

**IN THE MATTER OF THE ARBITRATION BY VIRTUE OF THE CENTRAL
AMERICAN AND DOMINICAN REPUBLIC FREE TRADE AGREEMENT AND
THE ARBITRATION RULES OF THE UNCITRAL ARBITRATION
REGULATIONS (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) (Plaintiffs)**

v.

THE REPUBLIC OF COSTA RICA (Defendant)

**FIRST WITNESS STATEMENT
OF JORGE ANTONIO BRICEÑO VEGA**

I, **JORGE ANTONIO BRICEÑO VEGA**, a resident of Los Ángeles de Parrita, Puntarenas, Costa Rica, hereby DECLARE the following:

1. I am making this declaration in favour of the Memorial of the Plaintiffs in this proceeding.
2. The matters included in this witness statement are true to the best of my knowledge and belief. The facts and circumstances included in this statement are of my personal knowledge or are derived from information or documents that I have consulted by virtue of my role as Internal Auditor of the Municipality of Parrita, pursuant to Article 33 of the Internal Control Law (Law 8292), and from documents that I prepared in my capacity as Internal Auditor, in which case I make reference to the corresponding source of information.

3. I hereby confirm that the attorneys for the Plaintiffs, Vinson & Elkins RLLP and Batalla Salto Luna, have assisted me in the preparation of this statement, but I also confirm that its contents represent my own statements and knowledge before the Court in this proceeding.

4. In the preparation of this statement, I met with the attorneys for the Plaintiffs in order to talk about my intervention in the “Las Olas” project as Internal Auditor of the Municipality of Parrita and I also reviewed the documents that I mention in this witness statement to help me recall the facts that I also describe. Since I do not speak English I am making my statement in Spanish, and I have signed my statement in Spanish.

Background

5. I am presently 65 years old, and I have lived in the Canton of Parrita, Puntarenas for 39 of those years. I have been a public accountant for 37 years. I completed my higher education in the Centro de Investigación para el Perfeccionamiento de la Educación Técnica (CIPET) [Centre for the Research and Perfection of Technical Education], where I graduated as professor in Accounting Education. I also studied in the University of San Marcos, located in San Jose, Costa Rica, where I graduated with a degree in Public Accounting. Additionally, I attended the Accounting Technician course in the Jesús Ocaña Vocational College of Alajuela. By virtue of these studies, I have been a Public Accountant (ID No. 5219) since 14 January 1979, and a Certified Public Accountant (ID No. 6789) since 31 May 2013.

6. My first employment experience, which comprises the years from 1970 to 1984, was as an officer in several departments of the National Bank of Costa Rica, being promoted during the 14 years that I worked in that institution. Amongst the positions I held were: Platform officer; teller; branch inspector, auditing inspector,

until I became manager of the banking offices of Bagaces and Parrita.

7. After my banking experience, I decided to take on new challenges, and I exercised the accounting profession independently from 1984 until September 2010. From May 2013 until the present date, I have continued to exercise the profession independently.
8. Simultaneously with my independent work as an accountant, I was an Accounting teacher in the Ministry of Public Education during the years from 1985 to 2006, contributing to the education of new generations of accountants. Specifically, I was assigned to the Professional Technical College of Parrita, from which I retired in January 2007.
9. In August 2009, I participated in the competition for the position of Internal Auditor of the Municipality of Parrita, and I was selected to occupy that position beginning in February 2010. My selection was formalised in an accord adopted by the Municipal Council. I must mention that this accord was vetoed by the then Municipal Mayor, Mr Gerardo Acuña Calderón, which implied that the legality of the accord by the Municipal Council had to be analysed by the Contentious Administrative Court, whose final decision was that my appointment was completely legal and in conformance with the law. I therefore occupied my position in the month of October 2010. My post was unipersonal, so I did not have any personnel below me.

Internal Auditor of the Municipality of Parrita

10. Article 184 of the Political Constitution of the Republic of Costa Rica describes the duties and attributions of the General Comptrollership of the Republic, which are: i) to oversee the execution and liquidation of the ordinary and special budgets of the Republic. An order for payment from State funds may not be issued

until that expenditure has been examined by the Comptroller; ii) examine, approve or deny approval of the budgets of the Municipalities and autonomous institutions and oversee their execution and liquidation; iii) send an annual memorandum of the movement corresponding to the previous fiscal year to the first ordinary meeting of the Legislative Assembly, with details of the Comptroller's acts and his/her opinions and the suggestions that he/she considers necessary for a better management of the public funds; and to examine, gloss over and close the accounts of the State institutions and of the public officials.

11. For its part, Article 1 of the Organic Law of the General Comptrollership of the Republic ("Law 7428"), is a fundamental constitutional entity of the State, an auxiliary of the Legislative Assembly in the higher-level control of the Public Treasury and a monitor of the oversight system contemplated by this Law.

12. For the exercise of the function of General Comptrollership of the Republic, in regard to the municipalities, the Municipal Councils have the obligation of appointing an Internal Auditor. The Internal Auditor must submit annual reports on the actions of the Auditing Department, and the principal duty of this independent entity is to ensure the legal handling of the finances, of the administrative procedures, and of the Municipality's acts in general, ensuring that it adheres to the law and that the public treasury is not affected.

13. In this context, the function of the Internal Auditor is defined in Article 21 of Law No. 8292, which states the following: "**Article 21.- Functional Concept of internal auditing.** *Internal auditing is the independent, objective and advisory activity that provides security to the body or entity, since it is created for the purpose of validating and improving its operations. It contributes to the attainment of the institutional objectives by practising a systemic and professional focus in order to evaluate and improve the effectiveness in the administration of risk and in the control of the management procedures in the entities that are subject to this Law. Within an organisation, internal auditing provides a reasonable guarantee to the citizenry that*

the acts of the chief and of the rest of the administration are executed in conformance with the legal and technical framework of honest practices.”

14. In order to carry out the functions of the Internal Auditor in an adequate manner, it is necessary to follow the guidelines established in Article 32 of Law No. 8292, which deals with the duties and obligations of that post. Internal Auditors must comply with the faculties established by the law and all the duties pertaining to their faculties, as well as with all the technical and juridical ordinances that are applicable, and they must collaborate in the studies that the General Comptrollership of the Republic and other institutions realise in the exercise of legally attributed oversight or control faculties. They must manage the resources of the processes for which they are responsible, and in their reports they must not disclose information regarding the audits or special auditing studies that are being conducted to third parties who do not have a direct relationship to the matters involved, nor information on any matters that could establish the civil, administrative or possible criminal liability of the officials or entities subject to this Law. They have a duty of confidentiality in regard to the information to which they have access. Additionally, they must observe the provisions and recommendations issued by the General Comptrollership of the Republic. Finally, they must deliver, or facilitate access to, the information requested of them by the Legislative Assembly, in the exercise of its attributions, and collaborate with it in regard to that information.

15. The powers of the Internal Auditor are listed in Article 33 of Law No. 8292, amongst which are: i) free access, at all times, to all the books, files, securities, bank accounts and documents of the entities and groups in which the auditor has authority, as well as of the private subjects, insofar as they administer public funds or assets of the entities over which the auditor has institutional authority. The Internal Auditor shall also have free access to other sources of information related to his/her activity. The Internal Auditor may access, for his/her purposes and at any time, the electronic transactions found in the electronic files and systems realised by the entities with banks and other institutions, and the administration must provide the auditor with whatever resources are required for this purpose; ii) request of any official or private person who manages

or holds public funds of the entities and groups under the auditor's institutional authority to provide him with, in a reasonable manner, condition and period of time, the reports, data and documents that he/she may need for the full compliance with his/her functions; iii) request of officials of any hierarchical level the collaboration, advice and the facilities required for the exercise of the internal auditing, as well as any other power that the applicable technical and juridical ordinances may prescribe.

16. The foregoing means that the Internal Auditor may only make recommendations, issue warnings about irregularities that are established during the investigation process, and pose conflicts before the General Comptrollership of the Republic in those cases in which the entity subject to the audit does not respond to the recommendations or indications of irregularity within the period of time established by Internal Auditing, in conformance with Article 38 of Law No. 8292.

17. As Internal Auditor, I was also aware that I was prohibited from participating in the adoption of decisions made by the Active Administration.

18. From the time of my appointment, I understood the importance of my role in the proper operation of the Municipality of Parrita and its public function, and I was aware of my authority, powers and limitations as Internal Auditor of the Municipality of Parrita.

Involvement with the "Las Olas" Project

19. As Internal Auditor, I am legally authorised and required to carry out an investigation in the case of complaints or because of comments I might hear, whether inside the Municipality or outside of it. This attribution is of such a particular nature that it becomes an obligation of investigation by the Internal Auditor, once he/she learns, by any means, of the existence of a problem or of a situation that can be classified as irregular.

20. In the year of 2012, I heard that the “Las Olas” project would affect a zone that is considered to be a wetland, and that the municipality had adopted accords that included the application of precautionary measures on the project, such as a halt to the works. In the face of this situation, in compliance with my duties and obligations as Internal Auditor, I proceeded to carry out an investigation to determine if those rumours were true and if the stoppage of the project ordered by the Municipality had been carried out in conformance with Costa Rican law.
21. The investigation consisted in gathering and studying the existing information in regard to the acts and decisions that had been adopted, which resulted in a halt to the development of the “Las Olas” project, as well as meetings with officials from the different departments of the Municipality of Parrita, officials of the Administrative Environmental Court, and a visit to the project with Municipality officials.
22. The information that I gathered, studied and reviewed was contained in the internal Municipality official letters issued by the Environmental Management Department, the Terrestrial Maritime Zone Department, and the Department of Urban Development. I also studied and reviewed the accords adopted by the Municipal Council in relation to the “Las Olas” project.
23. By virtue of that investigation I consulted the three files found in the Administrative Environmental Court and which were later combined into a single file. I also reviewed and studied Resolutions 839-2011¹ and 2850-2011² issued by the Technical Environmental Secretariat (SETENA).
24. By virtue of my position as Internal Auditor of the Municipality of Parrita, in the year of 2012 and the analysis and review I have described in the previous paragraphs, I prepared the following three official letters in relation to the “Las Olas” project in the year of 2012: (i) DAMP-153-2012³, dated 16 October 2012, addressed to the

¹ C-20.

² C-19.

³ C-282.

Administrative Environmental Court; (ii) DAMP-154-2012⁴, dated 29 October 2012, addressed to the Municipal Council and to Mr Freddy Garro Arias, Municipal Mayor of Parrita; and (iii) DAMP-159-2012⁵, dated 5 November 2012, addressed to the Municipal Council.

25. In the year of 2013, I prepared official letter DAMP-009-2013⁶, dated 25 January 2013, addressed to Freddy Garro Arias, Municipal Mayor of Parrita. In this official letter I summarised 14 situations or cases in which I made recommendations and warnings related to irregularities in the municipal acts that affected both internal administrators as well as third parties, with clear or possible consequences for the public treasury. The purpose of this official letter was to warn about the consequences of failing to attend to the warnings and recommendations issued by an internal auditor, in accordance with the law. I therefore established a period of 15 working days to comply with the warnings and recommendations made, in conformance with Article 38 of Law No. 8292, or else to present a valid justification for the failure to act within that period of time.

- a. One of the points dealt with in this official letter was the omissions or failure to act on the recommendations and warnings related to the irregularities and illegal acts in the “Las Olas” case (see paragraph 9 in the official letter in question), which I had documented in official letters DAMP-154-2012 and DAMP-159-2012.

Description of the 4 official letters I issued in relation to the “Las Olas” Project

26. I issued official letter **DAMP-153-2012⁷ on 16 October 2012** and I addressed it to the Administrative Environmental Court for the purpose of requesting information in relation to the files numbered 343-10-01-TAA, 34-11-01-TAA and 71-11-02-TAA, all related to the Las Olas Project, so that I could issue my opinion to the Municipal Council of Parrita. I was also interested in knowing if the Municipality of Parrita was

⁴ C-283.

⁵ C-284.

⁶ C-286.

⁷ C-282.

considered by the Administrative Environmental Court to be an active party in the complaint filed by the official Mónica Vargas Quesada from the Environmental Management Department.

27. I issued official letter **DAMP-154-2012⁸ on 29 October 2012** and I addressed it to the Municipal Council and to Mr Freddy Garro Arias in his capacity as Municipal Mayor of Parrita. For the elaboration of this official letter I consulted the following letters⁹ and carried out the following actions:

- a. Official Letter No. DeGA-061-2011¹⁰, dated 5 May 2011, issued by Mónica Vargas Quesada in her capacity as an official of the Environmental Management Department, and addressed to Mr Freddy Garro, in his capacity as Mayor of Parrita. I received a copy of this official letter.
- b. Official Letter No. DeGA-064-2011¹¹, dated 9 May 2011, issued by Mónica Vargas Quesada in her capacity as an official of the Environmental Management Department, and addressed to Mr Jorge Alvarez, in his capacity as official of the Department of Urban Development of the Municipality of Parrita. I received a copy of this official letter.
- c. Official Letter No. DeGA-049-2009¹², dated 26 April 2009, issued by Mónica Vargas Quesada in her capacity as an official of the Environmental Management Department and the documents attached to said official letter.
- d. Official Letter No. DeGA-090-2010¹³, dated 31 May 2010, issued by Mónica Vargas Quesada in her capacity as an official of the Environmental Management Department, addressed to Engineer Shelen Castro, of the Construction Department of the Municipality, and the documents attached to said official letter.

⁸ C-283.

⁹ The official letters listed do not follow a chronological order but rather the order in which they came to my knowledge.

¹⁰ R-88.

¹¹ R-89.

¹² R-26.

¹³ R-29

- e. Official Letter No. DeGA-091-2009¹⁴ (2010), dated 16 June 2010, issued by Mónica Vargas Quesada in her capacity as an official of the Environmental Management Department, and addressed to Engineers Cristian Bogantes and Carlos Vinicio Cordero of the Ministry of Environment, Energy and Telecommunications (MINAET) of Puriscal and the documents attached to that official letter.
- f. Official Letter No. DeGA-092-2010¹⁵, dated 31 May 2010, issued by Monica Vargas Quesada in her capacity as an official of the Environmental Management Department, addressed to Engineer Andrei Bourrquet Vargas, Secretary General of the Plenary Commission.
- g. Official Letter No. DeGA-104-2010¹⁶, dated 16 June 2010, issued by Monica Vargas Quesada in her capacity as an official of the Environmental Management Department, addressed to Mr German Torres of the Municipal Patents Department.
- h. Official Letter No. DeGA-0106-2010¹⁷, dated 15 June 2010, issued by Monica Vargas Quesada in her capacity as an official of the Environmental Management Department, and sent to the Administrative Environmental Court.
- i. Official Letter No. DeGA-0122-2010¹⁸, dated 29 August 2010, issued by Monica Vargas Quesada in her capacity as an official of the Environmental Management Department, which was sent to Mr Gerardo Acuña Calderón, Mayor of the Municipality of Parrita.
- j. Official Letter No. DeGA-0140-2010¹⁹, dated 29 August 2010, issued by Monica Vargas Quesada in her capacity as an official of the Environmental Management Department, and sent to the Administrative Environmental Court.
- k. Official Letter No. DeGA-200-2010²⁰, dated 18 August 2010, issued by Monica Vargas Quesada in her capacity as an official of the Environmental Management

¹⁴ R-204. The official letter indicates that it is DeGA-091-2009. However, according to its issuance date and the consecutive numbers, it should be DeGA-091-2010.

¹⁵ R-30.

¹⁶ C-285.

¹⁷ C-69.

¹⁸ R-52.

¹⁹ C-81.

²⁰ R-49.

Department, sent to Ms Hazel Díaz Meléndez, Director of the Quality of Life Area for the Defence of the Inhabitants.

1. I visited the Administrative Environmental Court twice, and both times, together with Ms Elizabeth Araya, the official of that Court, I reviewed the three files opened in relation to the Las Olas Project.
28. I issued official letter No. **DAMP-159-2012 on 5 November 2012** and addressed it to the Municipal Council of the Municipality of Parrita. For the elaboration of this official letter I consulted the following official letters, resolutions and accords of the Municipal Council:
- a. Official Letter No. DZMT-026-2011²¹, dated 7 March 2011.
 - b. Official Letter No. SM-172-2011²² dated 8 March 2011, which transcribes Accord No. 3, Article No. 14 of Ordinary Meeting No. 2362-2011.
 - c. Accord of the Municipal Council number AC-03-2362-2011²³, which corresponds to Accord 3, Article 4, Correspondence, Item No. 14 of Ordinary Meeting No. 2362, held on 7 March 2011.
 - d. Resolution 1597-2008²⁴ dated 2 June 2008, issued by SETENA, which granted environmental viability to the Condominio Horizontal Residencial Las Olas [Las Olas Residential Condominium] project.
 - e. Resolution 839-2011²⁵, issued by SETENA on 13 April 2011, whereby the stoppage of any works or activity initiated in the Condominio Horizontal Residencial Las Olas [Las Olas Residential Condominium] project was ordered as a precautionary measure.
 - f. Accords of the Municipal Council, adopted in Ordinary Meeting No. 2373-2011²⁶.

²¹ R-74.

²² R-75.

²³ This agreement is transcribed in Official Letter SM-172-2011, corresponding to test R-75.

²⁴ C-52.

²⁵ C-20.

²⁶ Reference is made to this document in my Official Letter No. DAMP-159-2011.

- g. Resolution No. 2850-2011²⁷ issued by SETENA on 15 November 2011, whereby the appeal filed by the developers was accepted and the precautionary measures previously imposed by Resolution No. 839-2011 were rendered without effect.
 - h. Brief filed on 1 December 2011²⁸, signed by Mr David Richard Aven in which he asks Mr Jorge Álvarez Mondragón, Urban and Social Manager of the Municipality, to lift the order of closure, since the appeal for revocation had been resolved by SETENA on 15 November 2011, according to resolution No. 2850-2011.
29. I issued official letter No. **DAMP-009-2013²⁹ on 25 January 2013** addressed to Mr Freddy Garro Arias, Municipal Mayor of Parrita. For the elaboration of this official letter I consulted the following official letters, resolutions and accords of the Municipal Council.
- a. Official Letter No. SM-2012-801³⁰, dated 6 November 2012, which transcribes Accord No. AC-01-2488-2012 of the Municipal Council, Item No. 20, ordinary meeting No. 2488-2012 of 5 November 2012.
 - b. Official Letter No. SM-2012-802³¹, dated 6 November 2012, which transcribes Accord No. AC-03-2488-2012 of the Municipal Council, Item No. 1, Ordinary Meeting No. 2488-2012, held on 5 November 2012.
30. The reasons and justifications for writing and issuing official letter **DAMP-154-2012³²** were chiefly the following:
- a. In conformance with our legal system, especially Article 190 of the General Law of the Public Administration, the public administration can be economically liable for the damages caused, either due to its legitimate or illegitimate operation, that is, both for a licit normal act as well as for an irregular act.

²⁷ C-19.

²⁸ The document is not part of the file, but I make reference to this document in the Official Letter that I submitted, DAMP 159-2011. Similarly, reference is made to this Official Letter in Official Letter No. SM-802-2012.

²⁹ C-286.

³⁰ C-288.

³¹ R-129.

³² C-283.

- b. Through official letter number DeGA-0106-2010³³, the official Mónica Vargas Quesada of the Environmental Management Department of the Municipality of Parrita filed a complaint before the Administrative Environmental Court. This complaint was processed as File No. 343-10-01-TAA, and the Municipality of Parrita was considered as the complainant. This situation caused me some concern, due to the fact that the official Mónica Vargas Quesada acted, in my professional opinion as an Internal Auditor, in her own name, and not in the name and at the instigation of the Municipal entity.
- c. By virtue of the foregoing, in my previously indicated capacity, it became necessary and pertinent to advise the Municipal Council and the Mayor of this situation - that the Municipality of Parrita was being considered by the Administrative Environmental Court as the complainant, with the legal and juridical consequences that this could have or bring to the municipality in the future, and for that reason I recommended that the appropriate decision, from a juridical point of view, be made, and to inform the Administrative Environmental Court: *“if the municipality accepts being a party to the complaint made by Mónica Vargas Quesada in her capacity as Environmental Manager (...), or if, to the contrary, it does not agree with said complaint, and therefore completely disregard the participation of the Municipality (...).”*
- d. It was clear to the undersigned, as an Internal Auditor, that establishing a complaint of the degree that was established in the Administrative Environmental Court, could have significant economic consequences in the future, because of the transcendence and repercussions in the legitimate interests of third parties, such as the developers, as I indicated in said letter when I said: *“In the event that it is decided to take part in the complaint filed by Mónica Vargas I WARN YOU that the Municipal Corporation will thereby assume the civil and criminal liabilities that could be derived from the legal actions of third parties who consider themselves affected by future resolutions adopted by said Environmental Court in the event that economic interests are affected thereby.”*

³³ C-69.

31. Up until the day I resigned and left the Municipality of Parrita, I was aware that the Municipal Council and the Mayor had not heeded the recommendations and warnings established in official letter No. **DAMP-154-2012**³⁴ as they were legally required to do so. It was for that reason that I wrote official letter No. DAMP-009-2013³⁵, with the purpose of following up on this recommendation, or else to understand why no attention had been paid.
32. The reasons and justifications for which I wrote and issued official letter **DAMP-159-2012**³⁶ were chiefly the following:
- a. The only grounds justifying Municipal Council Accord No. AC-03-2362-2011 was a correspondence. That is, the accord to order the suspension of the Las Olas Project works was adopted at a meeting in which a correspondence was revealed, and based on that correspondence the Municipal Council adopted an accord of enormous legal and economic consequences.
 - b. That correspondence was official letter No. DZMT-026-2011, dated 7 March 2011. The official letter has the same date on which Ordinary Meeting No. 2361 was held, namely 7 March 2011.

³⁴ C-283.

³⁵ C-286.

³⁶ C-284.

- c. What Official Letter No. DZMT-026-2011 does is document and report a meeting that was held on the morning of 7 March 2011 (10:30 a.m.) in the meeting room between Mr Nelson Masis Campos (Municipal Councillor at that time) and Mr Marvin Mora Chinchilla, of the Terrestrial-Maritime Zone (who was the person who wrote the official letter) with Mr Steve Buchelato, Mr Alfonso Jiménez and Mr Franklin Carmiol. In its two paragraphs, the official letter literally states:
- d. Based on these two paragraphs the Municipal Council, without further discussion and analysis, and without requesting an in-depth and detailed investigation by the various departments of the Municipal Entity in regard to the supposed irregularities that were taking place in the Las Olas Project, decided to adopt an accord of this scope, with the possible legal and economic consequences that could result for third parties as well as for the municipality itself.
- e. As I stated at the time, in the adoption of the decision the Municipal Council based its action solely on *“the comments made by Mr Buchelato Jimenez and Mr Carmiol in the presence of a municipal official and a municipal councillor. The municipal official thereupon issued a report about the conversation and submitted it to the Municipal Council.”*
- f. By virtue of the above and from the study and analysis that I carried out on the Las Olas project case I considered - and indicated thus - that Accord No. AC-03-2362-2011 issued by the Municipal Council was **illegal** and should be annulled for the following reasons:
- i. On 7 March 2011 there was not a single legal or administrative basis on which to adopt such a decision. It was based solely on the words of three persons, whom I understand have ties to the community because two of them live in a zone neighbouring the Project and the other one is a legal consultant.
 - ii. Official letter No. ACOPAC-CP-003-11³⁷, dated 3 January 2011, was not an official letter addressed to the Municipal Entity. This official letter did not categorically establish the existence of a violation of the environmental

³⁷ C-101 and R-262.

laws, nor did it refer to faculties or functions that the Municipality of Parrita should address in Ordinary Meeting No. 2361 on 7 March 2011.

- iii. The photographs that form a part of Annexe 2 to official letter ACOPAC-CP-003-11, are the same ones that appear attached to official letter DeGa-049-2010³⁸, which were photographs provided by residents of the community, and there is no certainty regarding their authenticity or if they really correspond to the zone that was inspected at the time when official letter DeGa-049-2010 was issued. They are not official photographs taken by public officials, nor is it possible to guarantee where and when they were taken or if they correspond to the site in question. Moreover, they are the same photos that have been enclosed with other official letters issued by the Environmental Management Department, such as: Official Letter No. DeGA-090-2010³⁹, dated 31 May 2010, and official letter No. DeGA-091-2009⁴⁰ (2010), dated 16 June 2010.
- iv. The accord was adopted on 7 March, almost two months before SETENA Resolution No. 839-2011 of 13 April 2011, which ordered a precautionary measure, was made known in Ordinary Meeting No. 2373-2011 on 2 May 2011.
- v. The actions by the Municipal Council, by the Mayor, and by the Urban Development Department were not the same or as diligent when they learned of SETENA Resolution No. 839-2011, dated 13 April 2011, which ordered a precautionary measure, as when they learned of resolution No. 2850-2011, dated 15 November 2011, which ordered the annulment of the precautionary measures imposed by the previous resolution issued in

³⁸ R-26.

³⁹ R-29.

⁴⁰ R-204. The official letter indicates that it is DeGA-091-2009. However, according to its date and the consecutive number, it should be DeGA-091-2010.

April. In the first case, the acts of the Municipal entity and the compliance with the order were immediate. In relation to the second resolution, however, it was not implemented nor executed. It was ignored. It was simply made known to the various departments, without demanding compliance therewith. The Municipal Council, the Mayor, and the Urban Development Department, as well as the Environmental Management Department acted in a different manner in regard to these two resolutions by SETENA, which I recognised and made known to the Municipality of Parrita as an improper act on their part.

- vi. On 7 March 2011, the Administrative Environmental Court had not issued any accord ordering a precautionary measure.
- vii. The developer or developers were not given an opportunity to be heard or to defend their rights, which could have serious legal and economic consequences for the Municipal Corporation. The right to a defence and due process for third parties in interest needs to be guaranteed, especially in the case of existing permits already granted, and it was my obligation to issue a warning about this.
- viii. The Municipal Entity had not delimited the supposed wetlands area, and I pointed this out. It was important that the area be marked off, in order to guarantee the rights of third parties, and thereby clearly identify *“to whom the lands in the area of conflict effectively belonged.”*

33. By virtue of the above, and in order to correct what I, as the Internal Auditor considered as an erroneous and illegal act by the Municipal Corporation, I made the following three recommendations:

34. In my opinion, as far as I know, up to the month of April 2013, when I left the Municipality of Parrita, none of these three recommendations had been implemented. The first two were completely ignored. Regarding the third recommendation, an accord was adopted by the Municipal Council in Ordinary Meeting No. 2488-2012 (Accord No. AC-01-2488-2012⁴¹), held on 6 November 2012, which ordered the Mayor to create an interdisciplinary group and its coordination with representatives of

⁴¹ R-129.

the Project. The Mayor ordered the creation of the Commission (see OAM-676-2012⁴²). However, it is my understanding that said coordination and the work with the interdisciplinary group was never carried out during my tenure, and if the Commission issued a report it was after I had ceased to work in the Municipality.

35. Everything I did during the years of 2012 and 2013 in relation to the case of the Las Olas Project was in my capacity as Internal Auditor, in strict adherence to my legal duties and with the only purpose of ensuring compliance with the laws of Costa Rica in everything the Municipality did. The warnings and observations I made in relation to the actions of the municipality in regard to the Las Olas Project were for the purpose of correcting the actions that I considered and documented as being illegal and to thus avoid economic consequences to the public treasury.

I consider that the facts declared in this WITNESS STATEMENT are true.

Signature

Briceño

Date

⁴² C-287.