⁰² See above, ¶ 17(h).

¹⁰³ See Counter-Memorial, Section V.D.

¹⁰⁴ See Counter-Memorial, ¶¶ 144-151.

	<p>Document production obligations do not entail the creation of new documents, such as the reports requested by the Claimant. This is particularly so, considering breadth of the new information requested by the Claimant, which would comprise more than forty cases that the Claimant describes as the “Parties’ Combined Domestic Comparators”(which definition is disputed by the Respondent), spanning ten years.¹⁰⁵</p> <p><u>The requested documentation is protected from disclosure by legal impediment or privilege (IBA Rules, Rule 9(2)(e)):</u></p> <p>The requested documents may contain annotations reflecting the substance of the Court’s deliberative process, which is protected from disclosure as a matter of Peruvian law and under the TPA. Accordingly, the Respondent objects to the Claimant’s Request, on the basis of Rule 9(2)(e) of the IBA Rules. The Respondent refers in this regard to its comments on Request No. 1.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p>Perú refers generally to its objections to Request No. 3 in objecting to this Request. Accordingly, Claimant refers to and incorporates by reference its responses in row D of Request No. 3.</p> <p>Claimant addresses below Perú’s specific objections to Request No. 4.</p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>Perú argues that the Parties’ Combined Domestic Comparators are not relevant comparators to determine a purported breach of the National Treatment standard. As Claimant explained in its response to Perú’s objection to Request No. 1, Perú’s reliance on its own arguments on the merits is impermissible in determining the materiality and relevance of Claimant’s request of Documents. It is the Tribunal—not Perú—who will determine, after a thorough analysis of the Parties’ arguments and evidence, if the Parties’ Combined Domestic Comparators or Claimant’s Domestic Comparators were or were not in “like circumstances” with Scotiabank for the purposes of the National Treatment analysis. Thus, Perú’s improper attempt to circumvent production of Documents that are clearly relevant to a central, disputed factual and legal question in this arbitration should be dismissed.</p> <p>Further, Perú disputes the factual predicate that in the Scotiabank Amparo, “deliberations had been reportedly finalized but then . . . the decision was still delayed for four more years and then subject to reconsideration”. However, Respondent cannot credibly dispute that “deliberations had been <i>reportedly</i></p>

¹⁰⁵ See above, ¶ 38.

finalized” (emphasis added) because that is precisely what the *Hildebrandt* article reported in connection with the Leaked Decision (C-0200).

As demonstrated by Claimant, the requested Documents are relevant to the dispute and material to its outcome because they will enable a comparative assessment between (i) how the deliberations progressed in the Scotiabank Amparo (the subject of Request Nos. 2 and 3), and (ii) how the deliberations progressed in the comparable domestic cases (the subject of this Request).

Claimant’s Request encompasses a narrow and specific category of Documents:

Perú argues that Claimant’s request is “excessively broad” because the timeframe defined by the Claimant is almost four years longer than the period comprised by the Parties’ Combined Domestic Comparators. This is wrong. The Parties’ Combined Domestic Comparators involves a specifically defined category of cases before the Constitutional Court, identified by the Parties as being in “like circumstances” with Scotiabank. Thus, the time period for this Request simply comprises the starting point when the first of those cases reached the Court until the date on which the Court issued the binding precedent in the *Maxco* case concerning default interest claims such as the Scotiabank Amparo. Claimant’s Request would require Perú to search in the Constitutional Court database for very specific materials in specific and identifiable case files. The time period adds no layer of complexity or burden on Respondent to satisfy the Request.

Claimant’s requested Documents would not impose an excessive burden on Perú:

Contrary to Perú’s arguments, Claimant’s Request does not require that Perú “create” new documents, but that it simply export the requested information, the existence of which Respondent does not dispute, in a useable format from the Constitutional Court’s database. As recognized by Perú’s own witness, Respondent has the means to conduct reasonably accessible searches through the Court’s database for the limited universe of cases that comprise the Parties’ Combined Domestic Comparators.

As for Perú’s argument that this Request would entail information from more than forty cases over ten years and would therefore be excessively burdensome, Claimant refers to its response to Perú’s preceding objection to this Request. That is not a burdensome exercise as the relevant cases have already been identified. Rather, it is a mechanical exercise of producing the reports sought by Claimant in connection with each of the Parties’ Combined Domestic Comparators.

Further, Perú’s objection fails to contextualize the claimed burden against the high materiality of the requested information. The IBA Rules require a balance between the burden of production and the relevance and materiality of the documents sought. The information concerning the distribution of the

	<p>case files associated with the Parties’ Combined Domestic Comparators is relevant and material to a central factual dispute in this arbitration, namely whether the Parties’ Combined Domestic Comparators received similar treatment from the Peruvian State as compared to the treatment accorded to Scotiabank Perú. Perú has failed to establish that the present Request would create an excessive burden to a level that justifies not producing such material evidence.</p> <p><u>Perú has failed to prove that the requested Documents are protected by privilege:</u></p> <p>Respondent’s conclusory and conditional assertion is entirely inadequate to establish a valid claim of privilege. Not only has Respondent failed to identify a specific privilege that would apply to this specific category of Documents, but it has not even confirmed the existence of the allegedly confidential content (“may contain annotations”). Claimant additionally refers to its responses to Perú’s objections on the basis of privilege set forth in response to Request Nos. 1 and 3(iii).</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 4.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Request denied as overbroad and disproportionate.</i></p>

<p>Document Request No</p>	<p>5. Deliberations leading to the Clarification Order [ORDER SOUGHT]</p>
<p>A. Documents or category of documents requested (requesting Party)</p>	<p>The following Documents relating to the Constitutional Court’s drafting of the Clarification Order, to the extent not produced in response to Request 2:</p> <ul style="list-style-type: none"> (i) all Documents reflecting discussions and deliberations within the Constitutional Court addressing the need for and content of the Clarification Order, including but not limited to any communications between the justices of the Court (and their clerks, advisors and other employees) and records of any meetings amongst justices of the Court; and (ii) all electronic and paper copies of all drafts of documents intended or designed to become all or a component part of the Clarification Order, from the first draft of any such document to the final draft of the Clarification Order, including those paper copies reflecting any handwritten comments or annotations, as well as all communications copying or enclosing all such Documents.

	<p><u>Time period:</u> between 9 November 2021 (date 2021 Decision was announced) and 30 November 2021 (date Clarification Order was published).</p>
<p>B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments</p>	<p><u>Background and relevance & materiality:</u></p> <p>The Constitutional Court issued the 2021 Decision with only four justices, and a three-justice majority, in disregard of the Court’s quorum requirements (Memorial, ¶¶ 153–159). A few weeks after announcing its decision in the Scotiabank Amparo, and within two weeks of having issued its reasoning, the Court published a further clarification decision explaining why it had decided the case in disregard of its quorum requirements (<i>i.e.</i>, the Clarification Order). Claimant contends that the Clarification Order issued by the Constitutional Court demonstrates that the Constitutional Court recognized the irregularity of issuing the 2021 Decision with only four justices issuing votes in connection with the judgment (Memorial, ¶¶ 158–159; <i>see also</i> Memorial, ¶ 244; CER-Landa/Neyra, ¶¶ 197–200; C-0356).</p> <p>For its part, the Respondent contends that there was nothing improper or unusual about the Court’s decision to disapply its own quorum requirements. Yet, it is silent about the impetus for the Clarification Order (Counter-Memorial, ¶¶ 216–230).</p> <p>A disputed issue between the parties is the irregularity of the Court’s disapplication of its quorum requirement in ruling on the Scotiabank Amparo and the Court’s behavior on quorum in comparable cases involving domestic investors. The decision-making around the Clarification Order is germane to those issues as it expressly addressed the quorum issue. The requested Documents are relevant to the dispute and material to its outcome because they will explain the impetus for the Clarification Order and its connection to irregularities observed by Claimant in the Court’s disapplication of its own quorum requirement.</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody or control. The Clarification Order was drafted by the Constitutional Court and some discussion would have preceded its preparation. Moreover, drafts of the decision would have been circulated to and commented upon by justices of the Court. Additionally, Perú acknowledges that [REDACTED] and so it is obvious that documents would have been generated in connection with that discussion (Counter-Memorial, ¶ 406 n.568).</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to</p>	<p><i>See</i> Respondent’s comments on Request No. 2.</p>

<p>document request (objecting Party)</p>	<p>Given that the Clarification Order was issued within File No. 222-2017, Request No. 5 overlaps with Request No. 2, whereby the Claimant requests, <i>inter alia</i>: (i) the entire case file (<i>i.e.</i>, the <i>expediente interno</i> or similar compilation) of the Scotiabank Amparo as maintained by the Constitutional Court, and (ii) all Documents containing meeting agendas of the Constitutional Court and/or drafts of judgments to discuss and/or deliberate on the Scotiabank Amparo. Accordingly, in the interest of efficiency, the Respondent refers to its comments above.</p> <p>The Respondent notes that, as stated in its comments on Request No. 2, it has agreed to produce a redacted version of the Minutes of the Plenary session of the court of 30 November 2021, whereby the Clarification Order was adopted.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p>Perú’s general reference to its comments on Request No. 2 does not constitute a properly sustained objection to Claimant’s Request. While both Requests touch upon the deliberative process of the Court regarding the Scotiabank Amparo, Request No. 5 focuses specifically on the deliberations leading to the Clarification Order and comprises internal deliberative Documents such as communications among justices, clerks, or advisors, which exceeds the scope of Request No. 2. At any rate, Claimant refers to and incorporates by reference its responses in row D of Request No. 2.</p> <p>Claimant takes note of Perú’s commitment “to produce a redacted version of the Minutes of the Plenary session of the court of [REDACTED]”. That is a single document that would be responsive but plainly would not satisfy Request No. 5, which evidently seeks the production of a number of different Documents leading up to and relating to the Clarification Order.</p> <p>The requested Documents are relevant to the dispute and material to its outcome because they will explain the impetus for the Clarification Order and its connection to irregularities observed by Claimant in the Court’s disapplication of its own quorum requirement.</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 5.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Request denied as overlapping with Request No. 2.</i></p>
<p>Document Request No</p>	<p>6. The Court’s changes to the quorum requirements [ORDER SOUGHT]</p>
<p>A. Documents or category of</p>	<p>All Constitutional Court Documents relating to:</p>

<p>documents requested (requesting Party)</p>	<ul style="list-style-type: none"> (i) the Constitutional Court’s decision to lower the number of judges required to vote in favour of a decision in order for the decision to be valid, as ultimately reflected in Administrative Resolution 205-2021-P/TC rendered on 3 November 2021; (ii) the number of justices that would rule on the Scotiabank Amparo; (iii) the timing for the issuance of a decision on the Scotiabank Amparo; (iv) Scotiabank’s Notice of Intent issued on 1 September 2021 (C-0021); (v) decision-making on the Scotiabank Amparo given the abstentions of Justices Sardón de Taboada and Ferrero Costa, and/or Justice Ramos’ passing; (vi) the number of justices that would rule on the Parties’ Combined Domestic Comparators; and (vii) any clarification order issued by the Constitutional Court in the Parties’ Combined Domestic Comparators relating to changes to the quorum requirements, such as the Clarification Order. <p><u>Time period:</u> between 23 April 2013 (date the first of the Parties’ Combined Domestic Comparators reached the Constitutional Court) and 7 February 2023 (date the Constitutional Court published the <i>Maxco</i> binding constitutional precedent).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality:</u></p> <p>Claimant asserts that, through Administrative Resolution 205-2021-P/TC, the Constitutional Court unilaterally lowered the quorum of justices required to rule on a case (Memorial, ¶ 151). This change took place shortly after Scotiabank delivered its Notice of Intent to initiate arbitration, and days before the issuance of the 2021 Decision in the Scotiabank case (Memorial, ¶¶ 151–153). Claimant contends that this change in the quorum requirement was not valid under Peruvian law, that the old quorum requirement therefore remained in place when the 2021 Decision was issued, and that the 2021 Decision was therefore legally invalid (Memorial, ¶¶ 151–153, 157–159). Claimant also contends that the change in quorum to enable the Court to rule against Scotiabank in its case is a further example of differential treatment by Perú, as compared to the Parties’ Combined Domestic Comparators, in violation of Article 803 of the Treaty (Memorial, ¶¶ 303–308).</p> <p>Perú contends that the change in quorum was adopted in accordance with the need to timely administer justice, which is a duty of the Constitutional Court under the Peruvian Constitution, and that the 2021 Decision was therefore issued validly (Counter-Memorial, ¶¶ 214–217, 426). Perú contends that there was nothing improper relating to the Court’s decision to disapply the quorum requirement (Counter-Memorial, ¶¶ 211–230, 426).</p> <p>The requested Documents are relevant to the dispute and material to its outcome because they will provide detail on the Constitutional Court’s decision-making regarding the lowering of the voting quorum requirement,</p>

	<p>and enable the Tribunal to evaluate whether Claimant received differential treatment, as compared to the Parties’ Combined Domestic Comparators, in connection with the Court’s decision to disapply the quorum requirement in the Scotiabank Amparo.</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control. The Constitutional Court prepared Administrative Resolution 205-2021-P/TC to lower the quorum requirement. Documents would necessarily have been generated both in connection with the Court addressing the perceived need to lower the quorum requirement, as well as in preparing the administrative resolution itself. Moreover, it stands to reason that documents would exist discussing the application of the lowered quorum in the Scotiabank Amparo as, ultimately, the Court subsequently felt obliged to justify its decision in the Clarification Order. It is reasonable to conclude that the quorum requirement was also discussed by the Court in other cases.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>The Claimant’s Request is excessively broad. Although the Claimant purports to obtain information regarding the issuance of Administrative Resolution No. 205-2021-P/TC on 3 November 2021, it seeks documents that are vaguely described with generic references to topics of its interest, <u>over a period of almost ten years</u>. This is neither reasonable nor necessary and consists of a thinly veiled fishing expedition that runs contrary to the IBA Rules.</p> <p>Moreover, although the Claimant purports to obtain information on the so-called “Parties’ Combined Domestic Comparators”, the timeframe defined by the Claimant is almost four years longer than the period comprises by the alleged Comparators. Indeed, according to the Claimant, the alleged Comparators include “<i>those cases in which Peruvian investors, allegedly in like circumstances to Claimant, brought amparo proceedings between 23 January 2017 and 7 February 2023</i>” (emphasis added).¹⁰⁶ In this light, the Claimant’s attempt to go back four additional years is entirely unjustified.</p> <p>Additionally, the Respondent addresses each of the Claimant’s Requests, as follows:</p> <p><u>Request 6(i):</u> Without accepting the relevance or materiality of the information required in these Requests, the Respondent is willing to voluntarily produce a copy of the [REDACTED] whereby Administrative Resolution No. 205-2021-P/TC was adopted, after applying the redactions required to protect any information</p>

¹⁰⁶ See above, ¶ 17(h).

that is subject to privilege or legal impediment under Peruvian law and the TPA (*see* IBA Rules, Rule 9(2)(e)).

Requests 6(ii)-6(v): The Respondent objects to these categories of documents, which are excessively broad (IBA Rules, Rule 3(3)(a)(ii)). The Claimant’s Requests are nothing but a fishing expedition, as demonstrated by the fact that, rather than describing a document or documents, the Claimant’s Requests set forth broad topics on which the Claimant would like to obtain documentation. This clearly fails to comply with the IBA Rules’ requirement that documents be requested in a “narrow and specific manner” and is contrary to the spirit and purpose of document production.

Relatedly, the Claimant’s Requests are unreasonably burdensome for the Respondent (*see* IBA Rules, Rule 9(2)(c)). In order to identify and collect potentially responsive Documents, the Respondent would have to review all documents in its possession that could be remotely “related” to file No. 222-2017 within a period of close to 10 years.

Request 6(vi): The Claimant’s Request is vague, unclear and excessively broad, as explained above for Requests 6(ii)-6(v). In any event, the number of Justices who participated in each of the cases to which the Claimant refers as the “Parties’ Combined Domestic Comparators” (which definition the Respondent disputes) is already in the record, as summarized in the Respondent’s **Appendix 1**, showing: *(i)* each of the decisions which make up the so-called “Parties’ Combined Domestic Comparators”; *(ii)* the votes cast by each of the Justices in each case, and *(iii)* the reference to the relevant judgment from where this information arises, as submitted in the record.

Request 6(vii): The requested documentation is not material to the outcome of the case (IBA Rules, Rules 3(3)(b); 9(2)(a)). As explained by the Respondent in its Counter-Memorial, none of the alleged investors described by the Claimant as the Parties’ Combined Domestic Comparators is in “like circumstances” and is therefore a relevant comparator to determine a purported breach of the National Treatment standard.¹⁰⁷ Therefore, the judgment *quorum* in each of these case files is not material to the outcome of this arbitration.

Moreover, it would be an unreasonable burden for the Respondent to produce the requested documentation (IBA Rules, Rule 9(2)(c)). The Claimant’s Request would require Peru to review the case files for each of the more than forty cases in the so-called “Parties’ Combined Domestic Comparators”, spanning ten years,¹⁰⁸ to identify and review any potentially responsive Clarification Order.

¹⁰⁷ *See* Counter-Memorial, Section V.D.

¹⁰⁸ *See* above, ¶ 17(h).

Scotiabank Amparo].” However, that is not the case. What is required is that Respondent should certainly collect all Documents generated within the Constitutional Court relating to the Scotiabank Amparo. That collection effort itself is not particularly burdensome given that it concerns a single case that was before a single court, and Respondent ought to be able to identify which document custodians within the Court may likely be in possession of Documents relating to the Scotiabank Amparo. The Respondent should then be able to conduct reasonable word searches and review those more limited Documents responsive to parts (ii) to (v) of Request No. 6, as well as other Requests seeking Documents from the Constitutional Court. The examples here, in parts (ii) to (v) of the Request, relate to a finite and discrete set of issues that more broadly concern the Court’s changes to its quorum requirements. That Respondent considers compiling all Documents generated by the Court relating to the Scotiabank Amparo to be “unreasonably burdensome” is concerning given the subject matter of the arbitration.

Claimant’s Request encompasses a narrow and specific category of Documents:

Contrary to Respondent’s contention, parts (ii) to (v) meet the “narrow and specific” threshold under the IBA Rule 3(3)(a)(ii). These parts of the Request are focused on Documents related to the application of quorum rules, and their modification, to the Scotiabank Amparo and the impact of recusals or abstentions. These are not “broad topics” but specific, identifiable issues that would be addressed through internal Documents and discussions within the Court. Each part of the Request describes with sufficient specificity (i) the subject matter sought; (ii) the type of Documents (*i.e.*, agendas, emails, minutes, attendance sheets); and (iii) potential custodians (Constitutional Court justices, clerks, advisors) in order to allow Perú to conduct a reasonable search for relevant Documents.

Perú’s objection fails to contextualize the claimed burden against the high materiality of the requested information, for which Claimant refers to its response in Request No. 1.

Request No. 6(vi):

Claimant takes notes of Perú’s comment that the number of justices who participated in the Parties’ Combined Domestic Comparators’ cases is summarized in Respondent’s Appendix 1 to the Counter-Memorial. Claimant notes, however, that Appendix 1 only includes such information with regards to cases that Claimant has submitted on the record, some (but not all) of which constitute Claimant’s Domestic Comparators.¹⁰⁹ Respondent’s Appendix 1 does not include those cases identified by the Respondent as

¹⁰⁹ For a list of Claimant’s Domestic Comparators, see Annex II, Tab 2: Domestic Comparators, CER-Landra/Neyra. See also Memorial, ¶ 260.

	<p>allegedly appropriate domestic comparators. In any event, Claimant seeks no further order from the Tribunal at this time.</p> <p><u>Request No. 6(vii):</u></p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>As Claimant explained in response to Perú’s objection to Request No. 1, Perú’s reliance on its own arguments on the merits cannot supplant Claimant’s showing of the relevance and materiality of the requested Documents. Thus, Respondent’s arguments concerning whether the Parties’ Combined Domestic Comparators should be deemed to have been in “like circumstances” to Claimant are irrelevant, and exceed the scope of the Document Production. Claimant refers to its response to Perú’s objection to Request No. 4. Notably, Respondent cannot dispute that the requested Documents—here, the existence of any decision similar to the “Clarification Order” issued in connection with the Parties’ Combined Domestic Comparators—will be relevant to the comparative exercise relevant to Claimant’s National Treatment claim.</p> <p><u>The production of the requested Documents would not impose an excessive burden on Perú:</u></p> <p>Part (vii) of Request No. 6 targets a very specific category of Documents—clarification orders related to quorum changes—within the context of the Parties’ Combined Domestic Comparators. This is a clearly defined Document type that would be readily identifiable if it exists. The Parties’ Combined Domestic Comparators is a finite list of 40 cases identified by Claimant (Memorial, ¶ 260; Annex II, Tab 2: Domestic Comparators, CER-Landra/Neyra) plus a handful of cases that Perú refers to in its Counter-Memorial as allegedly appropriate comparators. It is not an unreasonable burden for Respondent to review the files of those cases and determine if there was any decision issued that is analogous to the Clarification Order.</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to parts (ii), (iii), (iv), (v) and (vii) of Request No. 6.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Request granted as to sub-Requests (ii), (iii), (iv), (v) and (vii).</i></p>
<p>Document Request No</p>	<p>7. The Court’s prioritization of its case load [ORDER SOUGHT]</p>
<p>A. Documents or category of</p>	<p>The following Documents prepared by the Constitutional Court relating to the prioritization of cases before it:</p>

<p>documents requested (requesting Party)</p>	<p>(i) Administrative Resolution 157-2018-P/TC (establishing criteria for the Court’s management and prioritization of its case load);</p> <p>(ii) all other written policies or procedures of the Court that were in effect during the pendency of the Scotiabank Amparo that concern the Court’s management and prioritization of its case load; and</p> <p>(iii) all Documents relating to the application of the criteria in Administrative Resolution 157-2018-P/TC—or in any other written policies or procedures responsive to part (ii) of the Request—to the timing for the Court to consider and rule on the Scotiabank Amparo.</p> <p><u>Time period:</u> between 14 October 2016 (date <i>agravio constitucional</i> was filed with Constitutional Court) and 30 November 2021 (date on which the final Clarification Order was issued in connection with the Court’s judgment of 20 November 2021 in the Scotiabank Amparo).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality:</u></p> <p>On 2 August 2018, while the Scotiabank Amparo was still pending, the Constitutional Court declared an emergency regarding its pending caseload. Accordingly, the Constitutional Court issued Resolution 157-2018-P/TC with the aim to establish a set of criteria to prioritize cases to be resolved promptly by the Court. To Claimant’s knowledge, that resolution is not publicly available.</p> <p>Claimant has otherwise explained that—after the Leaked Decision of June 2017—the Constitutional Court improperly delayed deciding on the Scotiabank Amparo for more than four years given the associated negative political climate (Memorial, ¶¶ 212–213). Claimant explains that the delay in the Court’s decision-making following the Leaked Decision reflects treatment not otherwise accorded to the Parties’ Combined Domestic Comparators (Memorial, ¶¶ 283–284).</p> <p>For its part, Perú denies there was anything untoward or politically-motivated in connection with the Court’s delay in ruling on the Scotiabank Amparo (Counter-Memorial, ¶¶ 409–410).</p> <p>The requested Documents are relevant to the dispute and material to its outcome because they will show whether the Court applied its own criteria in delaying its decision on the Scotiabank Amparo or whether—as Claimant contends—the record reflects that the delay was caused by the political climate surrounding the Scotiabank Amparo.</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control. Resolution 157-2018-P/TC was issued by the president of the Constitutional Court (<i>see</i> “Constitutional Court Strengthens Procedural Offload Plan,” Constitutional Court (10 September 2017), https://www.tc.gob.pe/institucional/notas-de-prensa/tribunal-</p>

	<p>constitucional-fortalece-plan-de-descarga-procesal/). Moreover, as the resolution purports to establish criteria for the prioritization of the Court’s caseload, it stands to reason that there would be Documents showing the establishment and application of that criteria for all cases, including in particular in connection with the Scotiabank Amparo.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p><u>Request No. 7(i)</u>: The Respondent is willing to produce a copy of Administrative Resolution No. 157-2018-P/TC.</p> <p><u>Request No. 7(ii)</u>: The Respondent will endeavor to identify any official written policies or procedures of the Court that were in effect during the pendency of the Scotiabank Amparo that concern the Court’s management and prioritization of its case load and will produce these in good faith, to the extent that these documents are not subject to legal impediment or privilege, in accordance with Rule 9(2)(e).</p> <p><u>Request No. 7(iii)</u>: As stated above, the Respondent has agreed to produce redacted versions of the Minutes of the Plenary sessions in which File No. 222-2017 was addressed (<i>see</i> Respondent’s Comments on Request No. 2). Additionally, the video recording of the deliberations of the Court as regards its decision on File No. 222-2017 already form part of the record (C-338), as well as the Judgment issued by the Court on 20 November 2021 (C-340), and the Clarification Order of 30 November 2025 (C-356). Therefore, all documents relevant to the Claimant’s Request No. 7(iii) have already been provided or will be provided to the Claimant, rendering Request No. 7(iii) redundant.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant part (iii) of the Request. Subject to the comments below, Claimant seeks no order at this time in connection with parts (i) and (ii) of the Request.</p> <p><u>Request Nos. 7(i) and (ii)</u>: Claimant takes note of Perú’s commitment to produce responsive Documents. Claimant reserves its rights to challenge Perú’s claims of privilege and/or any of Perú’s redactions.</p> <p><u>Request No. 7(iii)</u>: Perú’s assertion that Request 7(iii) is redundant because it would be covered by the redacted versions of the Minutes of the Plenary sessions in which File No. 222-2017 was discussed (<i>see</i> Perú’s objection to Request No. 2) along with the video recording (C-0338), the 2021 Judgment (C-0340), and the Clarification Order (C-0356), fundamentally misconstrues the scope of this Request. These Documents concern the deliberation and outcome of the case but they do not necessarily detail the internal application or impact of the Court’s case prioritization policies to the Scotiabank Amparo case itself, particularly regarding the delay in its resolution after the Leaked Decision. Documents detailing the specific application of these criteria (or lack thereof) to the Scotiabank Amparo are relevant to the Tribunal’s</p>

	comparative assessment of the delays by the Court in ruling on the Scotiabank Amparo as compared to the time periods taken to decide the Parties’ Combined Domestic Comparators.
E. Decision of the Tribunal	<i>Noting the clarifications provided by the Respondent, Request granted as to sub-Request (iii). No decision necessary as to sub-Requests (i) and (ii).</i>

B. REQUESTS RELATING TO THE CONSTITUTIONAL COURT AND GOVERNMENT’S INTERACTIONS WITH THE MEDIA IN CONNECTION WITH THE SCOTIABANK AMPARO AND THE PARTIES’ COMBINED DOMESTIC COMPARATORS

Document Request No	8. Interactions between the Court and journalists regarding the Scotiabank Amparo [ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>The following Documents relating to interactions between, on the one hand, the Constitutional Court justices or any employees of the Court, and, on the other, journalists or other individuals associated with the media, regarding the Scotiabank Amparo:</p> <ul style="list-style-type: none"> (i) all Documents relating to the meeting of ██████████, a journalist from <i>Hildebrandt en sus Trece</i> (i.e., the publication that leaked excerpts of the Leaked Decision within days of the 30 May meeting); (ii) all Documents relating to the meeting of ██████████ ██████████ ██████████ (iii) all Documents relating to the interview with Justice Ledesma published by <i>Hildebrandt en sus Trece</i> in its article of 27 September 2019 (C-298) in which Justice Ledesma made comments regarding the Scotiabank Amparo, including Documents relating to the scheduling of the interview and any preparatory materials prepared in connection with the interview; (iv) all Documents reflecting communications, whether made directly or indirectly, between ██████████ and individuals associated with <i>Hildebrandt en sus Trece</i>; (v) all Documents relating to the transmission by any justice or employee of the Constitutional Court of any draft decision of the Constitutional Court in the Scotiabank Amparo (including but not limited to the Leaked Decision) to any individual unaffiliated with the Court, including (but not limited to) any journalist or individual affiliated with a media outlet; and

	<p>(vi) all Documents relating to other meetings or communications between Constitutional Court justices or employees of the Court, on the one hand, and journalists or other individuals associated with the media, on the other, regarding the Scotiabank Amparo.</p> <p><u>Time period</u>: between 14 October 2016 (date <i>agravio constitucional</i> was filed with Constitutional Court) and 30 November 2021 (date Clarification Order was published).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality</u>:</p> <p>See Request 1.</p> <p>Moreover, the Court’s public records show that, during the pendency of the Scotiabank Amparo and in the days prior to the publication of the Leaked Decision, ██████████ met with a journalist from <i>Hildebrandt en sus Trece</i>, the publication responsible for leaking the Leaked Decision (Memorial, ¶ 83; C-0193; C-0301; C-0302; C-0294; C-0296). ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ She also subsequently gave an interview to the same publication that publicized the Leaked Decision in which she addressed the Scotiabank Amparo (Memorial, ¶ 109; C-0298).</p> <p>Perú does not dispute that these meetings took place, nor does it deny that the Scotiabank Amparo was the subject of discussion between ██████████ and the journalists in question (Counter-Memorial, ¶ 133). Perú also does not deny that <i>Hildebrandt en sus Trece</i> is a media outlet with anti-foreign investment inclinations (Memorial, ¶ 281; Counter-Memorial, ¶ 133).</p> <p>An important issue in the case concerns the circumstances relating to the Constitutional Court’s leaking to the press of the Leaked Decision in the Scotiabank Amparo. The existence of the Leaked Decision casts a dark shadow over the relationship between the Constitutional Court and the press generally, and more specifically <i>Hildebrandt en sus Trece</i>, the relevant news outlet responsible for publishing the Leaked Decision. Justice Ledesma’s personal interactions with the publication that leaked the Leaked Decision is equally troublesome. The requested Documents are therefore relevant to the dispute and material to its outcome because they will complete the factual record regarding events that are of central importance in the arbitration (<i>i.e.</i>, the circumstances around the Leaked Decision and other related interactions by the Constitutional Court with the press during the pendency of the Scotiabank Amparo) and enable a more complete comparison as regards to similar conduct in comparable cases involving domestic investors.</p> <p><u>Belief that Documents exist</u>:</p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control. It is reasonable to believe that</p>

	<p>meetings held by justices of the Constitutional Court would have generated Documents responsive to the request. Responsive Documents likely exist recording the nature of any discussions, including in the form of any handwritten notes.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>Preliminarily, the Respondent is compelled to correct the Claimant’s misstatement of the Respondent’s position. Contrary to the Claimant’s statements, Peru does not “<i>deny that the Scotiabank Amparo was the subject of discussion between ██████████ and the journalists in question</i>” merely because, like the Claimant, it cannot attest as to the content of discussions to which it was not privy. Evidently, this does not imply an agreement with the Claimant’s unfounded allegations that (i) the Published Document was leaked by a public official of the Court, and (ii) that ██████████ was responsible for said alleged leak. Similarly, the fact that Peru did not expressly deny, in its Counter-Memorial, that “<i>Hildebrandt en sus Trece is a media outlet with anti-foreign investment inclinations</i>” is also not tantamount to an acceptance of the Claimant’s characterization of the publication. In any event, <i>Hildebrandt’s</i> editorial line is entirely irrelevant to this dispute.</p> <p>Additionally, the Respondent objects to the Claimant’s requests, for the reasons set out in detail below:</p> <p><u>The documentation requested is insufficiently narrow and specific (IBA Rules, Rule 3(3)(a)(ii)):</u></p> <p>The Respondent objects to these categories of documents, which are excessively broad (IBA Rules, Rule 3(3)(a)(ii)). The Claimant’s Requests are nothing but a fishing expedition, as demonstrated by the fact that, rather than describing a document or documents, the Claimant’s Requests set forth broad topics on which the Claimant would like to obtain documentation. This clearly fails to comply with the IBA Rules’ requirement that documents be requested in a “narrow and specific manner” and is contrary to the spirit and purpose of document production.</p> <p>The Claimant also fails to explain why, although its Request purportedly concerns the release of the Published Document by <i>Hildebrandt</i> in June 2017, it seeks documents covering a period of more than five years—beginning almost a year before the events allegedly relevant to the Request and extending for four years thereafter. This is unreasonably broad and, respectfully, should not be upheld.</p> <p><u>The Claimant’s Requests are unreasonably burdensome for the Respondent (see IBA Rules, Rule 9(2)(c)):</u></p>

	<p>As a result of the vagueness and broadness of the Claimant’s Request, in order to identify and collect potentially responsive documents, the Respondent would have to review all documents in its possession that could be remotely “related” to a purported “leak” which the Claimant has failed to prove, within a period of over 5 years. This is unreasonably burdensome, and thus contrary to the IBA Rules.</p> <p><u>The requested documentation does not exist or, if it exists, it is not in the possession, custody, or control of the Respondent (IBA Rules, Rule 3(3)(c)):</u></p> <p>The Claimant has failed to prove that it is reasonable to assume that the requested documents exist. Indeed, the Claimant’s stated basis for its allegation that the Documents “<i>exist and are in Perú’s possession, custody or control</i>” amounts to nothing other than its own belief that they ought to exist. Contrary to the Claimant’s allegations, it is highly unlikely that any documents resulted from the meetings between ██████████ ██████████ as would be expected from any private meeting between a high authority of the Court and an investigative journalist.</p> <p>This is also the case of Request 8(v), which somehow suggests that the Respondent is in possession of documents that would demonstrate an alleged illegality, which the Claimant has failed to reasonably prove. The Claimant’s Request is based on the flawed assumption that the leak existed, which is not a demonstrated fact. Moreover, even if the leak had occurred as such (<i>quod non</i>), it is not reasonable to presume that there was a paper trail for any such act, as the Claimant itself recognizes.¹¹⁰</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>At the outset, Respondent’s factual “corrections” have no merit and—if anything—would support the existence of a factual dispute between the parties, which would only support the production of documents responsive to the Request. Claimant has established that the timing of ██████████’s meeting with <i>Hildebrandt</i> journalists just prior to the publication of the Leaked Decision is noteworthy and highly suspicious (Memorial, ¶¶ 11, 83, 88, 232, 281). Only Respondent has the ability to produce Documents responsive to the Request, and to shed further light on the nature and subject matter of the interactions between the Court and members of the media. Respondent’s attestation that it is unaware of the nature of such discussions only underscores the need for document production.</p>

¹¹⁰ See above, ¶ 7(a) (“[I]mproprieties of the variety at issue here often are not accompanied by a vast paper trail. It is obvious that leaking a judgment of a court to the media prior to its official publication is improper. Such conduct is not ordinarily taken by individuals in a way that leaves a vast paper trail, let alone a public one that would be accessible to Claimant.”).

	<p>Claimant addresses below Perú's further, specific objections.</p> <p><u>Claimant's Request encompasses a narrow and specific category of Documents:</u></p> <p>Perú has failed to substantiate its assertion that this Request is “unreasonably broad” and “nothing but a fishing expedition”. This Request is focused on Documents relating to interactions between the Constitutional Court justices or employees and the press regarding the Scotiabank Amparo, in circumstances where it is a known and incontrovertible fact that Justices of the Constitutional Court met with journalists (including immediately before the public emergence of the Leaked Decision (C-0193; C-0301; C-0302; C-0294; C-0296)) and specifically discussed the Scotiabank Amparo with the press (C-0298). Each element of the Request describes with sufficient specificity (i) the subject matter sought (<i>i.e.</i>, specific meetings on specific dates); (ii) the type of Documents sought; and (iii) potential custodians (<i>i.e.</i>, Constitutional Court justices and employees of the Constitutional Court) in order to allow Perú to conduct a reasonable search for relevant documents.</p> <p>Perú's argument that Claimant has requested documents with respect to an unreasonably broad time period also fails. Perú erroneously characterizes the Request as relating only to the leak of the Leaked Decision—in fact, the Request also concerns the relationship between the Constitutional Court and the press generally over the course of the Scotiabank Amparo's pendency before the Court (indeed, as explained in the Request, months after <i>Hildebrandt</i> published the Leaked Decision, Justice Ledesma granted <i>Hildebrandt</i> an interview in which she specifically discussed the Scotiabank Amparo (C-0298)). Accordingly, it is reasonable for Claimant to define its request with respect to the period of time during which the Scotiabank Amparo was pending before the Constitutional Court.¹¹¹</p> <p><u>Claimant's Request is not unreasonably burdensome:</u></p> <p>Contrary to Perú's assertion, it will not have to “review any document remotely ‘related’ to a purported leak”; instead, as described above, Perú will only have to review the documents related to the specific meetings between specific individuals on specific dates, or specific individuals referring to specific topics, which the Claimant identified in its request. Moreover, the existence of the Leaked Decision itself is a factual reality that was acknowledged by both SUNAT and Scotiabank Perú in submissions to the Constitutional Court during the pendency of the Scotiabank Amparo (Memorial, ¶ 143; Counter-Memorial, ¶¶ 160, 163); its authenticity and</p>
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¹¹¹ Where, as here, the requestor “can identify with some particularity the nature of the documents sought and the general time frame in which they would have been prepared[,] [s]uch a request may qualify as a ‘narrow and specific category of Documents’, as permitted under Article 3.3(a)(ii)”. IBA Task Force for the Revision of the IBA Rules on the Taking of Evidence in International Arbitration, Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, January 2021, p. 10.

widespread reporting are undisputed. The existence of the Leaked Decision, and the fact of the leak, justifies the Request.

Perú's objection fails to contextualize the claimed burden against the high materiality of the requested information, for which Claimant refers to its response in Request No. 1. The information concerning interactions between the Constitutional Court and the press regarding the Scotiabank Amparo is directly relevant and highly material to a central factual dispute in this arbitration.

Claimant's requested Documents are reasonably believed to exist and to be in Perú's possession, custody or control:

Perú argues that it is "highly unlikely" that documentation of ██████████ ██████████ private meetings with investigative journalists would exist. Perú provides no support for this speculative assertion. Contrary to Perú's argument, it is reasonable to expect that a normal practice of justices of a high court would create some form of a record of such meetings—documenting the request for the meeting, the stated purpose of the meeting, and the scheduling/diarizing of the meeting. To suggest that a Justice would engage in such meetings without any form of internal documentation is to imply a serious deficiency in institutional record-keeping for a body as critical as the Constitutional Court.

In addition, Perú incorrectly asserts that the leak is unproven, and that there is therefore no reason to believe that documentation of the leak exists or is in the possession of Perú. As explained above, the leak is a proven fact confirmed by the publication of snapshots of an internal court document (C-0200). Perú's continued insistence that the "leak" is not a "demonstrated fact" is a semantic argument that ignores the clear evidence in the record. Perú offers no explanation as to how an official document from the Constitutional Court involving deliberations of a proceeding involving private parties ended up on the front page of a newspaper.

Finally, Respondent refers to Claimant's statement that the direct act of leaking "is not ordinarily taken by individuals in a way that leaves a vast paper trail" as an excuse to object the requested documents. However, this recognition does not preclude the existence of other documents (*e.g.*, communications leading up to, or reacting to, the Leaked Decision; internal investigations; security logs) that would illuminate the circumstances of the transmission, and the meetings between justices of the Court and members of the media. Any responsive Documents are inherently within the exclusive possession, custody, or control of Perú and its State organs.

For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 8.

E. Decision of the Tribunal	<i>Request granted as to sub-Requests (i), (ii), (iii), (iv) and (v). Sub-Request (vi) denied as overbroad.</i>
Document Request No	9. Transmission of draft judgments in the Parties’ Combined Domestic Comparators to third parties [ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>Documents showing the transmission by any justice or employee of the Constitutional Court of any draft decision of the Constitutional Court in any of the Parties’ Combined Domestic Comparators to any individual unaffiliated with the Court, including (but not limited to) any journalist or individual affiliated with a media outlet.</p> <p><u>Time period:</u> between 23 April 2013 (date the first of the Parties’ Combined Domestic Comparators reached the Constitutional Court) and 7 February 2023 (date the Constitutional Court published the <i>Maxco</i> binding constitutional precedent).</p>
B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments	<p><u>Background and relevance & materiality:</u></p> <p>Claimant contends that it received differential treatment, as compared to domestic investors, when a draft judgment in the Scotiabank Amparo was leaked to the press (Memorial, ¶¶ 78–84, 277). Claimant contends that the plaintiffs in the Parties’ Combined Domestic Comparators were not subjected to that same type of treatment (<i>id.</i>, ¶¶ 112, 277, 283). Claimant’s contention is based on a comprehensive review of publicly-available sources, including the Constitutional Court’s official webpage and the official daily <i>El Peruano</i> (<i>id.</i>, ¶¶ 283, CER-Landa/Neyra, ¶ 118–121).</p> <p>Perú does not deny that the Leaked Decision in the Scotiabank Amparo was leaked to the press (Counter-Memorial, ¶¶ 142, 155–164). Perú is silent on whether a draft judgment was leaked in any of the Parties’ Combined Domestic Comparators (<i>see id.</i>, ¶¶ 401–407). While Claimant can only rely on what is discernible from the public record, only Perú has access to determine definitively the existence of leaks from the Constitutional Court in any of the comparable cases involving domestic investors.</p> <p>A central issue in dispute is whether the treatment accorded to Claimant was replicated across any of the Parties’ Combined Domestic Comparators (Memorial, ¶¶ 275, 277). The requested Documents are relevant to the dispute and material to its outcome because they will provide a point of comparison against which the Tribunal can determine whether Claimant received less favourable treatment with respect to the confidentiality of the Court’s deliberations prior to the issuance of a final decision in the Scotiabank Amparo.</p> <p><u>Belief that Documents exist:</u></p>

	<p>If the Constitutional Court leaked to the press a draft judgment in a comparable case, Documents establishing that transmission would be in Perú’s possession, custody, or control. Only Perú has complete access to the files to identify the existence of other leaked judgments.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p><i>See</i> Respondent’s comments on Request No. 1 above, correcting the Claimant’s misstatement of Peru’s position on the existence of the alleged leak of a draft judgment in file No. 222-2017, which Peru denies.</p> <p><u>The requested documentation is not material to the outcome of the case (IBA Rules, Rules 3(3)(b); 9(2)(a)):</u></p> <p>As explained by the Respondent in its Counter-Memorial, none of the alleged investors described by the Claimant as the Parties’ Combined Domestic Comparators is in “like circumstances” and is therefore a relevant comparator to determine a purported breach of the National Treatment standard.¹¹²</p> <p><u>The Claimant has not shown that it is reasonable to assume that the requested documents exist:</u></p> <p>Per the Claimant’s admission, it has failed to provide any evidence nor indication that the requested documents may reasonably be believed to exist, which it has the burden of reasonably showing under the IBA Rules.</p> <p>The Claimant attempts to deflect by stating that “[o]nly Perú has complete access to the files to identify the existence of other leaked judgments”. The Claimant’s assertion is incomprehensible. If there was any evidence of “leaks” (<i>quod non</i>), this would clearly not arise from the case files, but rather from the press, to which the Claimant and the Respondent have equal access.</p> <p>This Request, which the Claimant knows full well should not succeed, has been made merely with the tactical purpose of allowing the Claimant to plead its case, which is not the purpose of document production. The Respondent reserves its rights.</p> <p><u>The category of documentation requested is insufficiently narrow and specific (IBA Rules, Rule 3(3)(a)(ii)):</u></p> <p>The Respondent objects to the Request, which is excessively broad (IBA Rules, Rule 3(3)(a)(ii)). The Claimant has failed to provide any description of the requested documents, thus failing to comply with the IBA Rules’ requirement that documents be requested in a “narrow and specific manner” and is contrary to the spirit and purpose of document production.</p> <p><u>Relatedly, the Claimant’s request is unreasonably burdensome for the Respondent (see IBA Rules, Rule 9(2)(c)):</u></p>

¹¹² See Counter-Memorial, Section V.D.

	<p>In order to identify and collect potentially responsive documents, the Respondent would have to review the more than forty case files of the so-called “Parties’ Combined Domestic Comparators”, over almost 10 years’ worth of documents, to identify evidence of any potential, unidentified leak. Respectfully, this is a far cry from being reasonable.</p> <p><u>In any event, any documents pertaining to draft judgments would be protected from disclosure under Peruvian law and the TPA (see IBA Rules, Rule 9(2)(b), as they may reflect the substance of the Court’s deliberative process, or may contain legal advice. The Respondent refers in this regard to its comments on Request No. 1 above.</u></p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>See Claimant’s response to Respondent’s preliminary comments on Request No. 1. As explained therein, Respondent’s attempt to dispute the existence of a leaked judgment in the Scotiabank Amparo is erroneous (given the <i>Hildebrandt</i> article exhibited at C-0200). At any rate, to the extent that Respondent now disputes the existence of a leak of the Leaked Decision, that only supports the production of Documents to bring light to the parties’ factual dispute.</p> <p>Claimant addresses below Perú’s specific objections to the Request.</p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>As Claimant explained in response to Perú’s objection in Request No. 1, Perú’s reliance on its own arguments on the merits cannot supplant Claimant’s showing of the relevance and materiality of the requested Documents. Notably, Respondent cannot dispute that the requested Documents—here, the existence of any transmission of a draft decision similar to the Leaked Decision in connection with the Parties’ Combined Domestic Comparators—will be relevant to the comparative exercise at the heart of Claimant’s National Treatment claim.</p> <p><u>Claimant’s requested Documents are reasonably believed to exist and to be in Perú’s possession, custody or control:</u></p> <p>Claimant rejects Respondent’s allegation that this Request was made with any purpose other than obtaining Documents that Claimant considers to be relevant to the dispute and material to its outcome.</p> <p>Specifically, there is contemporaneous evidence on the record in the arbitration showing that an unsigned decision in the Scotiabank Amparo was leaked to the press (C-0200). Perú’s attempt to deny that fact is simply not</p>

credible, as demonstrated immediately above and by Claimant’s response to Perú’s objections to Request No. 1.

If a leak existed in any of the Parties Combined Domestic Comparators, it is reasonable to assume that evidence of such a leak would be found in documents within the possession, custody or control of the Constitutional Court. The leaking of an unsigned judgment—or discussions regarding the discovery of such a leak—might well take place using the Constitutional Court’s servers. That reasonable assumption is also supported by what took place in the Scotiabank Amparo. The leak in the Scotiabank Amparo was acknowledged by both SUNAT and Scotiabank Perú in submissions to the Constitutional Court during the pendency of the Scotiabank Amparo (Memorial, ¶ 143; Counter-Memorial, ¶¶ 160, 163). Accordingly, Perú’s assertion that evidence of a leak in a comparator case would only arise in the press is an unreasonable assumption.

Claimant’s Request encompasses a narrow and specific category of Documents:

Perú has failed to substantiate its assertion that this request is “excessively broad”; it offers no explanation of which element of the request is allegedly imprecise or outside the scope of the issues in dispute.

Claimant’s request identifies a narrow and specific category of Documents. It identifies (i) a specific sub-set of cases, the Parties’ Combined Domestic Comparators; (ii) potential custodians (Constitutional Court personnel); and (iii) content of those documents (drafts created by the Court in the identified cases). To the extent a leak occurred in any comparator case, the relevant comparator case files should include references to and complaints about the leak. This level of granularity meets the “narrow and specific” threshold under the IBA Rules, Rule 3(3)(a)(ii).

Claimant’s Request is not unreasonably burdensome:

Perú cannot simply invoke an alleged excessive burden as a shield without providing any explanation or specific data.

Perú’s argument regarding “forty cases” and “10 years” is misleading. The Parties’ Combined Domestic Comparators is a finite list of 40 cases identified by Claimant (Memorial, ¶ 260; Annex II, Tab 2: Domestic Comparators, CER-Landra/Neyra) plus a handful of cases that Perú refers in its Counter Memorial as allegedly appropriate comparators. It is not an unreasonable burden for Respondent to review the files of those cases and determine, based on the available documents, if a draft decision was transmitted to any individual unaffiliated with the Constitutional Court. In addition, the time period for the Request has been tailored to capture the pendency of the Scotiabank Amparo, as well as the pendency of the Parties’ Combined

	<p>Domestic Comparators (the time period captured for the Parties’ Combined Domestic Comparators is further explained in row D of Request No. 4).</p> <p>Perú’s objection fails to contextualize the claimed burden against the high materiality of the requested information, for which Claimant refers to its response in Request No. 1. The information concerning the transmission of draft judgments to third parties is directly relevant and highly material to a central factual dispute in this arbitration.</p> <p><u>Perú has failed to prove that the requested Documents are protected by privilege:</u></p> <p>Perú’s objection that documents pertaining to draft judgments are protected from disclosure by legal impediment or privilege is unsubstantiated and insufficient, as explained by Claimant in Request No. 1. In any event, if a document reflecting a deliberative process or legal advice has been unlawfully or improperly disclosed to a third party outside the circle of privilege, the privilege may be deemed waived or lost. Perú has the burden of demonstrating that, despite such transmissions, the privilege remains intact.</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 9.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Request denied as overbroad and burdensome.</i></p>

<p>Document Request No</p>	<p>10. Interactions between SUNAT and the media regarding the Scotiabank Amparo and the Parties’ Combined Domestic Comparators [ORDER SOUGHT]</p>
<p>A. Documents or category of documents requested (requesting Party)</p>	<p>The following Documents relating to interactions between SUNAT and any journalist or individual affiliated with a media outlet in connection with the Scotiabank Amparo and the Parties’ Combined Comparators:</p> <p>(i) all Documents relating to interactions between [REDACTED] or [REDACTED] or any other employee from SUNAT, and [REDACTED] or any other journalist or individual affiliated with the media outlet <i>Hildebrandt en sus Trece</i> (the publication that publicized the Leaked Decision in an article that included comments from SUNAT (C-0200)) regarding the Scotiabank Amparo;</p> <p>(ii) all Documents relating to interactions between [REDACTED] or [REDACTED] or</p>

	<p>any other employee from SUNAT, and any journalist or individual affiliated with the media outlet TV Perú regarding the Scotiabank Amparo, including but not limited to all Documents relating to the media statement made by José Escalante on 16 June 2017 (C-0221; C-0222);</p> <p>(iii) all Documents relating to interactions between [REDACTED] or [REDACTED] or any other employee from SUNAT and any other journalist or individual affiliated with any media outlet relating to the Scotiabank Amparo or any of the Parties' Combined Domestic Comparators; and</p> <p>(iv) all Documents referring, reflecting or relating to SUNAT's media strategy in connection with cases referred to the Constitutional Court in <i>amparo</i> proceedings concerning the application of default interest on disputed tax debts.</p> <p><u>Time period:</u> between 23 April 2013 (date the first of the domestic comparators reached the Constitutional Court) and 7 February 2023 (date the Constitutional Court published the <i>Maxco</i> binding constitutional precedent).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality:</u></p> <p>Claimant contends that SUNAT and representatives of SUNAT exerted undue pressure and interfered with the Constitutional Court by, among other acts, publicly criticizing in the media the Constitutional Court and its position in favour of Scotiabank evidenced in the Leaked Decision (Memorial, ¶¶ 93–96, 234–236, 289). Claimant contends that the Parties' Combined Domestic Comparators were not subjected to that same type of treatment (<i>id.</i>, ¶¶ 290–291). Claimant's contention was based on a comprehensive review of media sources (<i>id.</i>, ¶ 291).</p> <p>Perú does not deny that representatives of SUNAT gave media interviews in conjunction with and following the publication of the Leaked Decision. Perú does not dispute that those representatives openly discussed the Scotiabank Amparo and criticized the Constitutional Court, suggesting that a ruling in favour of Scotiabank would have devastating consequences for the Peruvian State (Counter-Memorial, ¶¶ 174–178, 184). Perú is silent on whether such public statements occurred in any of the Parties' Combined Domestic Comparators (<i>see id.</i>, ¶¶ 401–417). While Claimant can only rely on what is discernible from a review of public media sources, only Perú has access to SUNAT's files to determine definitively the existence of a similar media strategy in any of the Parties' Combined Domestic Comparators.</p> <p>A central issue in dispute is whether the treatment accorded to Scotiabank Perú was similarly accorded to the Parties' Combined Domestic Comparators (Memorial, ¶¶ 275, 277). The requested Documents are relevant to the dispute and material to its outcome because they go to the comparative</p>

	<p>treatment that Claimant received as compared to the Parties’ Combined Domestic Comparators.</p> <p><u>Belief that Documents exist:</u></p> <p>The requested Documents concern interactions between the SUNAT and various individuals in the media, as well as SUNAT’s overall media strategy. SUNAT would have all such Documents, and—as an instrumentality of the State—SUNAT’s documents are within Perú’s possession, custody or control.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p><i>See</i> Respondent’s comments on the Claimant’s Request No. 1 above, correcting the Claimant’s misstatement of Peru’s position on the existence of the alleged leak of a draft judgment in File No. 222-2017, which Peru denies.</p> <p><u>The requested documentation is not material to the outcome of the case (IBA Rules, Rules 3(3)(b); 9(2)(a)):</u></p> <p>As explained by the Respondent in its Counter-Memorial, none of the alleged investors described by the Claimant as the Parties’ Combined Domestic Comparators is in “like circumstances” and is therefore a relevant comparator to determine a purported breach of the National Treatment standard.¹¹³</p> <p><u>The Claimant’s Request is excessively broad:</u></p> <p>While the Claimant purports to obtain information on the so-called “Parties’ Combined Domestic Comparators”, the timeframe defined by the Claimant is almost four years longer than the period comprised by the alleged Comparators. Indeed, according to the Claimant, the alleged Comparators include “<i>those cases in which Peruvian investors, allegedly in like circumstances to Claimant, brought amparo proceedings between 23 January 2017 and 7 February 2023</i>” (emphasis added).¹¹⁴ In this light, the Claimant’s attempt to go back four additional years is entirely unjustified.</p> <p><u>The Claimant has also failed to describe a “narrow and specific” category of documents, as required by the IBA Rules (see Rule 3(3)(a)(ii)):</u></p> <p>On the contrary, the Claimant has failed to specifically identify or illustrate the documents that it seeks.</p> <p><u>The Claimant’s Request is unreasonably burdensome and thus contrary to Rule 9(2)(c) of the IBA Rules, as it would require Peru to review almost 10 years’ worth of documents to locate any document “relating” to any of the vague facts described by the Claimant in its Request.</u></p>

¹¹³ See Counter-Memorial, Section V.D.

¹¹⁴ See above, ¶ 17(h).

	<p><u>The Claimant has failed to prove that it is reasonable to assume that the requested documents exist:</u> Indeed, the Claimant’s stated basis for its allegation that the Documents exist amounts to nothing more than its own belief that they ought to exist. This is particularly so as regards any documents relating to “<i>SUNAT’s media strategy in connection with cases referred to the Constitutional Court in amparo proceedings concerning the application of default interest on disputed tax debts</i>”, which is based on the flawed assumption that such “media strategy” existed, which Peru denies.</p> <p>The above notwithstanding, and without accepting the alleged materiality or relevance of the requested documentation, the Respondent is willing to produce the SUNAT’s Press Release No. 013 of 16 February 2023, commenting on the Constitutional Court’s decision in the <i>Maxco</i> case, along with a list of publications on the matter that exists within the SUNAT’s Department of Communications and Institutional Image.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>Respondent’s alleged corrections to Claimant’s assertions about the existence of a leaked judgment in the Scotiabank Amparo have no merit (<i>See</i> Claimant’s response to Respondent’s preliminary comments on Request No. 1).</p> <p>Claimant addresses below Perú’s specific objections.</p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>As Claimant explained in response to Perú’s objection in Request No. 1, Perú’s reliance on its own arguments on the merits cannot supplant Claimant’s showing of the relevance and materiality of the requested Documents. Notably, Respondent cannot dispute that the requested Documents—here, the existence of any communications between SUNAT and the media in connection with the Scotiabank Amparo or the Parties’ Combined Domestic Comparators—will be relevant to the comparative exercise at the heart of Claimant’s National Treatment claim.</p> <p><u>Claimant’s Request encompasses a narrow and specific category of Documents and does not create an unreasonable burden:</u></p> <p>Perú has failed to substantiate its assertion that this Request is “excessively broad”. On the contrary, Claimant identifies a narrow and specific category of Documents relating to interactions between (i) specific representatives of SUNAT and (ii) specific journalists and/or specific media outlets, about (iii) specific topics.</p> <p>Respondent complains about the time period applicable to the Request. The Parties’ Combined Domestic Comparators is a finite list of 40 cases identified</p>

	<p>by Claimant (Memorial, ¶ 260; Annex II, Tab 2: Domestic Comparators, CER-Landra/Neyra) plus a handful of cases that Perú refers in its Counter Memorial as allegedly appropriate comparators. This list, compiled by both parties, will bear on the parties’ submissions on the comparative treatment that Scotiabank Perú received as compared to domestic investors. Accordingly, the time period for the Request has been tailored to capture the pendency of the Scotiabank Amparo, as well as the pendency of the Parties’ Combined Domestic Comparators (the time period captured for the Parties’ Combined Domestic Comparators is further explained in row D of Request No. 4). There is nothing overly broad about the time period. Rather, it has been specifically tailored to the period during which Documents responsive to the Request would have been generated.</p> <p>Perú’s objection fails to contextualize the claimed burden against the high materiality of the requested information, for which Claimant refers to its response in Request No. 1. The information regarding the interactions between SUNAT and the media in connection with the Scotiabank Amparo and the Parties’ Combined Domestic Comparators is directly relevant and highly material to a central factual dispute in this arbitration.</p> <p><u>Claimant’s requested Documents are reasonably believed to exist:</u></p> <p>Claimant notes Perú’s willingness to produce SUNAT’s press release commenting on the Constitutional Court’s decision in the <i>Maxco</i> case, along with a list of publications commenting on the matter. That compilation of what sound like publicly available documents does not remotely satisfy the scope of the request.</p> <p>Perú’s acknowledgment of the existence of these Documents, however, only lends credence to Claimant’s belief that the application of default interest on disputed tax debts was a critical issue for SUNAT—a logical conclusion given the hundreds of millions of dollars at stake for SUNAT—and that SUNAT therefore devised a media strategy in connection with cases on this issue. Claimant has submitted substantial evidence to support its assertion that SUNAT had a media strategy in connection with the Scotiabank Amparo, and, more generally, cases addressing the application of default interest on disputed tax debts (<i>See, e.g.</i>, Memorial, ¶¶ 96, 290–291; C-0200; C-0204; C-0205; C-0221; C-0222). It is therefore reasonable for Claimant to believe that the requested Documents exist.</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 10.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Request granted as to sub-Requests (i), (ii) and (iii). Sub-Request (v) denied as overbroad.</i></p>

Document Request No	11. Interactions between government officials and the media regarding the Scotiabank Amparo [ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>All Documents from the custodians mentioned in (i) to (ix) below that relate to any public or media statements made—and all Documents reflecting communications or information made available to the custodians prior to the making of such statements—regarding the Scotiabank Amparo and/or the Leaked Decision:</p> <ul style="list-style-type: none"> (i) the statement of Justiniano Apaza, Congressman, made on 16 June 2017 (referenced in C-0219); (ii) the statement of Alfredo Thorne, Minister of Economy and Finance, made on 21 June 2017 (referenced in C-0226; C-0227); (iii) the statements of Yeni Vilcatoma, Congresswoman, made on 25 August 2017 (referenced in C-0249; C-0250), 29 August 2017 (referenced in C-0252; C-0253), and on 30 October 2017 (referenced in C-0266); (iv) the statement of Jorge Castro, Congressman, made on 13 September 2017 (referenced in C-0257); (v) the statement of Alberto Quintanilla, Congressman, made on 26 September 2017 (referenced in C-0260); (vi) the statement of Walter Gutiérrez, Ombudsman, made on 23 October 2017 (referenced in C-0261); (vii) the statement of David Tuesta, Minister of Economy and Finance, made on 16 March 2018 (referenced in C-0273); (viii) the statement of Martín Vizcarra, President, made on 4 June 2018 (referenced in C-0279; C-0282); and (ix) the statement of Pedro Francke Ballvé, Minister of Economy and Finance, made on 9 August 2021 (referenced in C-0323). <p><u>Time period:</u> between 9 June 2017 (date that the Leaked Decision was released) and, for each custodian mentioned in (i) to (ix) above, the date the relevant statement was made.</p>
B. Relevance and materiality	<p><u>Background and relevance & materiality:</u></p> <p>Claimant contends that it received differential treatment, as compared to domestic investors, when Peruvian Government actors interfered in the</p>

<p>(requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p>Scotiabank Amparo by engaging in a sustained campaign to pressure the Constitutional Court through public statements and threats, ultimately succeeding in reversing the Constitutional Court’s position (Memorial, ¶¶ 97–111, 114, 237–240, 289–291). Claimant’s contention is based on a comprehensive review of media sources (<i>id.</i>, ¶¶ 291).</p> <p>Perú does not deny that Government officials gave media interviews in conjunction with and following the publication of the Leaked Decision, in which those officials criticized the Constitutional Court and suggested that its ruling in favor of Scotiabank would have detrimental consequences for the Peruvian State (Counter-Memorial, ¶¶ 180–190). Perú is silent on whether such public statements attacking a particular outcome—or unpublished outcome leaked prior to an issued ruling—in a case occurred in any of the Parties’ Combined Domestic Comparators (<i>see id.</i>, ¶¶ 401–417). While Claimant can only rely on what is discernible from a review of public media sources, only Perú has access to Government officials’ files to determine definitively the existence of a media strategy of criticism and interference in any of the Parties’ Combined Domestic Comparators (the subject of Request 12).</p> <p>The requested Documents are relevant to the dispute and material to its outcome because they will provide further context, meaning and motive regarding the public statements made by Government officials in connection with the Scotiabank Amparo and Leaked Decision. Moreover, together with the Documents requested in Request 12 below regarding comparable cases with domestic investors, the requested Documents will bear on the comparison between the treatment that Scotiabank Perú received as compared to the treatment accorded to the relevant parties in the Parties’ Combined Domestic Comparators regarding the subject of political pressure exerted by government officials on the Constitutional Court.</p> <p><u>Belief that Documents exist:</u></p> <p>The requested Documents are within Perú’s possession, custody, or control. It is undisputed that the individuals listed above made public statements against the Constitutional Court in connection with the Leaked Judgment and the Scotiabank Amparo. Those individuals must have Documents to which they had access to motivate and to form the basis of their statements.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>Preliminarily, the Respondent takes issue with and rejects the Claimant’s misrepresentations that “<i>Perú does not deny that Government officials gave media interviews in conjunction with and following the publication of the Leaked Decision, in which those officials criticized the Constitutional Court and suggested that its ruling in favour of Scotiabank would have detrimental consequences for the Peruvian State</i>”. Contrary to the Claimant’s sweeping</p>

statement, the Republic of Peru has demonstrated, *inter alia*, that: (i) “Mr. Thorne’s response when the interviewer asked him if Telefónica would follow if the Scotiabank decision was favourable to it, Mr. Thorne very elegantly stated that he did not want to personalize”;¹¹⁵ (ii) “[s]imilarly distorted is the Claimant’s assertion that, in a televised allocution by the President Vizcarra’s in 2018, [...] were an obvious reference to Scotiabank Perú”;¹¹⁶ as explained by Peru “at no point did the President mention Scotiabank”;¹¹⁷ (iii) “[a]s regards the statements of Minister Francke in 2021, it bears mentioning that his exhortation to various companies which owed money to the State was made in the context of the pandemic and the economic crisis, and was part of a broader discussion held by Minister Franke after requesting information and analyzing the composition of the debt to the SUNAT and the challenges that the SUNAT was facing to collect unpaid debts”.¹¹⁸

Moreover, the Respondent objects to the Claimant’s Request for the reasons set out below:

The requested documentation is not material to the outcome of the case and is not sufficiently relevant to the outcome of the case (Rules 3(3)(b) and 9(2)(a)):

The Claimant submits as the basis of its request that the “*requested Documents are relevant to the dispute and material to its outcome because they will provide further context, meaning and motive regarding the public statements made by Government officials in connection with the Scotiabank Amparo and Leaked Decision*” and that “*with the Documents requested in Request 12 below regarding comparable cases with domestic investors, the requested Documents will bear on the comparison between the treatment that Scotiabank Perú received as compared to the treatment accorded to the relevant parties in the Parties’ Combined Domestic Comparators*”.

The allegation is baseless: (i) as the Respondent has demonstrated,¹¹⁹ and as Canada has itself submitted, “[I]t is well settled that absent a denial of justice, judgments of national courts interpreting domestic law cannot be challenged as a violation of international”;¹²⁰ (ii) the Tribunal has in its Decision On Rule 41, found that it manifestly lacked jurisdiction over the Claimant’s claims regarding Minimum Standard of Treatment and, accordingly, it is barred from adjudicating claims regarding denial of justice, the only basis on which an adjudicatory decision can be considered an international wrongful act. Accordingly, the alleged “*context, meaning and motive for the*

¹¹⁵ Counter-Memorial, ¶ 180.

¹¹⁶ Counter-Memorial, ¶ 181.

¹¹⁷ Counter-Memorial, ¶ 181.

¹¹⁸ Counter-Memorial, ¶ 183.

¹¹⁹ See Counter-Memorial, ¶¶ 318-326.

¹²⁰ See Counter-Memorial, ¶ 324.

[purported] *public statements made by Government Officials in connection with Scotiabank Amparo and [the wrongly] called Leaked Decision*” are irrelevant and immaterial to the outcome of this case. In addition, (iii) “even if the Tribunal were to analyze the merits of the Claimant’s claim under Article 803 FTA (*quod non*), it is the Respondent’s submission that the Claimant has failed to meet its burden of proof regarding all the elements for liability to arise under the National Treatment standard provided in the Treaty”,¹²¹ as it has failed to demonstrate, *inter alia*, the existence of “Treatment”: “even if the Claimant had proven (i) the existence of any alleged “interference” by Peruvian officials, and (ii) the causal link between said alleged interference and the 2021 Constitutional Court Decision (*quod non*), this interference would still not constitute “treatment” under Article 803 of the Treaty, as it does not directly concern the Claimant or its investment. Indeed, the only measure having a material impact on the Claimant’s investment is the 2021 Constitutional Court Decision itself. The Claimant’s speculations of interference are nothing but mere “theoretical distinctions” with no material impact on the Claimant. Therefore, in accordance with the predominant case law, these allegations are simply not relevant to establish a breach of the National Treatment standard”¹²² and “the Claimant has failed to comply with this burden of identifying adequate comparators in ‘like circumstances’ with the Claimant and its investment. It is uncontroversial that, in order to establish the existence of domestic comparators “in like circumstances” to Scotiabank Perú, the Claimant must account for any differences that may legitimately give rise to differential treatment (1). Instead, the Claimant has relied on cases which were not decided by the same Justices who ruled on Scotiabank Perú’s case (2) and failing to identify any adequate comparators in which a decision was issued by a six-judge Court with two abstentions, such as in the case of Scotiabank Perú”.¹²³ Accordingly, the Claimant’s allegation that, together with “the Documents requested in Request 12 below regarding comparable cases with domestic investors, the requested Documents will bear on the comparison between the treatment that Scotiabank Perú received as compared to the treatment accorded to the relevant parties in the Parties’ Combined Domestic Comparators”, does not support the Claimant’s Request, and the requested information is irrelevant and immaterial to the resolution of the case.

It would be an unreasonable burden for the Respondent to produce the requested documentation (IBA Rules, Rule 9(2)(c)):

As is evident, the Claimant’s Request is based on speculation. The Claimant presents no credible basis for the existence of the requested documentation, comprising nine alleged custodians and regarding the so-called “Parties’

¹²¹ Counter-Memorial, ¶ 327.

¹²² Counter-Memorial, ¶ 345 (emphasis added).

¹²³ Counter-Memorial, ¶ 351 (emphasis added).

	<p>Combined Domestic Comparators” amounting to over forty cases, and spanning a decade. The Request is wholly unreasonable and burdensome and constitutes an improper fishing expedition, if not a wild goose chase.</p> <p><u>The description given is insufficient to identify the requested documentation:</u></p> <p>The Claimant provides no specific indication on the supposed document that the alleged custodians could have relied upon. Accordingly, the Request is too vague (<i>see</i> IBA Rules, Rule 3(3)(a)(i)).</p> <p>Similarly, and relatedly, the category of documentation requested is insufficiently narrow and specific. The Request is therefore excessively broad (<i>see</i> IBA Rules, Rule 3(3)(a)(ii)).</p> <p><u>There is no basis to assume the requested documentation is in the possession, custody, or control of the Respondent (<i>see</i> IBA Rules, Rule 3(3)(c)):</u></p> <p>The Claimant’s <i>ipso dixit</i> statement that “[t]hose individuals <u>must</u> have Documents to which they had access to motivate and to form the basis of their statements” is plainly insufficient to support its claim. Moreover, the information regarding the Published Document in the Scotiabank <i>Amparo</i> was public and any comments or views expressed by the alleged custodians appear to be based on it. The Request is speculative and provides no basis regarding the existence of said documentation (<i>see</i> IBA Rules, Rule 3(3)(a)(ii)), let alone about the Respondent’s custody, possession and control (<i>see</i> IBA Rules, Rule 3(3)(c)).</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>Respondent’s alleged corrections to Claimant’s assertions are unsupported. Perú does <u>not</u> deny that Peruvian government officials publicly criticized the Constitutional Court and suggested that its ruling in favour of Scotiabank would have grave consequences for the State. Despite Perú’s unsupported arguments about those specific statements, Perú does not, and cannot, deny that there were indeed government officials who made statements publicly criticizing the Constitutional Court for its ruling in Scotiabank’s favour, as reflected in the Leaked Decision, and the alleged consequences for the State.</p> <p>Claimant addresses below Perú’s specific objections.</p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>As Claimant explains in its response to Perú’s objection to Request No. 1, Perú’s reliance on its own arguments on the merits cannot supplant Claimant’s showing of the relevance and materiality of the requested Documents. The very purpose of document production is to adduce evidence to facilitate the Tribunal’s analysis of the issues in dispute. By repackaging</p>

its substantive argument as an objection, Perú is asking the Tribunal to prejudge an issue pertaining to the merits that requires a full review of all the available evidence. Claimant therefore rejects Perú's attempt to restate its case on the merits in this submission, arguments to which Claimant will fully respond in its Reply Memorial.

Claimant's Request is not unreasonably burdensome:

Respondent complains that Claimant's Request is unreasonably burdensome because it "compris[es] nine alleged custodians and regard[s] the so-called 'Parties' Combined Domestic Comparators' amounting to over forty cases, and spanning a decade". Respondent mischaracterizes Claimant's Request, however—this Request relates only to statements made by the identified custodians "regarding the Scotiabank Amparo and/or the Leaked Decision" (emphasis added). Accordingly, Respondent's objection is wholly misplaced.

Claimant's Request encompasses an easily identifiable, and narrow and specific, category of Documents:

Perú has failed to substantiate its assertion that this Request is "too vague"; Claimant's request identifies a narrow and specific category of Documents relating to statements provided by (i) specific custodians, on (ii) specific dates, and (iii) about specific topics.

For this same reason, Perú's contention that this request is "excessively broad" also fails. Perú offers no explanation of which element of the request is allegedly imprecise or outside the scope of the issues in dispute.

Claimant's requested Documents are reasonably believed to exist and to be in the possession, custody or control of Perú:

Perú's contention that any comments expressed by the custodians identified in this Request appear to be based on the publicly available excerpts of the Leaked Decision is insufficient to refute Claimant's reasonable belief that the requested Documents exist. Contrary to Respondent's allegation, the request is not based on mere speculation or an "*ipso dixit*" claim, but on reasonable inference and institutional logic. When high-ranking officials, particularly those within entities like the MEF and the SUNAT with significant public responsibilities, make public statements about a matter of relevance such as the Scotiabank Amparo (which involved a potential liability of [REDACTED]), it is a reasonable and logical expectation that such statements are underpinned by internal analysis, preparatory discussions, or supporting documentation. Government officials do not speak out actively against an ongoing case without being briefed about the case.

Because the identified custodians are Government officials, it is reasonable to expect that the requested Documents are in the possession, custody or control of Perú.

	For the foregoing reasons, Claimant respectfully requests that the Tribunal overrule Perú’s objections and order the production of all Documents responsive to Request No. 11.
E. Decision of the Tribunal	<i>Request denied as overbroad and unduly burdensome.</i>

Document Request No	12. Interactions between government officials and the media regarding the Parties’ Combined Domestic Comparators [ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>All Documents from the custodians mentioned in parts (i) to (ix) in Request 11 above relating to any public or media statements made by them regarding the Constitutional Court cases on default interest involving the Parties’ Combined Domestic Comparators, including those Documents reflecting communications or information made available to the custodians prior to the making of such statements.</p> <p><u>Time period:</u> between 23 April 2013 (date the first of the Parties’ Combined Domestic Comparators reached the Constitutional Court) and 7 February 2023 (date the Constitutional Court published the <i>Maxco</i> binding constitutional precedent).</p>
B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments	<p><u>Background and relevance & materiality:</u></p> <p>See Request 11.</p> <p>A central issue in dispute is whether the treatment accorded to Claimant was replicated across any of the Parties’ Combined Domestic Comparators (Memorial, ¶¶ 275, 277). The requested Documents are relevant to the dispute and material to its outcome because—together with the Documents requested in Request 11 above—they will bear on the comparison between the treatment that Scotiabank Perú received as compared to the treatment accorded to the relevant parties in the Parties’ Combined Domestic Comparators regarding the subject of political pressure exerted by government officials on the Constitutional Court.</p> <p><u>Belief that Documents exist:</u></p> <p>The requested Documents are within Perú’s possession, custody or control. It is undisputed that the individuals listed above made public statements against the Constitutional Court in connection with the Leaked Judgment and the Scotiabank Amparo. As these individuals expressed interest in making statements regarding the Scotiabank Amparo, it stands to reason that they may also have had a desire and interest in making statements regarding</p>

	<p>similar cases that were before the Constitutional Court. Those individuals must have Documents to which they had access to motivate and to form the basis of any such statements.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p><u>The requested documentation is not material to the outcome of the case (IBA Rules, Rules 3(3)(b); 9(2)(a)):</u> As explained by the Respondent in its Counter-Memorial, none of the alleged investors described by the Claimant as the Parties’ Combined Domestic Comparators is in “like circumstances” and is therefore a relevant comparator to determine a purported breach of the National Treatment standard.¹²⁴</p> <p><u>The Claimant has not shown that it is reasonable to assume that the requested documents exist:</u></p> <p>The Claimant’s basis to establish that the requested documentation exists is merely its understanding that Peruvian officials will have had “<i>a desire and interest in making statements regarding similar cases</i>”, pointing to no evidence or indication that this was indeed the case. This is inadmissible, particularly considering that the Claimant’s requests concerns not internal communications within the Peruvian State, but rather purported interactions with the media, which would have reasonably resulted in public statements or allusions.</p> <p><u>The Request is excessively broad:</u></p> <p>While the Claimant purports to obtain information on the so-called “Parties’ Combined Domestic Comparators”, the timeframe defined by the Claimant is almost four years longer than the period comprised by the alleged Comparators. Indeed, according to the Claimant, the alleged Comparators include “<i>those cases in which Peruvian investors, allegedly in like circumstances to Claimant, brought amparo proceedings between 23 January 2017 and 7 February 2023</i>” (emphasis added).¹²⁵ In this light, the Claimant’s attempt to go back four additional years is entirely unjustified.</p> <p><u>It would be an unreasonable burden for the Respondent to produce the requested documentation (IBA Rules, Rule 9(2)(c)):</u></p> <p>The Claimant’s Request would require Peru to review documentation relating to more than forty cases in the so-called “Parties’ Combined Domestic Comparators”, spanning ten years,¹²⁶ to identify any potential interactions between government officials and the media. This is patently unreasonable.</p>

¹²⁴ See Counter-Memorial, Section V.D.

¹²⁵ See above, ¶ 17(h).

¹²⁶ See above, ¶ 17(h).

	<p>Furthermore, the Respondent refers to, and incorporates, its objections to Request No. 11, which are fully applicable to this Request.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>As Claimant explained in response to Perú’s objection in Request No. 1, Perú’s reliance on its own arguments on the merits (particularly on disputed legal and/or factual issues) cannot supplant Claimant’s showing of the relevance and materiality of the requested Documents on the case that Claimant is making.</p> <p><u>Claimant’s requested Documents are reasonably believed to exist:</u></p> <p>Perú itself submits evidence that supports Claimant’s understanding that Peruvian officials would have an interest in making public statements about cases similar to the Scotiabank Amparo. In attempting to refute Claimant’s argument that SUNAT participated in a pressure campaign to effectuate a ruling against Scotiabank, Perú emphasizes that [REDACTED] at that time, made public comments not only about the Scotiabank Amparo, but also about cases involving similar claims by other companies (Counter-Memorial, ¶¶ 177–178). Based on the evidence that Perú provides, it is reasonable for Claimant to believe that the requested Documents exist.</p> <p><u>Claimant’s Request encompasses a narrow and specific category of Documents:</u></p> <p>Claimant’s request is sufficiently narrow and specific, as it refers to specific custodians identified in Request No. 11 referring specifically to the Parties’ Combined Domestic Comparators.</p> <p>The Request covers documents relating to the Parties’ Combined Domestic Comparators, a finite list of cases compiled by both parties that will bear on the parties’ submissions on the comparative treatment that Scotiabank Peru received as compared to domestic investors. Accordingly, the time period for the Request has been tailored to capture the pendency of the Parties’ Combined Domestic Comparators (the time period captured for the Parties’ Combined Domestic Comparators is further explained in row D of Request No. 4). There is nothing overly broad about the time period.</p> <p><u>Claimant’s Request is not unreasonably burdensome:</u></p> <p>Claimant refers to its responses to Perú’s objections to Request Nos. 9 and 10. The Parties’ Combined Domestic Comparators is a finite list of 40 cases identified by Claimant (Memorial, ¶ 260; Annex II, Tab 2: Domestic Comparators, CER-Landra/Neyra) plus a handful of cases that Perú refers in its Counter Memorial as allegedly appropriate comparators. It is not an unreasonable burden for Respondent to review the files of the identified</p>

	<p>custodians to determine whether any interactions between government officials and the media in connection with those cases occurred.</p> <p>The timeframe, which covers the duration of the Parties’ Combined Domestic Comparators, is irrelevant for the determination of the reasonable efforts of Claimant’s request. As explained above, the search is confined to specific types of communications and information relating to the specific subset comprised by the Parties’ Combined Domestic Comparators.</p> <p>Perú’s objection fails to contextualize the claimed burden against the high materiality of the requested information, for which Claimant refers to its response in Request No. 1. The information concerning interactions between government officials and the media in connection with the Parties’ Combined Domestic Comparators is directly relevant and highly material to a central factual dispute in this arbitration.</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 12.</p>
E. Decision of the Tribunal	<i>Request denied as overbroad and unduly burdensome.</i>

C. REQUESTS RELATING TO INTERACTIONS BETWEEN THE CONSTITUTIONAL COURT AND OTHER ARMS OF THE PERUVIAN GOVERNMENT REGARDING THE SCOTIABANK AMPARO AND DOMESTIC DEFAULT INTEREST CASES

Document Request No	13. <i>Ex parte</i> meetings between SUNAT and the Court relating to the Scotiabank Amparo and the Parties’ Combined Domestic Comparators [ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>All <i>ex parte</i> communications and all SUNAT and Constitutional Court Documents relating to all <i>ex parte</i> meetings between (a) on the one hand, any employee or authorized representative of SUNAT, and (b) on the other hand, the justices or employees of the Constitutional Court, that refer or relate to:</p> <p>(i) the Scotiabank Amparo; and/or</p> <p>(ii) the Parties’ Combined Domestic Comparators.</p> <p><u>Time period</u>: between 23 April 2013 (date the first of the Parties’ Combined Domestic Comparators reached the Constitutional Court) and 11 February 2023 (date the Constitutional Court published the <i>Maxco</i> binding constitutional precedent).</p>

<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality:</u></p> <p>Claimant contends in its Memorial that a variety of government actors improperly interfered in the Constitutional Court’s consideration of the Scotiabank Amparo, including SUNAT, as evidenced by SUNAT attorney Francisco Eguiguren saying <i>in the same news article that first published the Leaked Decision</i> that it would be a “fatal precedent” (Memorial, ¶¶ 86, 93–95). It is undisputed that SUNAT and its representatives met occasionally with the Constitutional Court on an <i>ex parte</i> basis during the pendency of the Scotiabank Amparo (<i>id.</i>, ¶¶ 128, 139; Counter-Memorial, ¶ 163). Claimant contends that SUNAT’s conduct contributed to the generation of an inappropriate political climate in connection with the Scotiabank Amparo, which was not present in comparable cases (Memorial, ¶¶ 126, 282, 289–294).</p> <p>Respondent does not present any witness from SUNAT but denies that SUNAT behaved inappropriately in the case of the Scotiabank Amparo nor differently from how it behaved in the Parties’ Combined Domestic Comparators (Counter-Memorial, ¶¶ 342, 403).</p> <p>An important factual issue in dispute is the extent to which government actors, including SUNAT, improperly interfered in the Constitutional Court’s consideration of the Scotiabank Amparo and the extent to which that interference differed from the circumstances present in the Parties’ Combined Domestic Comparators. The requested Documents are relevant to the dispute and material to its outcome because they go to the nature of and will permit an evaluation of SUNAT’s <i>ex parte</i> interactions with the Constitutional Court on the Scotiabank Amparo as compared to its interactions with the Court in connection with the Parties’ Combined Domestic Comparators.</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control. It is reasonable to assume that meetings between SUNAT and the Constitutional Court would have generated Documents, and that—following such meetings—SUNAT would have reported internally on the outcome of such meetings. It stands to reason that the Constitutional Court would also have records relating to its <i>ex parte</i> meetings with SUNAT.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document</p>	<p>Preliminarily, the Respondent rejects the Claimant’s allegations regarding undue interference by SUNAT with the Constitutional Court. In any event, and as stated in the Respondent’s Counter-Memorial,¹²⁷ even if there was</p>

¹²⁷ See Counter-Memorial, ¶ 404.

<p>request (objecting Party)</p>	<p>interference (<i>quod non</i>), it would not constitute “treatment” under the Treaty and therefore the requested documentation is neither sufficiently relevant nor material to the outcome of the case.</p> <p>Moreover, the Respondent notes that, for the period between 2013 and 2023, there is a publicly accessible database with the official visitors received by the Justices of the Court, available at the Court’s institutional transparency portal: https://gobiernoabierto.sedetc.gob.pe/visitas. From 2023 onwards, this information is available on the platform administered by the Presidency of the Council of Ministers: https://visitas.servicios.gob.pe/consultas/index.php?ruc_enti=20217267618.</p> <p>In this regard, the Constitutional Court complies with its obligation to record and disclose the visits received but does not keep any records on the content of the meetings held, which would be impracticable.</p> <p>The Respondent objects to the Claimant’s Request, for the reasons set out below:</p> <p><u>The Respondent objects to the requested documentation as it is neither sufficiently relevant to the outcome of the case, nor material to its outcome (see IBA Rules, Rules 3(3)(b), 9(2)(a)):</u></p> <p>The Respondent refers in this regard to its arguments concerning adjudicatory decisions as an international wrongful act, the Tribunal’s manifest lack of jurisdiction over claims regarding Minimum Standard of Treatment, the fact that alleged interference of governmental officials does not constitute “treatment” under Article 803 of the Treaty, as it does not directly concern the Claimant or its investment and the Claimant’s failure to demonstrate the elements of discrimination and identify proper domestic comparators.</p> <p>Moreover, as explained by the Respondent in its Counter-Memorial, none of the alleged investors described by the Claimant as the Parties’ Combined Domestic Comparators is in “like circumstances” and is therefore a relevant comparator to determine a purported breach of the National Treatment standard.¹²⁸</p> <p><u>The documentation requested is insufficiently narrow and specific. The Request is excessively broad (see IBA Rules, Rule 3(3)(a)(ii)):</u></p> <p>As worded, the Request includes, without limitation, employees of the SUNAT and of the Constitutional Court. Both organs employ a myriad of individuals who do not perform any legal or technical functions, and who are alien to any communications between these organs, as would be the case of security or cleaning staff, for example.</p>
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¹²⁸ See Counter-Memorial, Section V.D.

	<p><u>It would be an unreasonable burden for the Respondent to produce the requested documentation or it would otherwise be disproportionate to do so (see IBA Rules, Rule 9(2)(c)):</u></p> <p>The Request as worded comprises, as already stated, employees of the two bodies in general, and <i>ex-parte</i> communications regarding more than forty cases, spanning a decade, which is unreasonably burdensome and disproportionate.</p> <p>In any event, and without accepting any of the Claimant’s arguments, the Respondent has conducted reasonable searches in good faith as regards communications received from the Constitutional Court to the SUNAT concerning meetings related to Request 13(i) or (ii) and no documents regarding “<i>ex-parte</i> communications” have been identified in the archives of the SUNAT.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>Respondent’s preliminary comments have no merit. Precisely because Perú denies the undue interference by SUNAT with the Constitutional Court, this Request concerns a key factual issue in dispute between the Parties.</p> <p>Respondent then argues that even if there was undue interference in the Scotiabank Amparo, this would not amount to “treatment” under the Treaty, and that the requested Documents are therefore neither relevant to this dispute nor material to its outcome. As Claimant explains in its responses to Perú’s objections to Request Nos. 1 and 11, Perú’s reliance on its own arguments on the merits is impermissible in determining the materiality and relevance of Claimant’s request of Documents.</p> <p>In addition, Claimant notes that Perú’s position regarding the irrelevance and immateriality of Claimant’s requested Documents is inconsistent with Request No. 9 of Perú’s own schedule of document requests—there, Perú makes an analogous request, seeking documents reflecting meetings between Scotiabank Perú and the justices of the Constitutional Court. It is nonsensical for Perú to argue that its requested documents are relevant and material while simultaneously claiming that Claimant’s analogous requested Documents are irrelevant and immaterial.</p> <p>Respondent’s reference to publicly accessible visitor databases does not satisfy the Request. The Constitutional Court’s publicly available database of official visitors is not the only nor the most exhaustive possible source of evidence of meetings at the Constitutional Court—justices or their clerks, secretaries, or advisors almost certainly have their own records of, and communications about, <i>ex parte</i> meetings with parties’ representatives. The visitor logs to which Respondent refers simply notes the fact that meetings</p>

took place, without containing any details as to the content or substance of the discussions taking place during the meetings.

In addition, Perú's assertion that recording the content of meetings is "impracticable" is a generalized statement lacking specific substantiation for this particular Request. Request No. 13 does not demand verbatim transcripts of every meeting, but includes, for example, (i) internal notes or memoranda prepared by a justice or staff before, during, or after a meeting to summarize key points, decisions, or follow-up actions; (ii) internal communications such as emails or other exchanges within SUNAT or the Constitutional Court discussing the purpose, outcome, or implications of such meetings; (iii) agendas or preparatory materials outlining what was to be discussed. Such documents are routinely created in official settings, especially concerning high-stakes legal proceedings. It is reasonable to believe that some form of internal record of *ex parte* meetings would exist, given their potential impact on cases and the need for internal accountability.

Claimant addresses below Perú's specific objections to Request No. 13.

Claimant's requested Documents are relevant to the dispute and material to its outcome:

Claimant's claim is clear: Perú breached the National Treatment provision in the FTA by improperly interfering with the Constitutional Court's decision making during the Scotiabank Amparo, successfully pressuring the Constitutional Court into completely reversing its position regarding that case, and refraining from replicating this Treatment across any of the Parties' Combined Domestic Comparators. Perú cannot simply rewrite that claim, as a strawman, and then argue that this Request is not relevant to the rephrased claim or material to its success or denial. Perú's comments are therefore insufficient to overcome Claimant's showing of relevance and materiality, based on the actual claims that Claimant is advancing in the arbitration.

Claimant also refers to and incorporates by reference its responses to Perú's objections to Request Nos. 9 and 11, where it addresses Perú's identical comments.

Claimant's Request encompasses a narrow and specific category of Documents:

Respondent's observation that the Constitutional Court and SUNAT each employ "a myriad of individuals" such as "security and cleaning staff" is unreasonable and disregards the explicit limitations within Claimant's Request. The Request specifies the type of communication and subject matter that narrows the scope of relevant employees or custodians likely to be in possession of responsive Documents. The Request is clearly and narrowly framed to encompass Documents produced in relation to meetings between SUNAT and the Constitutional Court that refer or relate to the Scotiabank Amparo or the Parties' Combined Domestic Comparators. It is patently

	<p>illogical to suggest that “security or cleaning staff” would be involved in “<i>ex parte</i> communications” or “<i>ex parte</i> meetings” discussing the Scotiabank Amparo or the Parties’ Combined Domestic Comparators. Therefore, Perú fails in its attempt to inject imprecision in Claimant’s Request where there is none.</p> <p><u>Claimant’s Request is not unreasonably burdensome:</u></p> <p>As explained above, Claimant’s Request is narrowly framed to include communications between SUNAT and Constitutional Court employees regarding specific subjects. Perú’s objection is a mere generalized assertion of inconvenience and does not meet the standard required to prove an unreasonable burden under IBA Rule (9)(2)(c). In any large organization, including a governmental body, documents are typically managed electronically and can be searched using specific criteria. Perú’s sophisticated electronic document management systems should facilitate targeted searches by keywords (<i>e.g.</i>, “Scotiabank”), sender/recipient domains (<i>i.e.</i>, “@tc.gob.pe”), and specific date ranges. Respondent reiterates the number of cases and the timeframe across which these communications may span, without explaining why it would be burdensome to conduct searches with respect to the parameters set by Claimant. Respondent can conduct the relevant searches with minimal effort, for example by searching email accounts for emails sent or received from addresses with the domain; and by using key search terms for file numbers and the names of plaintiffs. Perú thus fails to substantiate its objection.</p> <p>Claimant notes Respondent’s good faith search of the SUNAT archives for “communications received from the Constitutional Court to the SUNAT concerning meetings related to Request No. 13(i) or (ii).” This search does not fully respond to Claimant’s Request, however. On the contrary, it covers only one direction of communication (“received from the Constitutional Court to the SUNAT”) and does not address communications originating from SUNAT to the Court, nor does it address other forms of documentation generated by said meetings, such as internal reports or preparatory notes.</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 13.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Request denied as overbroad.</i></p>
<p>Document Request No</p>	<p>14. Interactions between the Court and government officials regarding the Scotiabank Amparo and the Parties’ Combined Domestic Comparators [ORDER SOUGHT]</p>

<p>A. Documents or category of documents requested (requesting Party)</p>	<p>Documents relating to any meetings or reflecting communications between (a) on the one hand, any member or employee of the executive or legislative branches of government, or of any governmental agency, or their intermediaries (including, without limitation, direct or indirect communications or meetings involving individuals associated with the MEF, <i>Viceministerios de Economía y de Hacienda</i>, <i>Dirección General de Política de Ingresos Públicos</i>, <i>Dirección General de Presupuesto Público</i>, <i>Procuraduría Pública</i>, and SUNAT); and (b) on the other hand, the justices, clerks or any employees of the Constitutional Court, referring or relating to any of the following:</p> <ul style="list-style-type: none"> (i) the Scotiabank Amparo; (ii) MEF/SUNAT’s position on default-interest litigation; (iii) the Parties’ Combined Domestic Comparators; (iv) the budget and expenditures for the purpose of restoring, repairing, maintaining, or otherwise caring for the new Constitutional Court building located in the San Isidro district, Lima, Perú; and (v) any other budgetary allocations for the Constitutional Court for pending, expected or future expenditures. <p><u>Time period:</u> between 23 April 2013 (date the first of the Parties’ Combined Domestic Comparators reached the Constitutional Court) and 7 February 2023 (date the Constitutional Court published the <i>Maxco</i> binding constitutional precedent).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality:</u></p> <p>Claimant argues that the Peruvian office of the president, the MEF, and SUNAT worked in tandem to pressure the Constitutional Court into delaying and reversing its position on the Scotiabank case, based on public statements that each entity made (<i>see</i> Memorial, ¶ 96 (citing C-0204; C-0205; C-0207; C-0208; C-0210; C-0220; C-0221; C-0222; C-0226; C-0227; C-0232), ¶ 101 (citing C-0279; C-0280; C-0281; C-0283)). Claimant provided evidence that President Vizcarra stated that the MEF and SUNAT would be working together pursuant to an <i>ad hoc</i> commission “to develop payment mechanisms, with the objective to make the collection of tax debt effective” in the context of discussing Scotiabank’s tax debt (<i>id.</i>, ¶ 101 (citing C-0279; C-0280, C-0281; C-0283)). Claimant also established that on 9 August 2021 the Ministry of Economy and Finance announced that it would work hand in hand (<i>de la mano</i>) with the Judiciary in speeding up the Scotiabank case (<i>see id.</i>, ¶ 108; C-0321; C-0323); and the Minister of Economy and Finance, Alfredo Thorne, asserted in a TV interview with Peruvian media company RPP that SUNAT and the Ministry had already been “working arduously” to address the matter (<i>id.</i>, ¶ 96). Claimant also argues that the Government directly pressured the Court into delaying and reversing its position on the Scotiabank case by threatening to withhold funds for Court facility</p>

	<p>renovations (<i>see id.</i>, ¶¶ 114, 120, 122, 212) and baselessly moving to recuse those justices who voted in favour of Scotiabank in the Leaked Decision (<i>id.</i>, ¶¶ 125–126, 128–129).</p> <p>Perú denies that there was any undue interference from the Government with regards to the Scotiabank Amparo, arguing that the statements made by Peruvian public officials and members of Congress regarding the Scotiabank case did not constitute undue influence with respect to the work of the Constitutional Court (Counter-Memorial, ¶¶ 165–168).</p> <p>A central issue in dispute is to determine whether the Government interfered in the outcome of the Scotiabank Amparo and whether it accorded different treatment to Scotiabank as compared to the Parties’ Combined Domestic Comparators. The requested Documents are relevant to the dispute and material to its outcome because they will bear precisely on the comparative treatment received by Scotiabank as compared to the Parties’ Combined Domestic Comparators.</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control. The record reflects some level of interaction between various government actors and the Court—including, for instance, the public statement that the government would work hand in hand (<i>de la mano</i>) with the Judiciary in speeding up the Scotiabank case (<i>see</i> Memorial, ¶ 108; C-0321; C-0323). It is reasonable to assume that any such interactions between government actors and the Constitutional Court would have generated documents, either in the form of communications relating to scheduling, notes of meetings, or similar.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>As a preliminary remark, the Respondent objects to and rejects the Claimant’s allegations that “<i>the MEF and SUNAT worked in tandem to pressure the Constitutional Court into delaying and reversing its position on the Scotiabank case, based on public statements that each entity made [...]</i>” and refers in this regard to its Counter-Memorial, where it debunks the Claimant’s allegations.¹²⁹</p> <p>The Respondent has further demonstrated that the Claimant’s statement that it provided evidence that President Vizcarra stated that the MEF and SUNAT would be working together pursuant to an <i>ad hoc</i> commission “<i>to develop payment mechanisms, with the objective to make the collection of tax debt effective</i>” in the context of discussing Scotiabank’s tax debt is a misrepresentation, as Mr. Vizcarra was not discussing Scotiabank.¹³⁰</p>

¹²⁹ See Counter-Memorial, ¶¶ 133- 207, and in particular : 174-186.

¹³⁰ See Counter-Memorial, ¶¶ 181 - 183.

The Respondent is also compelled to refer to the Claimant’s statement that “*Alfredo Thorne, asserted in a TV interview with Peruvian media company RPP that SUNAT and the Ministry had already been ‘working arduously’ to address the matter*” and the Claimant’s innuendo linking Mr. Thorne’s assertion to undue pressure or wrongdoings as regards the Court. To recall, as stated by the Respondent: “*the interview was given as Mr. Thorne had just handed his resignation as Minister and the main topic was precisely his resignation and the analysis of his performance as Minister, including his economic model and tax reforms. The question on the potential decision of the Constitutional Court in the Scotiabank case was not an utterance of the Minister targeting Scotiabank, but a response to a question posed by Twitter to the interviewer. Mr. Thorne expressed that it was concerning that several companies engage in contesting the debts in every single court and further explained the problems the SUNAT had in general collecting and how the International Monetary Fund had been working with the SUNAT to ensure proper collection. In fact, Mr. Thorne’s response when the interviewer asked him if Telefónica would follow if the Scotiabank decision was favorable to it, Mr. Thorne very elegantly stated that he did not want to personalize There was nothing cryptic about the words of the departing Minister, let alone any undue pressure*”.¹³¹

In addition, the Respondent takes issue with the Claimant’s assertion that “[t]he record reflects some level of interaction between various government actors and the Court—including, for instance, the public statement that the government would work hand in hand (*de la mano*) with the Judiciary in speeding up the Scotiabank case”.¹³²

The Claimant’s allegation that the statement above includes the Constitutional Court has no basis. None of the mentioned exhibits includes the Constitutional Court which, as acknowledged by the Claimant’s experts themselves, is not part of the Judiciary.¹³³ Moreover, the Claimant misrepresents the content of the articles it cited allegedly in its support. Mr Francke did not state that the government would work with the Judiciary to expedite the Scotiabank case. That is an improper and purposeful conflation of two different ideas. During the interview, Mr. Francke alluded to Telefonica and Scotiabank, exhorting them to make an effort to pay their outstanding debts given the financial constraints imposed by the pandemic. Separately, in a different part of the interview, he stated that he was working with the Judiciary “*so that the processes before them get resolved faster*”, alluding to the caseload of the Judiciary in general.¹³⁴

¹³¹ See Counter-Memorial, ¶ 180.

¹³² See Memorial, ¶ 108; C-0321; C-0323.

¹³³ See CER-Landa/Neyra, ¶ 10.

¹³⁴ See C-0321; C-0323.

	<p>Moreover, the Respondent objects to the Claimant’s request, for the reasons set out below:</p> <p><u>The requested documentation is neither sufficiently relevant to the outcome of the case (see IBA Rules, Rules 3(3)(b); 9(2)(a)), nor material to its outcome (see IBA Rules, Rules 3(3)(b); 9(2)(a)):</u></p> <p>The Respondent refers in this regard to the reasons stated in Request 11. Moreover, as explained by the Respondent in its Counter-Memorial, none of the alleged investors described by the Claimant as the Parties’ Combined Domestic Comparators is in “like circumstances” and is therefore a relevant comparator to determine a purported breach of the National Treatment standard.¹³⁵</p> <p><u>The description given is insufficient to identify the requested documentation (see IBA Rules, Rule 3(3)(a)(i)) and the category of documentation requested is insufficiently narrow and specific (see IBA Rules, Rule 3(3)(a)(ii)):</u></p> <p>The description as worded comprises innumerable individuals (without distinction nor limitation of their functions, <i>i.e.</i>, extending also to support services such as security, cleaning, etc.) and extends to the entirety of the branches of the Peruvian government and administration, and so-called “intermediaries”, a concept alien to the State’s structure, regardless of their functions and roles, spanning a decade and in regards “any meetings or communications”. This Request is the clearest example of a fishing expedition, not permitted in document production.</p> <p>As regards <u>Requests 14(vi) and 14(vii)</u>: the Respondent objects to the requests in the general terms in which the chapeau is worded, on the basis described above.</p> <p>The Respondent further objects to <u>Requests 14(iv) and 14(v)</u>, regarding documentation on expenditures, as worded. The Request is too broad, and might comprise invoices and payments for materials, such as cement, or bricks, and other services, which are wholly irrelevant and immaterial to the case, are too broad and vague and place an unreasonable and disproportionate burden on the Respondent. This notwithstanding, in the spirit of good faith and cooperation, and without accepting the relevance or materiality of the information, the Respondent is willing to conduct reasonable searches in the archives of the relevant authorities <u>as regards Request No. 14(iv) (not extensive and unreasonable searches throughout the entirety of the Peruvian State past and present, nor as regards details and minutia of expenditures, or as regards non-final documents, such as drafts of budgets, or drafts calculations)</u> and is willing to produce documentation not covered by privilege or legal impediment.</p>
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¹³⁵ See Counter-Memorial, Section V.D.

	<p><u>It would be an unreasonable burden for the Respondent to produce the requested documentation (see IBA Rules, Rule 9(2)(c)):</u></p> <p>The Request as worded comprises, as already stated, employees of the two bodies in general, and potential, unidentified communications regarding more than forty cases, spanning a decade, which is unreasonably burdensome and disproportionate.</p> <p><u>The requested documentation is protected from disclosure by legal impediment or privilege (IBA Rules, Rule 9(2)(e)):</u></p> <p>As regards <u>Request 14(ii)</u> (MEF and SUNAT’s position on default interest litigation): the Request as worded comprises information covered by privilege and legal impediment under Peruvian law and professional secret and privilege regarding litigation advice (see IBA Rules, Rule 9(2)(e)), inter alia, Article 17(4) of Law 27806.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>Perú’s preliminary comments transcribing portions of its Counter-Memorial are unfounded and, in any event, are completely irrelevant to the pertinence of Claimant’s Request No. 14, as Claimant explains in its response to Perú’s objections to Request Nos. 1 and 11. Claimant will fully address Respondent’s allegations in due course in its Reply Memorial.</p> <p>Claimant addresses below Perú’s specific objections to Request No. 14.</p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>To the extent that Perú refers to its reasons in Request No. 11 in making this Request, Claimant refers to its responses to that Request.</p> <p>Additionally, Respondent’s objection is not a valid objection on materiality. As Claimant explained in detail in its response to Perú’s objection in Request No. 1, Perú’s reliance on its own arguments on the merits is impermissible in determining the materiality and relevance of Claimant’s request of Documents. Perú’s improper attempt to circumvent the production of Documents that are clearly relevant to a central, disputed factual and legal question in this arbitration should be dismissed.</p> <p><u>Claimant’s Request encompasses a narrow and specific category of Documents:</u></p> <p>Respondent’s observation that the Constitutional Court employs security and cleaning staff does nothing to detract from the specificity of Claimant’s Document Request. The Request is clearly and narrowly framed to encompass Documents produced in relation to meetings between any government department and the Constitutional Court <u>that refer or relate to the</u></p>

Scotiabank Amparo or the Parties’ Combined Domestic Comparators. Claimant further refers to its response to Perú’s objections to Request No. 13, where it addresses similar comments by Perú.

Also contrary to Perú’s objection, this Request does not “extend[] to the entirety of the branches of the Peruvian government and administration”, but only to the listed departments’ communications with the Court. As such, Perú will be able to search only the Court’s records for relevant documents and communications. Therefore, Perú fails in its attempt to inject imprecision in Claimant’s Request where there is none.

Perú’s argument that this Request is overly broad because it spans 10 years is likewise unavailing. Perú will be able to efficiently conduct a targeted search for this time period relating exclusively to the Scotiabank Amparo and the Parties’ Combined Domestic Comparators, especially in light of [REDACTED] explanation that the Court’s files have been digitized and that bar codes created at the inception of a case facilitate the tracking of files within the Court ([REDACTED] *see also* CER-Landa/Neyra, ¶¶ 52, 69).

Request Nos. 14(iv)–(v):

Claimant takes note of Perú’s willingness “to conduct reasonable searches in the archives of the relevant authorities as regards Request No. 14(iv) ([but] not extensive and unreasonable searches throughout the entirety of the Peruvian State past and present, nor as regards details and minutia of expenditures, or as regards non-final documents, such as drafts of budgets, or drafts calculations) and is willing to produce documentation not covered by privilege or legal impediment”. Claimant notes that, to the extent that Peru produces documents pursuant to this Request, it should produce all available and responsive Documents (and not Respondent’s own hand-picked subset).

Claimant respectfully refers to its response to Perú’s objections to Request No. 1 where it demonstrates why Perú’s objection on privilege is unsupported.

Request Nos. 14(vi)–(vii):

Perú objects to Request No. 14(vi)-(vii) “in the general terms in which the chapeau is worded.” Claimant notes, however, that Request 14 does not contain subparts (vi) or (vii). Perú’s objection is therefore nonsensical.

Claimant’s Request is not unreasonably burdensome:

Claimant’s Request is narrowly framed to include communications between specific government departments and Constitutional Court employees regarding specific subjects. Claimant refers to its responses to this objection in Request No. 13.

	<p><u>Perú has failed to prove that the requested Documents are protected by privilege:</u></p> <p>Perú invokes privilege in the abstract, but does not identify which privilege might apply to each document responsive to this Request, as contemplated by IBA Rule 9(4). <i>See</i> Claimant’s response to this issue in row D of Request No. 1.</p> <p>Moreover, Article 17(4) of the Transparency Law does not support Peru’s objection. Article 17(4) allows Peru to withhold information, when sought in the context of domestic public information requests by any member of the public, related to a specific administrative or judicial procedure and states that “this exception ends when the proceeding concludes”. The Transparency Law is not remotely relevant to establishing applicable tests for producing documents in response to requests made by litigating parties in an international arbitration. The Transparency Law relates to confidentiality for public disclosure, and that concept does not create the existence of categories of “privileged” documents. Moreover, Claimant’s Request No. 14(ii) is not related to a specific procedure, nor has Claimant requested documents prepared solely by advisors or attorneys. Rather, the Request concerns general communications between public authorities and the Constitutional Court regarding MEF/SUNAT’s position on default-interest litigation. Additionally, even if the requested Documents were related to a specific procedure, Article 17(4) states that this exception expires when the proceeding concludes. Therefore, even if (<i>arguendo</i>) the Transparency Law were relevant to issues of document production in this case (which is denied), the Transparency Law does not in fact assist Respondent.¹³⁶</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 14.</p>
E. Decision of the Tribunal	<i>Request denied as overbroad and unduly burdensome.</i>

Document Request No	15. Interactions between government officials regarding the Scotiabank Amparo and the Parties’ Combined Domestic Comparators [ORDER SOUGHT]
A. Documents or category of documents	Documents reflecting analysis, communications, meetings and/or any discussions by or between members or employees of the executive or legislative branches of government, or of any governmental agency, or their intermediaries (including, without limitation, the MEF, <i>Viceministerios de</i>

¹³⁶ Claimant’s **Annex G**, Transparency and Access to Public Information Law, Law No. 27806 (Consolidated text approved by Supreme Decree No. 021-2019-JUS), 11 December 2019, art. 17(4).

<p>requested (requesting Party)</p>	<p><i>Economía y de Hacienda, Dirección General de Política de Ingresos Públicos, Dirección General de Presupuesto Público, Procuraduría Pública, and SUNAT</i>) that refer or relate to any of the following:</p> <ul style="list-style-type: none"> (i) the Scotiabank Amparo; (ii) the Leaked Decision; (iii) the impact on the Government’s budget (including but not limited to SUNAT and MEF) of a repayment of default interest amounts paid by Scotiabank Perú as a result of a possible adverse outcome in the Scotiabank Amparo (<i>i.e.</i>, finding in favour of Scotiabank Perú); and/or (iv) the possible withholding from the Constitutional Court of budgeted amounts as a result of a possible adverse outcome in the Scotiabank Amparo (<i>i.e.</i>, finding in favour of Scotiabank Perú). <p><u>Time period</u>: between 14 October 2016 (date <i>agravio constitucional</i> was filed with Constitutional Court) and 11 February 2023 (date the Constitutional Court published the <i>Maxco</i> binding constitutional precedent).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality</u>:</p> <p>See Request 12.</p> <p><u>Belief that Documents exist</u>:</p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control. The record reflects some level of interaction between various government actors and the Court—including, for instance the Minister of Economy and Finance, Alfredo Thorne, stating on the state TV channel that the MEF and SUNAT were both working to address the Scotiabank Amparo pending in the Constitutional Court (Memorial, ¶ 96; C-0226; C-0227). It is reasonable to assume that—in connection with those interactions—different parts of the legislative or executive branches of Government would also have interacted with each other or generated other Documents regarding the subject matter of such interactions.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>Preliminarily, the Respondent objects to the characterization in Request 15(ii) of the excerpts published in <i>Hildebrandt en sus Trece</i> as a “Leaked Decision” (as explained above), and to the Claimant’s representation as a proven fact in Request 15(iv) that “<i>the possible withholding from the Constitutional Court of budgeted amounts as a result of a possible adverse outcome in the Scotiabank Amparo (i.e., finding in favour of Scotiabank Perú)</i>”. The Respondent rejects the Claimant’s allegations and refers in this regard to its Counter-Memorial.¹³⁷</p>

¹³⁷ See Counter-Memorial, ¶¶ 201, 403.

	<p>The Respondent objects to the Claimant’s Request, for the reasons set out below:</p> <p><u>The Claimant has failed to prove that the requested documentation is sufficiently relevant and material to the outcome of the case:</u></p> <p>The Respondent objects to the Request on the basis set forth at Request No. 11, as regards lack or relevance and materiality.</p> <p>As regards Request 15(i), specifically, the request is redundant, as it overlaps with Request 14.</p> <p>Moreover, as explained by the Respondent in its Counter-Memorial, none of the alleged investors described by the Claimant as the Parties’ Combined Domestic Comparators is in “like circumstances” and is therefore a relevant comparator to determine a purported breach of the National Treatment standard.¹³⁸</p> <p><u>The description given is insufficient to identify the requested documentation (see IBA Rules, Rule 3(3)(a)(i)) and the category of documentation requested is insufficiently narrow and specific (see IBA Rules, Rule 3(3)(a)(ii)):</u></p> <p>The Respondent further objects on the basis set forth as regards Request 14, due to its vagueness, over broadness, and as it is unreasonable and excessively burdensome.</p> <p>Nevertheless, and without accepting the materiality and relevance of the documentation, as set out by the Claimant, the Respondent has conducted reasonable searches and it is willing to voluntarily produce an “Economic Report on the Applicability of Interest in the Scotiabank Case, 1999- 2013”, of 2017.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>Perú’s preliminary comments transcribing portions of its Counter-Memorial are unfounded and, in any event, are completely irrelevant to the pertinence of Claimant’s Request No. 15, as Claimant explains in its response to Perú’s objections to Request Nos. 1 and 11. Claimant will fully address Respondent’s allegations in due course in its Reply Memorial. Claimant addresses below Perú’s specific objections to Request No. 15.</p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>Claimant notes that Perú has not attempted to substantiate its objection against the materiality and relevance of this specific Request No. 15. Respondent relies on its objections to Request No. 11. However, Request No.</p>

¹³⁸ See Counter-Memorial, Section V.D.

	<p>11 (“Interactions between government officials and the media regarding the Scotiabank Amparo”) and Request No. 15 (“Interactions between government officials regarding the Scotiabank Amparo and the Parties’ Combined Domestic Comparators”) concern completely different categories of documents. Therefore, Perú’s blanket objection on the relevance and materiality of Request No. 15 should be dismissed.</p> <p>In any event, Perú’s objections to the materiality and relevance of Request No. 11 are misplaced. Claimant refers to its responses to Perú’s objections to Request No. 11.</p> <p>Perú also wrongfully claims that Request No. 15(i) is redundant because it allegedly overlaps with Request No. 14. Request No. 14 seeks communications between (a) the listed government departments on one hand and (b) the Constitutional Court on the other. Request No. 15(i) seeks communications <i>among</i> the listed government departments themselves. The Requests therefore seek communications of different sets of parties.</p> <p>Finally, Perú’s arguments on the merits regarding whether the Parties’ Combined Domestic Comparators are relevant comparators for evaluating Claimant’s National Treatment claim are irrelevant and inappropriate for this stage of the arbitration, as set out in Claimant’s response to Perú’s objection in Request No. 1.</p> <p><u>Claimant’s Request encompasses a narrow and specific category of Documents and Claimant’s Request is not unreasonably burdensome:</u></p> <p>Claimant takes note of Perú’s willingness to produce “an ‘Economic Report on the Applicability of Interest in the Scotiabank Case, 1999- 2013’, of 2017”. This document, however, could not have been created in isolation, and Claimant requests that Perú produce all drafts, notes, impressions, and communications related to the preparation of this document, as well as any other Documents responsive to this Request. This document’s existence proves that the Request comprises existing and relevant Documents in Perú’s possession.</p> <p>To the extent that Perú objects to this Request “on the basis set forth as regards Request No. 14, due to its vagueness, over broadness, and as it is unreasonable and excessively burdensome,” Claimant refers to its responses to Perú’s objections to Request No. 14.</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to Request No. 15.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Request granted as to any drafts and communications related to the “Economic Report on the Applicability of Interest in the Scotiabank Case, 1999- 2013, of 2017” that the Respondent has committed to produce. Request otherwise denied as overbroad.</i></p>

Document Request No	16. Government commission evaluating large tax debts [NO ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	Documents relating to findings, conclusions or recommendations of the “ <i>ad hoc</i> commission” for large tax debts publicly announced by President Martín Vizcarra on 4 June 2018, and any Documents produced by the commission that refer or relate to the Scotiabank Amparo.
B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments	<p><u>Background and relevance & materiality:</u></p> <p>In June 2018, then President of Perú, Martin Vizcarra proclaimed that the Government would form an <i>ad hoc</i> commission between representatives of the MEF and SUNAT, among others, to develop payment mechanisms with the objective of making more effective the collection of “big corporation[’s]” tax debts, including Scotiabank’s disputed tax debt (Memorial, ¶ 101 (citing C-0279; C-0280; C-0281 C-0283)).</p> <p>Perú denies that there was any undue interference from the Government with regards to the Scotiabank Amparo, arguing that the statements made by Peruvian public officials—including those of President Vizcarra—did not refer to Scotiabank Amparo nor constitute threats to the justices of the Constitutional Court (Counter-Memorial, ¶¶ 165–168; 181–183).</p> <p>The requested Documents are relevant to the dispute and material to its outcome because they will complete the factual record regarding actions taken by the Government in connection with the Scotiabank Amparo and enable the Tribunal to evaluate differential treatment in how the Government treated Scotiabank Perú as compared to the Parties’ Combined Domestic Comparators. The work of the commission will bear specifically on a central question in dispute as to steps taken by the Government following the Leaked Decision to interfere with the independence of the Constitutional Court in its treatment of the Scotiabank Amparo.</p> <p><u>Belief that Documents exist:</u></p> <p>The President announced the creation of a commission that was to perform work relevant to the Scotiabank Amparo. Accordingly, Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control. Indeed, it is reasonable to assume that the Government would have maintained records of the findings, conclusions and recommendations of the “<i>ad hoc</i> commission” that is the subject of the Request.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>

C. Reasoned objections to document request (objecting Party)	<p>Preliminarily, the Respondent rejects the Claimant’s baseless assertions that the envisaged “ad hoc” commission that former President Vizcarra intended to create entailed any interference with the Constitutional Court, let alone with the Scotiabank case, which Mr. Vizcarra did not mention.¹³⁹ To recall the statement of President Vizcarra was as follows:</p> <p><i>“[W]e have identified big corporations that owe the State amounts that represent more than 1% of GDP, much necessary income for the development of projects and public policies that benefit all Peruvians. To that respect, an ad hoc commission will be formed by representatives of the Ministry of Economy and the SUNAT, among others, to develop payment mechanisms, with the objective to make the collection of tax debt effective”.</i>¹⁴⁰</p> <p>This notwithstanding, in the spirit of cooperation and good faith, the Respondent has conducted reasonable searches and has not identified documentation regarding the actual formation and work of the envisaged “ad hoc” commission.</p>
D. Response to objections and request for resolution (requesting Party)	<p>Claimant accepts Respondent’s representation that it was unable to identify any documents “regarding the actual formation” of the commission. Accordingly, although Claimant disagrees with Respondent’s objections, Claimant seeks no order from the Tribunal in connection with Request No. 16.</p>
E. Decision of the Tribunal	<p><i>No decision necessary.</i></p>

D. REQUESTS RELATING TO JUSTICE ESPINOZA-SALDAÑA’S TESTIMONY AT THE INTER-AMERICAN COURT OF HUMAN RIGHTS REGARDING GOVERNMENTAL INTERFERENCE IN THE SCOTIABANK AMPARO AND ASSOCIATED INVESTIGATIONS

Document Request No	<p>17. The Inter-American Court of Human Rights (<i>IACHR</i>) hearing on the independence of the Constitutional Court [ORDER SOUGHT]</p>
A. Documents or category of documents requested (requesting Party)	<p>The following Documents relating to the IACHR 165th Session Period, relating to the matter <i>Independencia del Tribunal Constitucional de Perú</i>, where Justice Espinosa-Saldaña’s testified on 24 October 2017 of the existence of improper interference by the Government in connection with the Scotiabank Amparo:</p>

¹³⁹ See Counter-Memorial, ¶¶ 181-183.

¹⁴⁰ Counter-Memorial, ¶ 181.

	<p>(i) all Documents prepared by or for Justice Espinosa-Saldaña in connection with his testimony at the IACHR that refer or relate to the Scotiabank Amparo or the Parties’ Combined Domestic Comparators;</p> <p>(ii) all Documents, prepared by or for any other Constitutional Court justice in connection with testimony that they were providing to the IACHR, that refer or relate to the Scotiabank Amparo or the Parties’ Combined Domestic Comparators;</p> <p>(iii) all Documents recording written or oral submissions made to the IACHR by any Peruvian authority addressing or responding to Justice Espinosa-Saldaña’s testimony at the IACHR relating to the Scotiabank Amparo; and</p> <p>(iv) all Documents from any other Constitutional Court justice or any government official discussing or referencing Justice Espinosa-Saldaña’s testimony at the IACHR.</p> <p><u>Time period:</u> between 19 July 2017 (when the IACHR opened its hearing requests for the 165th Session Period) and 27 October 2019 (two years following the closing of date the 165th Session Period).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality:</u></p> <p>Claimant argues that, following a leak to the Peruvian media of the Leaked Decision, Perú engaged in a concerted media and political campaign to pressure the Constitutional Court into reversing its position on the Scotiabank case. Claimant submits that the Constitutional Court justices were aware of the media and political pressure campaign regarding the Scotiabank case and concerned about the independence of the Constitutional Court, as evidenced by Justice Espinosa-Saldaña’s specific mention of the Scotiabank case in a hearing on the independence of the Constitutional Court in Perú before the IACHR, just four months after the Leaked Decision (Memorial, ¶ 100; C-0262; C-0263).</p> <p>Perú admits that Justice Espinosa-Saldaña did mention the Scotiabank case in his comments before the IACHR, but disputes the assertion that such mention implies any political pressure being placed on the Constitutional Court in relation to the Scotiabank case in particular (Counter-Memorial, ¶¶ 192–196).</p> <p>A central issue in dispute in this case is whether the Constitutional Court was unduly influenced and pressured by the Government into delaying and reversing the Leaked Decision (and the extent to which similar treatment was accorded to Peruvian investors in the Parties’ Combined Domestic Comparators). The requested Documents are relevant to the dispute and material to its outcome because they will assist in completing the assessment of the treatment that was accorded to Scotiabank Perú in the Scotiabank Amparo. In particular, the requested Documents will provide greater context</p>

	<p>and shed light on whether the Constitutional Court justices had complaints in connection with any of the Parties’ Combined Domestic Comparators that are analogous to the observation of Justice Espinosa-Saldaña made in connection with the Scotiabank Amparo. Moreover, the requested Documents will show whether Perú endeavoured to dispute Justice Espinosa-Saldaña’s testimony.</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody or control because the Constitutional Court forms part of the Peruvian State, and Perú participated in defending the independence of the Constitutional Court before the Inter-American Court of Human Rights through the Attorney General’s office (<i>Procurador Público Adjunto Supranacional</i>). Participation in the 165th Session Period of the IACHR required the Perú and/or the Court to file written requests for a hearing (<i>solicitudes de audiencia</i>) and the reasons to be included (<i>expresiones de interés</i>) through the IACHR website. Therefore, the requested Documents would have been created in the Peruvian State’s ordinary course of business. In addition, during the 165th Session Period, the Attorney General of Perú explicitly indicated that the State would submit a written document with information that would clarify, and help the IACHR to evaluate, the matter brought forward by the Constitutional Court justices (C-0262; C-0263). Moreover, it stands to reason that the individual justices of the Constitutional Court would have had materials prepared by or for them in advance of their testimony at the IACHR.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>The Respondent once again is compelled to correct the Claimant’s mischaracterization that individuals other than Justice Espinosa-Saldaña mentioned or somehow referred to the Scotiabank case. As stated by the Respondent,¹⁴¹ and as is demonstrated by the recording of the IACHR session regarding the <i>Frontón</i> case: “<i>it is incorrect to state, as Scotiabank does, that ‘it [was] clear that the Constitutional Court [was] aware of this [as in relation to Scotiabank] political pressure’, when only one Justice mentioned the case, in conjunction with the Perubar case, and referring to apparent—yet not expressed—statements regarding the investigation of the Justices</i>”.¹⁴² Neither Justice Ledesma, nor Justice Ramos or indeed the Attorney General of Peru make any reference to the Scotiabank case (or to Perubar, for that matter).¹⁴³</p>

¹⁴¹ See Counter-Memorial, ¶¶ 192-196.

¹⁴² Counter-Memorial, ¶ 196.

¹⁴³ See Counter-Memorial, ¶¶ 192-196. See also Counter-Memorial, fn. 257.

	<p>The Respondent objects to the Claimant’s Request, for the reasons set out below:</p> <p><u>The requested documentation is not material to the outcome of the case and is not sufficiently relevant to the outcome of the case (see IBA Rules, Rules 3(3)(b) and 9(2)(a)):</u> The Respondent refers in this regard to its comments on Request 11.</p> <p><u>The requested documentation is overbroad and vague (see IBA Rules, Rules 3(3)(a)(ii) and (iv)), and the Claimant has not shown any basis to believe that the requested documentation exists or is in the possession, custody, or control of the Respondent (see IBA Rules, Rule (3)(3)(a)(ii)).</u> The Claimant has failed to provide “narrow and specific” descriptions of the documents that it seeks, as required by the IBA Rules. Moreover, as explained by the Respondent, the Constitutional Court does not have an archival policy comprising any and every working document prepared within it.¹⁴⁴</p> <p>This notwithstanding, and without accepting the Claimant’s allegations as to the relevance and materiality of the requested documentation, the Respondent is willing to conduct good faith searches for documents responsive to Request No. 17(iii), as regards any documents in possession of the Peruvian Supranational Attorney General (<i>Procurador Supranacional</i>) addressing Justice Espinosa Saldaña’s testimony, to the extent that they are not covered by privilege.</p> <p><u>The documentation requested comprises documentation that might be protected by privilege and legal impediment (see IBA Rules, Rule 9(2)(b)):</u> Specifically, as provided, <i>inter alia</i>, by Article 17.4 of Law 27806 of 2021, and Article 16(5) of Law 28301 of 2004 (Organic Law of the Constitutional Court).</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant parts (i), (ii) and (iv) of the Request. Subject to the comments below, Claimant seeks no ruling from the Tribunal in connection with part (iii) of the Request.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>Respondent challenges the factual predicate for the Request. However, Respondent’s alleged corrections to Claimant’s assertions have no merit. What Claimant asserted (and Perú again has still not contested) is that Justice Espinosa-Saldaña referred to the Scotiabank Amparo during the IACHR 165th Session Period, in a hearing entitled <i>Independencia del Tribunal Constitucional de Perú</i>. Request No. 17 is limited to Documents generated in connection with that testimony; it does not hinge on whether other speakers also mentioned the case.</p>

¹⁴⁴ See above, ¶ 33.

Claimant also takes note of Perú's commitment to conduct "good faith searches for documents responsive to Request No. 17(iii), as regards any documents in possession of the Peruvian Supranational Attorney General (*Procurador Supranacional*) addressing Justice Espinosa Saldaña's testimony".

Claimant addresses below Perú's objections to parts (i), (ii) and (iv) of the Request.

Claimant's requested Documents are relevant to the dispute and material to its outcome:

Claimant notes that Perú has not attempted to substantiate its objection to the materiality and relevance of this specific Request No. 17. Request No. 11 ("Interactions between government officials and the media regarding the Scotiabank Amparo") and Request No. 17 ("The Inter-American Court of Human Rights . . . hearing on the independence of the Constitutional Court") concern completely different categories of Documents. Perú's blanket objection on the relevance and materiality of Documents responsive to Request No. 17, by reference to its objections to Request No. 11, should be dismissed. In any event, Claimant refers to and incorporates herein its responses to Perú's objections to Request No. 11.

As Claimant explained, a central issue in dispute in this case is whether the Constitutional Court was unduly influenced and pressured by the Government into delaying and reversing the Leaked Decision (and the extent to which similar treatment was accorded to Peruvian investors in the Parties' Combined Domestic Comparators). Justice Espinosa-Saldaña's express reference to the existence of governmental pressure—citing the Scotiabank Amparo specifically—in an international forum squarely addresses that issue. Documents relating to Justice Espinosa-Saldaña's testimony at the IACHR and Perú's reaction to it, as framed in this Request No. 17, are therefore relevant to the case and material to its outcome as per the IBA Rules, Rules 3(3)(b) and 9(2)(a). Perú has not even attempted to argue to the contrary.

Claimant's Request encompasses a narrow and specific category of Documents:

Perú has failed to substantiate its assertion that this Request is "overbroad and vague"; it offers no explanation of which element of the Request is allegedly imprecise, unduly burdensome, or outside the scope of the issues in dispute.

Claimant's Request identifies a narrow and specific category of Documents, produced by or for a specific set of custodians (Constitutional Court justices and Peruvian government authorities intervening in IACHR proceedings), in a finite time period, relating to specific testimony delivered by a specific individual (a Constitutional Court justice) in a specific proceeding before the

	<p>IACHR. This level of granularity therefore meets the “narrow and specific” threshold under the IBA Rules, Rule 3(3)(a)(ii).</p> <p><u>Claimant’s requested Documents are reasonably believed to exist and to be in Perú’s possession, custody or control:</u></p> <p>Perú argues that the requested Documents would not exist and/or would not be in Perú’s possession because the Constitutional Court would not have “any and every working document prepared within it”. Respondent’s argument is not an appropriate explanation as to why these specific requested Documents would not exist and/or be in Perú’s possession, custody or control. Claimant is not requesting “any working document” but rather Documents concerning nothing less than a hearing before the IACHR concerning the independence of the Constitutional Court. Perú has failed to provide any credible reason as to why the Constitutional Court and the relevant Peruvian intervening authorities would not have records of the Documents concerning such a high-profile international proceeding. It is inconceivable that no such records were created or retained. Moreover, as Claimant explained in Request No. 1, Perú had a duty to preserve such Documents under Peruvian law and the Court’s own internal policies.</p> <p><u>Perú has failed to prove that the requested Documents are protected by privilege:</u></p> <p>Perú invokes privilege in the abstract that “might” apply to the requested Documents, but does not identify which privilege might apply to each document responsive to this Request, as contemplated by IBA Rule 9(4). This is no ground for wholesale refusal. Perú’s reference to Peruvian legal provisions, without detailing their foundational relevance or particularizing their application to the Documents at issue, fails to substantiate a claim of privilege. <i>See also</i> Claimant’s responses to Perú’s objections to Requests Nos. 1 and 14 on privilege.</p> <p>Moreover, Article 17(4) of Perú’s Transparency Law does not support Perú’s objection.¹⁴⁵ <i>See</i> Claimant’s explanation and response on the same issue in Request No. 14. Moreover, Article 17(4) allows Perú to withhold information related to a specific administrative or judicial procedure and states that “this exception ends when the proceeding concludes”. However, IACHR sessions are not a “procedure” and thus the requested Documents are not covered by Article 17(4) of the Transparency Law. Additionally, even if the requested Documents were related to a “procedure” within the meaning of the Transparency Law, Article 17(4) states that this exception concludes when the proceeding concludes.</p>
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¹⁴⁵ Claimant’s **Annex G**, Transparency and Access to Public Information Law, Law No. 27806 (Consolidated text approved by Supreme Decree No. 021-2019-JUS), 11 December 2019, art. 17(4).

	<p>Perú’s reliance on Article 16(5) of the Organic Law is similarly misplaced, as it does not establish an exception to the right to access information held by Perú, but simply imposes a duty of confidentiality on the Court justices.¹⁴⁶</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal order the production of all Documents responsive to parts (i), (ii) and (iv) of Request No. 17.</p>
E. Decision of the Tribunal	<i>Request granted as to sub-Requests (i). Request denied as to sub-Requests (ii) and (iv) as overbroad. No decision necessary as to sub-Request (iii).</i>

Document Request No	18. Government investigations into the Leaked Decision and Justice Espinosa-Saldaña’s IACHR testimony [ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>All Documents relating to any investigation by the Constitutional Court (for example, <i>Oficina de Control Interno</i> and/or <i>Secretaria General</i>), Public Ministry (for example, <i>Co-ordinación de Enriquecimiento Ilícito y Denuncias Constitucionales de la Fiscalía de la Nación</i>) or any other relevant investigative body within the Peruvian Government relating to (i) the Leaked Decision; or (ii) the allegation of government interference in the Scotiabank Amparo (in light of Justice Espinosa-Saldaña’s testimony on the subject before the IACHR).</p> <p><u>Time period</u>: between 9 June 2017 (date that the Leaked Decision was released) to present.</p>
B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments	<p><u>Background and relevance & materiality</u>:</p> <p><i>See</i> Requests 1 and 17.</p> <p>Moreover, the combination of the Leaked Decision (Memorial, ¶¶ 87–88) and Justice Espinosa-Saldaña’s IACHR testimony of governmental interference in the Scotiabank Amparo (<i>id.</i>, ¶¶ 84, 100; <i>see also</i> CER-Landa/Neyra, ¶¶ 113, 138, 141–142) create material concerns regarding the independence of the Constitutional Court in hearing the Scotiabank Amparo. It is only logical that both of those events should have resulted in contemporaneous investigations. The requested Documents are relevant to the dispute and material to its outcome because they will show the outcome of Peruvian government investigations into two events that are of central importance to this arbitration.</p> <p><u>Belief that Documents exist</u>:</p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody or control because (a) the Constitutional Court</p>

¹⁴⁶ C-0118, Law No. 28301, Organic Law of the Constitutional Court, July 1, 2004.

	<p>was required to undertake an investigation into the Leaked Decision; and (b) the Peruvian State (through, for example, the Public Ministry (<i>Coordinación de Enriquecimiento Ilícito y Denuncias Constitucionales de la Fiscalía de la Nación</i>) and/or Attorney General’s offices (<i>Procuraduría Pública Supranacional</i>) are responsible for investigating claims regarding the lack of independence of the Constitutional Court.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>Preliminarily, the Respondent takes issue with the Claimant’s characterization of the excerpts published in <i>Hildebrandt en sus Trece</i> as a “Leaked Decision”, which definition the Respondent disputes.</p> <p>The Respondent objects to the Claimant’s Request, for the reasons set out below:</p> <p><u>The requested documentation is not material to the outcome of the case, and is not sufficiently relevant to the outcome of the case (see IBA Rules, Rules 3(3)(b) and 9(2)(a)):</u> The Respondent refers in this regard to its comments on Request 11.</p> <p><u>The documentation requested is insufficiently narrow and specific:</u> The request is excessively broad (see IBA Rules, Rule 3(3)(a)(ii)). Indeed, the Request spans 8 years, and comprises any investigative body in the Peruvian State as regards more than forty cases that the Claimant describes as the so-called “Parties’ Combined Domestic Comparators”.</p> <p><u>It would be an unreasonable burden for the Respondent to produce the requested documentation or it would otherwise be disproportionate to do so (see IBA Rules, Rule 9(2)(c)):</u></p> <p>To identify potentially responsive documentation, the Respondent would have to conduct searches across the Constitutional Court and the Prosecutors’ Office, for unspecified, unidentified potential investigations. This burden is aggravated by the fact that the Prosecutors’ Office does not have a central archive, for which reason the office of each individual Prosecutor across Peru is required to individually conduct each of the searches.</p> <p><u>Documentation comprised within the Request might be protected by privilege and legal impediment (see IBA Rules, Rule 9(2)(b)):</u></p> <p>This includes Article 17(1), 17(3) and 17(4) of Law 27806 and Article 16(5) of Law 28301 of 2004 (Organic Law of the Constitutional Court).</p>
<p>D. Response to objections and request for resolution</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s comments on Respondent’s observations regarding the factual predicate for the Request:</u></p> <p>As a preliminary matter, Respondent disagrees with Claimant’s characterization of the “Leaked Decision” contained in the <i>Hildebrandt</i></p>

<p>(requesting Party)</p>	<p>article. However, Claimant’s characterization is supported by the article itself, which reported that the Constitutional Court had voted on the Scotiabank Amparo and proceeded to show images from the decision that had been voted upon (C-0200). Accordingly, Respondent’s disagreement is less with Claimant and more with the <i>Hildebrandt</i> article.</p> <p>At any rate, the publication of the <i>Hildebrandt</i> article with images of an unpublished decision of the Constitutional Court, as well as the IACHR testimony alleging governmental interference in the Scotiabank Amparo, should have raised alarm bells resulting in governmental investigation, which is the subject matter of this Request No. 18.</p> <p>Claimant addresses below Perú’s specific objections.</p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>Respondent fails to substantiate its objection to the relevance and materiality of Request No. 18 (“Government investigations into the Leaked Decision and Justice Espinosa-Saldaña’s IACHR testimony”) by simply referring—without any support—to Request No. 11 (“Interactions between government officials and the media regarding the Scotiabank Amparo”). The two Requests concern very different subject matters and so the Respondent’s objections to Request No. 11 have no apparent application to this Request No. 18.</p> <p>At any rate, the requested Documents are relevant and material to a central issue in dispute in this case: whether the Constitutional Court was unduly influenced and pressured by the Government into delaying and reversing the Leaked Decision (and the extent to which similar treatment was accorded to Peruvian investors in the Parties’ Combined Domestic Comparators). The requested Documents go to that very issue by seeking the results of contemporaneous governmental investigations that should have been pursued following each of the events that are the subject matter of Request No. 18 (the publication of the Leaked Decision and the IACHR testimony regarding the Scotiabank Amparo). Respondent has offered no challenge to this showing of relevance and materiality.</p> <p><u>Claimant’s Request encompasses a narrow and specific category of Documents:</u></p> <p>Perú’s objection that the requested documentation is “insufficiently narrow and specific” is a mischaracterization of Request No. 18. On the contrary, this Request is, in fact, precisely defined by its subject matter, relevant entities, and timeframe, thereby fully complying with IBA Rule 3(3)(a)(ii).</p> <p><i>First</i>, concerning the subject matter, Claimant’s Request is highly specific as it targets Documents relating <u>exclusively</u> to investigations into two distinct,</p>
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yet interconnected, events central to this arbitration: (i) the Leaked Decision and (ii) Justice Espinosa-Saldaña’s testimony before the IACHR.

Second, Claimant’s Request appropriately identifies a limited number of potential custodians. Claimant explicitly identified key, relevant entities where such investigations would logically reside, namely the Constitutional Court (*Oficina de Control Interno and/or Secretaria General*) and a specialized unit within the Public Ministry (*Co-ordinación de Enriquecimiento Ilícito y Denuncias Constitucionales de la Fiscalía de la Nación*). Claimant’s reference to “any other relevant investigative body” is also sufficiently narrow, as the number of public offices who have competence to conduct such investigations should be limited. Perú would have intimate knowledge of the appropriate governmental bodies with potential investigative authority and Claimant did not wish to unduly limit the scope of the Request by omitting other investigative bodies of which it is unaware.

Third, Perú’s assertion that the Request “spans 8 years” is misleading and unsubstantiated. The timeframe, “between 9 June 2017 (date that the Leaked Decision was released) to present”, is directly linked to the initiation of the events giving rise to the need for investigation. Investigations into allegations of governmental interference and leaks from the Constitutional Court would be inherently complex and could extend over years, potentially involving multiple stages and different authorities. Extending the Request “to present” is crucial to capture any ongoing investigations or recently concluded inquiries into these significant matters.

Finally, Request No. 18 pertains exclusively to investigations related to the Scotiabank Amparo and the Leaked Decision, as explicitly stated by Claimant. It does not seek Documents concerning investigations in the “Parties’ Combined Domestic Comparators” (which is the subject of Request No. 19). Such a misapplication of a boilerplate objection suggests a lack of particularized review by the Respondent of the Claimant’s Requests.

Claimant’s requested Documents would not create an “unreasonable burden” and are not “disproportionate”:

Perú’s allegation that Claimant’s Request would require it to “conduct searches across the Constitutional Court and the Prosecutors’ Office, for unspecified, unidentified potential investigations” is unfounded and misconstrues the nature of this Request.

First, as Drs Landa and Neyra explain in their Expert Report, Perú was obligated under Peruvian law to investigate both the Leaked Decision and the events giving rise to the justices’ IACHR testimony, and to conserve the documents related thereto (CER-Landa/Neyra, ¶ 114 (citing C-0048, Resolución Administrativa No. 095-2004-P-TC, Reglamento Normativo del Tribunal Constitucional (14 September 2004), arts. 16(5), 19(5))). Indeed,

	<p>Article 18(h) of the Organization Rules in force at the time of the Leaked Decision states that the Institutional Control Office must “act <i>ex officio</i> when reasonable indications of illegality, omission, or noncompliance are detected in the entity’s acts and operations”.¹⁴⁷ Likewise, Article 18(r) of the Organization Rules compels the Institutional Control Office to “keep audit reports, audit documentation or working papers, complaints received and, in general, any document relating to the functions of the Institutional Control Office in an orderly manner, under safekeeping and available to the Comptroller General of the Republic for ten (10) years, after which they are subject to the archiving rules in force for the public sector”.¹⁴⁸ Since 10 years have not yet passed, the Constitutional Court is obligated to preserve all the Documents related to the government investigations into the Leaked Decision and Justice Espinosa-Saldaña’s IACHR testimony.</p> <p>Regardless, as already established, Claimant’s Request involves specified and identified investigations regarding the Leaked Decision and Justice Espinosa-Saldaña’s testimony before the IACHR, that would have been conducted by a limited number of Peruvian bodies. Specifically, as explained in Request Nos. 3 and 4, the Constitutional Court utilizes sophisticated electronic document management systems and employs barcoding to facilitate the tracking and management of case files. Moreover, investigations into allegations of governmental interference with the Constitutional Court are by their nature extraordinary and high-profile. Such investigations would not typically be dispersed across “each individual Prosecutor across Peru” as Perú claims. Instead, they would reasonably be concentrated within specialized, senior-level units within the Public Ministry, such as the <i>Coordinación de Enriquecimiento Ilícito y Denuncias Constitucionales de la Fiscalía de la Nación</i>, as explicitly identified in Claimant’s Request.</p> <p>Finally, Perú’s objection fails to contextualize the claimed burden against the high materiality of the requested information under the IBA Rules. The information concerning official investigations into alleged interference with the highest court in Perú is directly relevant and highly material to a central factual dispute in this arbitration, namely whether Claimant received differential treatment as a result of undue governmental pressure.</p> <p><u>Perú has failed to prove that the requested Documents are protected by privilege:</u></p> <p>Perú invokes privilege in the abstract that “might” apply to the requested Documents, but does not identify which privilege might apply to each</p>
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¹⁴⁷ Claimant’s **Annex F**, Rules on the Organization and Functions of the Constitutional Court, 1 March 2016, art. 18(h).

¹⁴⁸ Claimant’s **Annex F**, Rules on the Organization and Functions of the Constitutional Court, 1 March 2016, art. 18(r). This provision is also included in later resolutions. *See* Administrative Resolution No. 209-2018-P/TC, art. 15(r); Administrative Resolution No. 233-2018-P/TC; Administrative Resolution No. 196-2022-P/TC; Administrative Resolution No. 084-2023-P/TC.

	<p>document responsive to this Request, as contemplated by IBA Rule 9(4). This is no ground for wholesale refusal. Additionally, Claimant refers to and incorporates herein its response to Perú’s reliance on Peruvian law sources to support its “privilege” arguments in relation to Request Nos. 14 and 17.</p> <p style="text-align: center;">***</p> <p>For the foregoing reasons, Claimant respectfully requests that the Tribunal overrule Perú’s objections and order the production of all Documents responsive to Request No. 18.</p>
<p>E. Decision of the Tribunal</p>	<p><i>Request granted as to any responsive Documents relating to any investigation by the Constitutional Court (specifically the Oficina de Control Interno and/or Secretaria General), Public Ministry (specifically, the Co-ordinación de Enriquecimiento Ilícito y Denuncias Constitucionales de la Fiscalía de la Nación) relating to (i) the Leaked Decision; or (ii) the allegation of government interference in the Scotiabank Amparo (in light of Justice Espinosa-Saldaña’s testimony on the subject before the IACHR).</i></p>

<p>Document Request No</p>	<p>19. Investigations and/or allegations of undue Government interference in any of the Parties’ Combined Domestic Comparators [ORDER SOUGHT]</p>
<p>A. Documents or category of documents requested (requesting Party)</p>	<p>All Documents relating to any investigation by the Constitutional Court (for example, <i>Oficina de Control Interno</i> and/or <i>Secretaria General</i>), Public Ministry (for example, <i>Co-ordinación de Enriquecimiento Ilícito y Denuncias Constitucionales de la Fiscalía de la Nación</i>) or any other relevant investigative body within the Peruvian Government relating to any allegation of improper Government influence in connection with the Court’s deliberations and work on the Parties’ Combined Domestic Comparators.</p> <p><u>Time period</u>: 23 April 2013 (date the first Parties’ Combined Domestic Comparator case (<i>Baca Campodónico</i>) reached the Constitutional Court) to 17 November 2021 (date <i>Maxco</i> precedent reached the Constitutional Court)</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality</u>:</p> <p><i>See</i> Requests 1 and 18.</p> <p>A central issue in dispute is to determine whether the Government interfered in the outcome of the Scotiabank Amparo and whether it accorded different treatment to Scotiabank as compared to the Parties’ Combined Domestic Comparators. The requested Documents are relevant to the dispute and material to its outcome because they will bear precisely on the comparative treatment received by Scotiabank as compared to the Parties’ Combined Domestic Comparators. In particular, they will show whether there was a need for the Government to conduct any investigations into issues or</p>

	<p>allegations analogous to the mistreatment of which Scotiabank complains in this arbitration.</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody or control because, if allegations of improper influence against the Court had occurred in the Parties’ Combined Domestic Comparators: (a) the Constitutional Court would have been required to undertake an investigation; and (b) the Peruvian State (through, for example, the Public Ministry (<i>Coordinación de Enriquecimiento Ilícito y Denuncias Constitucionales de la Fiscalía de la Nación</i>) and/or Attorney General’s offices (<i>Procuraduría Pública Supranacional</i>) are responsible for investigating claims regarding the lack of independence of the Constitutional Court.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
<p>C. Reasoned objections to document request (objecting Party)</p>	<p>The Respondent objects to the Claimant’s Request, for the reasons set out below:</p> <p><u>The requested documentation is not sufficiently relevant to the outcome of the case and is not material to the outcome of the case (see IBA Rules, Rules 3(3)(b); 9(2)(a)):</u></p> <p>The Respondent refers in this regard to its objections in Request No. 11. Furthermore, the requested documentation is not material to the outcome of the case (IBA Rules, Rules 3(3)(b); 9(2)(a)). As explained by the Respondent in its Counter-Memorial, none of the alleged investors described by the Claimant as the Parties’ Combined Domestic Comparators is in “like circumstances” and is therefore a relevant comparator to determine a purported breach of the National Treatment standard.¹⁴⁹</p> <p><u>The Claimant has failed to reasonably show that the requested documentation exists:</u></p> <p>The Claimant’s Request presupposes what it seeks to demonstrate: that there was undue influence upon the Court by simply stating that it “<i>has reason to believe</i>”. This is no basis for a request (see IBA Rules, Rule (3)(a) (ii)).</p> <p><u>The description given of the requested documentation is insufficient to identify it:</u></p> <p>The Request is too vague (see IBA Rules, Rule 3(3)(a)(i)) and the category of documentation requested is insufficiently narrow and specific. The Request is also excessively broad (see IBA Rule 3(3)(a)(ii)). It spans a</p>

¹⁴⁹ See Counter-Memorial, Section V.D.

	<p>decade, and concerns all investigative bodies, without any distinction. The Request constitutes an inadmissible fishing expedition.</p> <p><u>It would be an unreasonable burden for the Respondent to produce the requested documentation or it would otherwise be disproportionate to do so (see IBA Rules, Rule 9(2)(c)):</u></p> <p>To identify potentially responsive documentation, the Respondent would have to conduct searches across the Constitutional Court and the Prosecutors’ Office, for unspecified, unidentified potential investigations concerning almost forty cases. This burden is aggravated by the fact that the Prosecutors’ Office does not have a central archive, for which reason the office of each individual Prosecutor across Peru is required to individually conduct each of the searches.</p> <p><u>The requested documentation might be protected from disclosure by legal impediment or privilege, including, <i>inter alia</i>, under Article 17(3) of Law 27806 (see IBA Rules, Rule 9(2)(b)).</u></p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant requests that the Tribunal grant the Request in full.</p> <p><u>Claimant’s requested Documents are relevant to the dispute and material to its outcome:</u></p> <p>Respondent refers to its objections to Request No 11. Claimant incorporates by reference its responses, in row D, of Request Nos. 11, 17 and 18.</p> <p>Respondent’s allegation that responsive Documents would not be material because the Parties’ Combined Domestic Comparators are, in Respondent’s view, not in “like circumstances” is not a valid objection. Whether the Parties’ Combined Domestic Comparators or Claimant’s Domestic Comparators were or were not in “like circumstances” to Scotiabank Perú is an issue in dispute between the parties and, precisely, something for this Tribunal to determine. Claimant refers to and incorporates herein its response to Perú’s objection to Request Nos. 4, 6, 9, 10, 12, 14 and 15 in this regard.</p> <p><u>Claimant sufficiently established that the requested Documents are reasonably believed to exist:</u></p> <p>Under IBA Rule 3(3)(a), cited by Perú, Claimant needs to establish that the requested Documents are “reasonably believed to exist”, not an absolute certainty of their existence. Claimant’s Request meets the standard.</p> <p>As explained by Claimant in Request No. 18, if allegations of improper interference existed and/or unpublished judgments were leaked in any of the Parties’ Combined Domestic Comparators (something that only Respondent may be aware of), it is a logical and reasonable inference that corresponding records of inquiry, communication, or findings (or decisions not to investigate) would have been generated and retained. The absence of such records, if allegations were indeed made, would itself be a relevant piece of</p>

	<p>evidence about the lack of undue influence and/or leaked judgments in the Parties’ Combined Domestic Comparators.</p> <p><u>Claimant’s requested Documents would not create an “unreasonable burden” and are not “disproportionate”:</u></p> <p>See Claimant’s response, in row D, to Respondent’s objections to Request No. 18.</p> <p>Further, the fact that this Request covers the Parties’ Combined Domestic Comparators does not create an unreasonable burden for Respondent. Claimant’s Request does not imply a manual review of every page of every file; rather, it allows for systematic electronic searches (about highly sensitive investigations) across the Constitutional Court’s and relevant Prosecutor’s offices’ databases, significantly mitigating the claimed burden.</p> <p><u>Claimant’s Request encompasses a narrow and specific category of Documents:</u></p> <p>Claimant’s Request focuses solely on Documents related to official investigations that would have been triggered by allegations of governmental interference in the Parties’ Combined Domestic Comparators. Such investigations, by their very nature, would generate identifiable records. Perú’s argument that it “spans a decade” is irrelevant. Such timeframe only reflects the duration of the Parties’ Combined Domestic Comparators, but the Request remains confined to those specific and limited cases.</p> <p>Moreover, Perú’s assertion that the Request concerns “all investigative bodies, without any distinction” is inaccurate. As Claimant explains in Request No. 18, Claimant provided concrete examples of the most likely relevant investigative bodies within the Constitutional Court and the Public Ministry. It is only reasonable to assume that such high-profile investigations would have been conducted by a limited number of Peruvian bodies. Perú has not demonstrated that an unreasonably large number of entities could have been involved in said investigations.</p> <p><u>Perú has failed to prove that the requested Documents are protected by privilege:</u></p> <p>Perú has failed to even cursorily explain how the requested Documents are protected from disclosure by privilege, and does not identify which privilege might apply to each document responsive to this Request, as contemplated by IBA Rule 9(4). This is no ground for wholesale refusal. Additionally, Claimant respectfully refers to its response to Perú’s objections to Request No. 17, where it demonstrates why Perú’s objection is unsupported.</p>
<p>E. Decision of the Tribunal</p>	<p><u>Request denied as overbroad and unduly burdensome.</u></p>

E. REQUESTS RELATING TO THE CALCULATION OF SCOTIABANK AND SCOTIABANK PERÚ’S LOSSES

Document Request No	20. The interest rate applicable to the SUNAT’s return of funds. [ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>The following SUNAT Documents relating to the interest rate applied to the SUNAT’s return of default interest amounts paid by any taxpayer, following a decision by the Constitutional Court ordering such reimbursement:</p> <ul style="list-style-type: none"> (i) Documents sufficient to show the interest rate applicable to the return of funds pursuant to any Constitutional Court <i>amparo</i> decisions ordering such reimbursements; and (ii) payment confirmations, receipts, and invoices sufficient to show the interest rates applied to the SUNAT’s return of funds. <p><u>Time period:</u> between September 21, 2016 (date the Constitutional Court published the <i>Medina de Baca amparo</i> decision) and 7 February 2023 (date the Constitutional Court published the <i>Maxco</i> binding constitutional precedent)</p>
B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments	<p><u>Background and relevance & materiality:</u></p> <p>Scotiabank argues that—because Scotiabank Perú made its payment to SUNAT of assessed interest accruing on its assessed tax debt under protest—the default interest rate under Peruvian law should apply to SUNAT’s repayment of those amounts under articles 33 and 38 of the Peruvian Tax Code (<i>Default Interest Rate</i>) (Memorial, ¶¶ 342, 349(c); CER-Hernández, ¶¶ 124–127). Indeed, that is what would restore Scotiabank to the position that it would have occupied had the Constitutional Court been permitted to issue its decision in line with the Leaked Decision in the absence of the events that led to the reversal of that outcome with the issuance of the 2021 Decision.</p> <p>For its part, Perú argues that the appropriate interest rate in this case is SUNAT’s published refund rate, rather than the Default Interest Rate (Counter-Memorial, ¶ 456 (citing RER-Sevillano, ¶¶ 357, 359, 367)).</p> <p>The requested Documents are relevant to the dispute and material to its outcome because they will show the interest rates that have, in reality, been applied to SUNAT’s return of funds following successful <i>amparo</i> claims in comparable cases (<i>i.e.</i>, in other cases involving challenges to the application of default interest on assessed tax liabilities).</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control because at least some of the Parties’ Combined Domestic Comparators received refunds from the SUNAT pursuant to the Constitutional Court’s <i>amparo</i> decisions in those cases.</p>

	<p>SUNAT must have generated the requested Documents in their processing, calculation and payment of said refunds.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
C. Reasoned objections to document request (objecting Party)	<p>Without accepting the relevance or materiality of the information required in these Requests, Peru is willing to produce the only two Resolutions in which the SUNAT was ordered to return amounts that had been previously paid to it as default interest on tax debts, after applying redactions as appropriate to protect any information that is covered by tax secrecy as a matter of Peruvian law. The Respondent notes that no “<i>payment confirmations, receipts, and invoices</i>” exist that are responsive to this Request, given that the SUNAT does not finally settle the amounts to be refunded in payment confirmations, receipts, and invoices, but rather in Intendancy Resolutions.</p>
D. Response to objections and request for resolution (requesting Party)	<p>Claimant takes note of Perú’s willingness to produce “the only two Resolutions in which the SUNAT was ordered to return amounts that had been previously paid to it as default interest on tax debts”. Claimant further takes note of Perú’s representation that “no ‘payment confirmations, receipts, and invoices’ exist that are responsive to this Request”. Yet, on information and belief, Claimant expects there to be more than “only two” responsive Documents to Claimant’s request. Claimant therefore requests that the Respondent is ordered to conduct a good faith search for further responsive Documents and to produce any additional responsive Documents.</p>
E. Decision of the Tribunal	<p><i>Respondent is ordered to conduct a good faith search for responsive Documents beyond the two Resolutions being produced.</i></p>

Document Request No	21. Periods of suspension of default interest [NO ORDER SOUGHT]
A. Documents or category of documents requested (requesting Party)	<p>The following Documents relating to the periods of suspension of the accrual of default interest during Scotiabank Perú’s tax proceedings that preceded the Scotiabank Amparo:</p> <ul style="list-style-type: none"> (i) Documents sufficient to show the date on which SUNAT submitted to the Tax Court Scotiabank Perú’s appeal against Intendency Resolution No. 015-4-11940 (regarding Scotiabank Perú’s case); and (ii) Documents sufficient to show the date on which SUNAT was notified of Tax Court Resolution RTF No. 07517-1-2003, issued by the Tax Court on 30 December 2003. <p><u>Time period</u>: 8 August 2000 (date when Scotiabank Perú submitted appeal against SUNAT’s Intendency Resolution No. 015-4-11940) to 30 June 2004 (six months following the issuance of RTF No. 07517-1-2003).</p>

<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p><u>Background and relevance & materiality:</u></p> <p>Scotiabank argues that the application of default interest should have been suspended during the period in which the Tax Court had exceeded the maximum legal term for issuing a resolution relating to Scotiabank Perú’s appeal from SUNAT’s 8 August 2000 decision in its case (Memorial, ¶ 52; CER-Hernández, ¶ 134). Claimant notes that this maximum legal term was six months, beginning on the date on which SUNAT submitted the Scotiabank Perú appeal file to the Tax Court, but that Claimant does not have access to the exact date on which this occurred (CER-Hernández, ¶ 134).</p> <p>Claimant similarly argues that the application of default interest should have been suspended during the period in which SUNAT had exceeded the maximum legal term for complying with RTF No. 07517-1-2003, which in part annulled SUNAT’s Intendency Resolution No. 015-4-11940, and required SUNAT to issue a new decision with respect to Scotiabank Perú within 30 business days (Memorial, ¶ 52; CER-Hernández, ¶ 134). The maximum legal term here was either 30 or 90 business days, depending on whether SUNAT was notified of the RTF’s issuance prior to or after 5 February 2004—the date on which Legislative Decree No. 953 extended the term to 90 days (CER-Hernández, ¶ 134). Claimant does not have access to the exact date on which SUNAT was notified of the issuance of RTF No. 07517-1-2003, but suggests that in theory that date could be the same as the date of the RTF’s issuance, <i>i.e.</i>, 30 December 2003 (<i>id.</i>).</p> <p>Perú does not dispute Claimant’s formulation of the appropriate parameters for the suspension of default interest, but does not provide the missing dates (RER-Sevillano, ¶¶ 317–320).</p> <p>The requested Documents are relevant to the dispute and material to its outcome because they will determine the exact dates on which the Tax Court and SUNAT, respectively, exceeded the maximum legal terms relating to the Scotiabank Perú case. Based on these dates, it will be possible to identify the exact time periods for which the default interest with respect to Scotiabank Perú’s tax debt should have been suspended.</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control because (a) SUNAT was required to submit the Scotiabank Perú appeal file to the Tax Court upon Scotiabank Perú’s decision to file an appeal, and (b) the Tax Court was required to notify SUNAT of the issuance of RTF No. 07517-1-2003. The requested Documents would therefore have been created in the ordinary course of business of SUNAT and the Peruvian Tax Court.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
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C. Reasoned objections to document request (objecting Party)	<p>Without accepting the relevance or materiality of the documentation required in this Request, as set out by the Claimant, Peru is willing to produce copies of:</p> <ul style="list-style-type: none"> • Official Letter No. 916-2000-NA0300 of 16 August 2000, by which SUNAT transmitted to the Tax Court the appeal file No. 015350003359 of 9 August 2000, filed against Administrative Resolution No. 015-4-11940. • Official Letter No. 334-2004-EF/41.01 dated 20 January 2004, by which the Tax Court notified SUNAT of RTF No. 07517-1-2003.
D. Response to objections and request for resolution (requesting Party)	<p>Claimant takes note that Perú will voluntarily produce (i) Official Letter No. 916-2000-NA0300 of 16 August 2000; and (ii) Official Letter No. 334-2004-EF/41.01 dated 20 January 2004. Claimant does not request any order from the Tribunal in connection with Request No. 21.</p>
E. Decision of the Tribunal	<p><i>No decision necessary.</i></p>

F. REQUEST RELATING TO INTERPRETATION OF THE TREATY

Document Request No	<p>22. Negotiation of the Treaty [NO ORDER SOUGHT]</p>
A. Documents or category of documents requested (requesting Party)	<p>All Documents in the <i>travaux préparatoires</i> of the Canada-Peru Free Trade Agreement (signed 29 May 2008) (the Treaty) relating to the drafting and negotiation of Chapter 11 of the Treaty.</p> <p><u>Time period:</u> between 7 June 2007 (the date on which it was announced that Canada and Perú would begin negotiations on the Treaty) and 29 May 2008 (date when the Treaty was signed)</p>
B. Relevance and materiality (requesting Party) (1) para ref to submissions (2) comments	<p><u>Background and relevance & materiality:</u></p> <p>Perú argues that under Article 1101 of the Treaty, measures adopted by a Party that relate to (i) financial institutions of the other Party; (ii) investors of the other Party, and investments of such investors in financial institutions; or (iii) cross-border trade in financial services, are not actionable under Chapter Eight of the Treaty, unless a specific substantive provision under Chapter Eight is expressly incorporated into Chapter Eleven (Respondent’s Submission on Rule 41, ¶ 63).</p> <p>Claimant argues that Chapter 11 of the Treaty does not bar its National Treatment Claims, but rather that the Treaty’s language more narrowly applies Chapter 11 to “measures . . . relating to financial institutions.” Here, the impugned measures relate to, <i>inter alia</i>, improper Government pressure</p>

	<p>and interference on the Court regarding the Scotiabank Amparo and the differential treatment experienced as compared to domestic investors (Memorial, ¶¶ 78–79, 153). Claimant argues that those are not measures relating to financial institutions, but measures that could have affected any investor in any industry (Claimant’s Response to the Respondent’s Rule 41 Submission, ¶ 62).</p> <p>The requested Documents are relevant to the dispute and material to its outcome because they may aid in the interpretation of relevant provisions of the Treaty that bear on the parties’ arguments (<i>see</i> Claimant’s Response to the Respondent’s Rule 41 Submission, ¶ 63).</p> <p><u>Belief that Documents exist:</u></p> <p>Claimant has reason to believe that the requested Documents exist and are in Perú’s possession, custody, or control because—as a signatory to the Treaty—Peru would have access to the drafting history and negotiation of all aspects of the Treaty.</p> <p>The requested Documents are not in the possession, custody, or control of Claimant.</p>
C. Reasoned objections to document request (objecting Party)	<p>The Respondent has conducted reasonable searches and will produce the responsive documentation, to the extent that it is not covered by privilege or legal impediment.</p>
D. Response to objections and request for resolution (requesting Party)	<p>Claimant takes note of Perú’s willingness to “produce the responsive documentation, to the extent that it is not covered by privilege or legal impediment.” Claimant does not request any order from the Tribunal in connection with Request No. 22.</p>
E. Decision of the Tribunal	<p><i>No decision necessary.</i></p>