

**IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN
REPUBLIC CENTRAL AMERICA FREE TRADE AGREEMENT AND THE
UNCITRAL RULES OF ARBITRATION (2010)**

**DAVID R. AVEN, SAMUEL D. AVEN, CAROLYN J. PARK, ERIC A. PARK,
JEFFREY S. SHIOLENO, GIACOMO A. BUSCEMI, DAVID A. JANNEY
AND ROGER RAGUSO (United States of America) (Claimants)**

v

THE REPUBLIC OF COSTA RICA (Respondent)

**FIRST WITNESS STATEMENT
OF FERNANDO ZUMBADO**

I, **FERNANDO ZUMBADO**, of San José, SAY as follows:

1. I make this statement in support of the Claimants' Memorial in these proceedings.
2. The matters contained in this witness statement are true to the best of my knowledge, information and belief. The facts and circumstances contained in this statement are within my own knowledge or derived from information and documents provided to me by those reporting to me, in which case I refer to the corresponding source of information.
3. I confirm that the Claimants' lawyers, Vinson & Elkins RLLP, have assisted me in preparing this statement, but I also confirm that its contents set out my evidence to the Tribunal in these proceedings.

Background

4. I have a degree in Economics from the University of California. I graduated in 1972.
5. I have been in politics for most of my career and although I am currently a private consultant, I intend to go back into politics in the future.
6. I became Minister of Planning for Costa Rica in 1977 at the age of 32. Also, I was Minister of Housing between 1986 and 1990, and again, between 2006 and 2008. I have also held the following positions:
 - a. Costa Rican Representative at the UN, between 1982 and 1985;
 - b. Costa Rican Ambassador in Washington D.C. 1985; and
 - c. Assistant Secretary General for the Latin American Bureau at the United Nations Development Program.
7. At the height of my political career so far, I was thinking to run for President of Costa Rica for Liberación Nacional (the current opposition party) and had a 78% approval rating for the role. Liberación Nacional has a large following – around 20 to 30% of the electorate. That was before the scandal broke, which I will explain in more detail below.

Abuse of the Costa Rican justice system

8. In 2008, I was caught up in a political scandal that was reported all over the Costa Rican press. It is only in the last few months, after I won the last appeal in May 2015, that the matter has finally been laid to rest. Although I have been advised that the probability of the Costa Rican authorities continuing to pursue me is pretty slim, the risk is still there.
9. By way of background, in 2008 I was falsely accused of misusing donated funds and perpetrating fraud against the government during my time as Housing Minister by acting in favor of a third party. The basis for the accusation was that I had allegedly mismanaged approximately US\$ 7,500.00 donated by Taiwan to fund the revitalisation of several low-income

neighbourhoods. The total amount donated by Taiwan was US\$ 2,000,000.00. The prosecution alleged that I had instead used the money to fund various consultancy projects. This allegation was completely baseless, as my acquittal has shown.

10. At my first trial in January 2014 I was sentenced to three years in prison, although I was not required to serve any of that time behind bars, and banned from holding a public office for five years. However, on appeal to the Court of Appeals in San José, I was finally acquitted of all charges on May 11, 2015, on the basis that there was no evidence that I had done anything unlawful.
11. The people behind the accusations were from the left of the political spectrum. At the time, the government was negotiating a free trade agreement with the United States. The previous administration had largely concluded the negotiations but the treaty had not yet been ratified. The left were opposed to the treaty and as a result there was a lot of political tension around the subject at the time. In order to appease the public, my party put forward a referendum in October 2007 to enable the Costa Rican people to decide. I was accused of making the poorer Costa Ricans back the yes campaign, which won by a very narrow margin. It was that month that the scandal broke. The first person caught up in it all was the President's brother. Then they came after me, alleging that I had somehow pushed for a yes vote, through the Housing Ministry by allegedly offering subsidies to the poorest sectors of the population by means of housing programs.
12. The whole manner in which the scandal broke and the case against me was brought was very strange, given the fact that some of the accusations from the oppositions found echo in my political party, and at times I was not sure whether those conspiring to sabotage me were from the opposition or from within my own party. Whoever was responsible, their actions resulted in the total destruction of my career and reputation at a time when I was in line to run for President.

13. When I look back at what has happened to me, it feels like a novel that is not related to me. The Prosecutor's Office even went so far as to characterize my secretary, who is 60 and an incredibly pious woman, as my lover. When I won my appeal and was finally acquitted, my appeal lawyers commented on the lack of objectivity throughout the process. At first instance, my arguments were completely disregarded by the judge who rendered the decision. As a result of my own experience, my impression of the criminal justice system is one of subjectivity and mediocrity. It is a system in which I no longer have any confidence.
14. The whole process over the course of the last seven years has demonstrated to me how the Costa Rican justice system is open to abuse by people seeking to further their own political agenda and the extent of the devastating effects this can have on a person's livelihood. My case is not the only example of this. The former Minister of the Environment, Roberto Dobles, was dragged through the courts because of the decisions he took; he was recently acquitted of charges related to a mine concession.
15. Whereas in the past political disputes would have been resolved in the political arena, since around 2000 the courts have increasingly been used as a venue for political point-scoring. This can be seen at the local level too, where civil matters are brought into the criminal courts, as in David Aven's case. Normally, one would expect the authorities to pursue a civil claim against anyone accused of breaching environmental laws, not a criminal one. But in Mr. Aven's case the prosecutor seems to have been determined to pursue Mr Aven personally in the criminal courts for what is, in reality, a civil issue.
16. The potential for abuse of the Costa Rican justice system is acknowledged by others. As part of my role in the former government, I became aware of a committee of notables that was appointed to work on reforming the state. This was a commission that was created in 2013 to issue recommendations for restructuring the Costa Rica State and included several well-known Costa Rican citizens. One of the committee's concerns was how the judicial system is being used to further political objectives. One of the issues the committee

members discussed was the length of the judicial process and how proceedings can sometimes drag on for 10 to 15 years, during which time the accused's life is essentially put on hold and irreparable financial and reputational damage can be done.

Initial Contact with Mr. Aven

17. I first became aware of the Las Olas project and Mr. Aven through a mutual good friend of mine in 2005, before I was appointed housing minister in 2006. Mr. Aven initially talked to me in 2007 about the possibility of building some affordable social housing, alongside the private development that was proposed at Las Olas. Mr. Aven offered to buy some land near the Las Olas project site and donate it to the government for use in building this low income housing. At that time, I was Housing Minister for Costa Rica. I had no commercial relationship with Mr. Aven.
18. In 2007, Costa Rica was in the middle of a property boom, much like the United States and Europe. Property prices were sky high and it was impossible to think about building social housing in that region, given the price of land near the coast. Mr. Aven suggested that he could purchase several hectares of land and donate it to the government and the government would in turn build affordable social housing on that land. I was keen to explore the possibility with Mr. Aven so I met with him in order to discuss it.
19. In fact in 2007, while I was still Housing Minister, I visited the project site with Mr. Aven and his attorney. I was already familiar with the area since Esterillos Oeste is a well-known surfing beach and my son is an avid surfer. The Las Olas project site was in the heart of the Esterillos Oeste community, with homes and businesses all around, including a school and local government health center. At the time of my visit, we walked around the community and I introduced myself to the local residents and asked them how things were going in the community. They all seemed very positive about the prospect of the Las Olas development, since they believed it would bring jobs and economic development to the area.

Involvement after the problems emerged with Las Olas

20. Because of my forced resignation as Housing Minister in 2008, the low-income housing project Mr Aven and I had been discussing was stopped. However, I maintained a friendship with Mr. Aven and we kept in contact. Mr Aven would keep me updated about what was happening with the project.
21. In 2009, Mr. Aven called me about a troubling meeting he had with the some people in the Municipality of Parrita. Mr. Aven told me that he had been asked by an employee of the local municipality to pay a bribe of US\$ 200,000 in cash to keep the project moving along.
22. This did not come as a surprise to me, as I had previously heard rumours of corruption in the coastal areas during the real estate boom. I mentioned what Mr. Aven had told me to some of my former colleagues in the Government, but nothing came of our discussions.
23. I was concerned because there had clearly been an abuse by a local official of his post and I felt compelled to try and help Mr. Aven. Foreign direct investment is an important contributor to Costa Rica's economy and Costa Rica depends on it for growth. Our currency is very strong vis-à-vis the US dollar and there is a gap between exports and imports. That gap is closed by foreign investment, which is why Costa Rica has so many reserves in its central bank.
24. In the circumstances, it is clearly in Costa Rica's interest to ensure that foreign investors such as Mr. Aven are not abused by corrupt officials. If this kind of criminal behaviour is not eliminated, then it will give Costa Rica a bad name and is liable to discourage future foreign investment. For those reasons, I was determined to try to do something to bring the situation to the relevant authorities' attention.
25. In an effort to help, I also spoke with a few lawyer friends of mine, including Javier Llobet and Javier Blandino, to see if there was anything that could be done but ultimately nothing came of these discussions either. It is easy to see

how, in a situation like the one that existed in 2007, when property prices were booming, individuals in control of the permitting process could be tempted to make some money on the side. According to rumours, the Central Pacific and South Pacific are the worse affected by this type of corruption although thankfully I have no direct experience of corruption of this nature.

26. The permitting system in Costa Rica is extremely complex and it can be difficult to navigate as there are so many agencies and processes involved. As a result, even in public housing it's virtually impossible to get a project off the ground in less than two years. In my view, the complexity of the permitting process creates opportunities for corrupt individuals to seek to extract bribes from unwitting developers. I believe the whole system could benefit greatly from being simplified

The allegation relating to wetlands

27. I was extremely surprised to hear that the authorities had intervened in the project and halted works as a result of the presence of a suspected wetland. I had visited the project site and the land had always appeared dry. As a result, I was suspicious of the authorities' motivations, particularly in view of what I already knew about the attempt to solicit a bribe from Mr. Aven. I could not understand why the authorities appeared to have done a 180 degree turn and, despite carrying out all the relevant environmental studies and granting all the requisite permits at the outset, they were only now saying that there was a wetland on the project site.
28. What has happened to the Las Olas project is very unusual. I have never heard of any other project where all the permits were issued and then later revoked on the basis of something that the relevant authorities themselves had already investigated and discounted. Sometimes small mistakes are made, and later permits are amended to account for this but I have never come across a case of an absolute revocation before, even in the public sector. The financial consequences for a project would be severe because of all the money that is invested at the outset in getting a project through the permitting and planning processes and off the ground. Developers must be to rely on the permits they

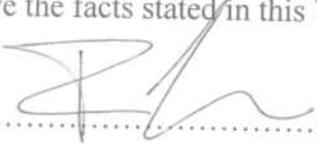
have lawfully obtained. The way in which the Las Olas project has been dealt with by the Costa Rican authorities is both inexplicable and unacceptable. I have built a number of condominium units in Costa Rica and am very familiar with the permitting process as a result. In my experience, what has happened to Las Olas and Mr Aven is not normal.

29. I visited the Las Olas project site a further three or four times after the problems started and I no longer occupied the position of Minister for Housing. Each time I was struck by how dry the land is and how bizarre it is that the authorities are now claiming that there is a wetland on the site.

The criminal proceedings against Mr Aven and Mr Damjanac

30. I was even more surprised when I learned about the criminal proceedings against Mr Aven and Mr Damjanac. I understood Mr Aven's concern as a foreigner having to navigate the Costa Rican criminal justice system. At some point, although I cannot remember exactly when, Mr Aven spoke to me about his concerns for his safety and the threats he had received. Although I was not aware of any specific threat to Mr Aven, I had heard of a new wave of crime in Costa Rica, where people get paid to kill people, although so far this has been linked specifically to the drug trade, so I can well understand why Mr Aven genuinely feared for his safety.
31. I have never heard of criminal proceedings being brought against a developer such as Mr Aven before. It certainly seems to me as though the authorities' reaction is disproportionate to the alleged crimes in this case and in my view, there is something very strange about Mr Aven's prosecution.

I believe the facts stated in this WITNESS STATEMENT are true.

Signed.....

FERNANDO ZUMBADO

Dated.....17 Nov. 2015