

ARBITRATION UNDER THE ARBITRATION REGULATION OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL 2010)

AND

UNDER THE DOMINICAN REPUBLIC - CENTRAL AMERICA – UNITED STATES FREE TRADE
AGREEMENT

BY AND BETWEEN:

DAVID R. AVEN, SAMUEL D. AVEN, CAROLYN J. PARK, ERIC A. PARK, JEFFREY S.
SHIOLENO, DAVID A. JANNEY AND ROGER RAGUSO

Claimants

- and -

THE REPUBLIC OF COSTA RICA

Respondent

SECOND WITNESS STATEMENT OF
MÓNICA VARGAS QUESADA

October 28, 2016

1. I, **Mónica Vargas Quesada**, domiciled in Esterillos Oeste, Parrita, hereby state that:
2. This is my second statement in the arbitration between David R. Aven, Samuel D. Aven, Carolyn J. Park, Eric A. Park, Jeffrey S. Shiolen, David A. Janney and Roger Raguso against the Republic of Costa Rica, which is being developed pursuant to the Arbitration Regulations of the UNCITRAL and the Dominican Republic - Central America – United States Free Trade Agreement (the "Arbitration").
3. I have been asked to participate in the Arbitration to expose my knowledge on the procedures carried out by the Municipality of Parrita (the "Municipality") in relation to complaints on violations of the environmental legislation by the developers of the residential project "Las Olas" and to reply to certain allegations made by the claimants in the Arbitration about me.
4. I confirm that I have neither direct nor indirect interest in this Arbitration and that I am filing this statement in my own name and in my capacity as Environmental Manager of the Municipality of Parrita.
5. Except for the cases where it is otherwise indicated by me, the facts and statements contained in this witness statement derive from my own knowledge and are true to the best of my knowledge. For the facts and statements herein contained that do not derive from my own knowledge, I have identified the sources of information I have based them on or from which the information I make reference to in this witness declaration arises.
6. In the preparation of this witness declaration, I have been assisted by the attorneys from Herbert Smith Freehills, but I hereby confirm that any and all of the affirmations and statements herein contained derive from my knowledge of the facts. Additionally, I have reviewed documents filed with the Municipality for the drafting of this statement and to help remind me of the facts that took place many years ago.
7. In my first witness statement, I have made known to you my involvement in the project "Las Olas", for which reason I will not repeat that here. In this statement I provide my answer to many of the issues raised by the Claimants in their Reply Memorial and the witness statements of Mr. David Aven, Mr. Jovan Damjanac, Mr. Manuel Ventura and Mr. Minor Arce Solano.

1. **INTRODUCTION**

8. First of all, I want to reject the degrading statements made by the Claimants against me:

"[Th]e crux of the Claimants' complaint against Ms. Vargas, Environment Head of the Municipality of Parrita, and Ms. Díaz, Life Quality Director at the *Defensoría de los Habitantes*, consists of **their actions, characterized by disproportionality and bad faith**, facilitated by a gallingly deficient system."¹

In the light of pieces of evidence proving the contrary, people like Mr. Martínez and **Ms. Vargas adopted a thoughtless and aggressive position**, refusing to consider that the ecological quality of the site had already been assessed by SETENA, and that such organism, expert in its field, had already authorized the development of the project.²

9. The Claimants qualify my actions as "*disproportional and of bad faith*".³ I never had any personal interest in damaging the Las Olas Project or its developers. I bought a property in Esterillos Oeste in August 2011, and moved there in December 2011. If my interests were to damage the Claimants and prevent them from developing their project in Parrita, I myself would result in being directly affected. Why would I want to stop a project that, if completed, would have given more economic value to my property?

10. I never acted in a "thoughtless" or, even less so, in an "aggressive" manner. It is really surprising to me that the Claimants accuse me of acting aggressively when their own representatives, Mr. Damjanac and attorney Vargas Roldán, on several occasions, behaved in an aggressive manner against me.⁴ Let me repeat that I always acted in compliance with the precautionary principle and did my work, as I would have done regarding any other complaint indicating that damage was being caused against the environment.

It's not only I did that accuse Miss Vargas of bad faith and legalities. Jorge Briencio, in his witness statement accusers here as well. Mr. Bricenio clearly states that the conduct of Ms. Vargas, and others, were totally illegal, and such could cause civil and possibly criminal penalties for them as well as liability to the Costa Rica Treasury. He further states that his warnings where completely ignored by Ms. Vargas and others that were involved in the illegal shut down of Las Olas.

11. The competence of the DeGA is to take action after the filing of complaints in cases where there is a suspicion that there exists possible damage to the environment. This is why I reject the accusation of Mr. Aven, who tries to challenge the facts documented in my reports for being based on "*opinions and observations from neighbors*":

"As I explained in my First witness statement, and as confirmed by Ms. Vargas in her own witness statement, Ms. Vargas based her reports and allegations solely upon hearsay opinions and observations of "neighbors" or from viewing the property from the borders of the project site, but never going onto the site."⁵

12. My statements are not only based on my personal observations and knowledge but also on the official reports that documented the illegal activities that were carried out in the Project Las Olas and which were issued by the competent entities. The reports are official documents prepared by people holding the public offices of the State of Costa Rica and who

are assumed to act in a legitimate manner.

13. The fact that the reports documented situations that are not to the liking of the Claimants or that prejudice their position within the Arbitration, does not mean that these reports do not truthfully provide the events that occurred in relation to the Project Las Olas. There is no reason whatsoever to question the truthfulness of the facts therein documented.

Again, no details about what documents are in evidence that proves what Ms. Vargas is saying here. Once again is there documentary evidence, that is in the evidence in this hearing, that proves what Ms. Vargas is saying. If so I would like to see it and be prepared for the cross examination. To the best of my knowledge there is no such documents and evidence. in fact I remember a letter from the mayor that there were never any letters sent to us complaining of anything we were doing illegally or inappropriately on the project site. And statement from the mayor that contradicts what you saying. So we need to show that clearly to impeach her testimony. She is one of two very low-quality fact witnesses

2. **ABOUT THE RELIABILITY AND CREDIBILITY OF MY REPORTS**

14. I wish to express my rejection to the accusations of Mr. Damjanac, who not only casts doubt on the information filed in reports prepared by me, by my colleagues at the Municipality and even by the public force, but also accuses them of containing false information.
15. First, Mr. Damjanac accuses my reports of lacking "reliability and credibility" since they are based on information provided by the neighbors of the community and my personal observations:

"Ms. Vargas then claims that she visited the site again on January 10, 2010 and on May 21, 2010, after receiving more complaints (groundless) from the neighbors (see the complaints of Mr. Buelato mentioned above) and that she issued three more reports on May 31, 2010, considering "*what the neighbors told [her]*" (that is to say, Mr. Buelato) and "*limited to a visual inspection from the borders of the property*".
There are intrinsic reliability and credibility issues with these reports."⁶

16. The neighbors are fully entitled to file complaints against acts considered contrary to the environmental legislation and that could cause damage to the environment. The DeGA is responsible for addressing these complaints and routing them to the competent institutions to verify whether they are admissible or not. This is precisely the reason the DeGA requested reports from the competent entities like the MINAE and the TAA in order to issue its opinion regarding the complaints on the existence of a wetland and forests in the project site.

Once again there are no witness statements from the neighbors about any of this, all we have is Ms. Vargas's heresy testimony which should not be admissible. Further, Ms. Vargas was required, by law, to comply with the SETENA resolutions, which he clearly refused to comply with. Instead, she apparently complied with me complaints that were being made by neighbors. If that's the case, then why don't we just eliminate SETENA and get the neighbors to approve the project?

17. Moreover, in Costa Rica, every person has the right to file complaints and public institutions have the obligation to address them. In the case of the DeGA, any complaint implying a possible damage to the environment shall be addressed, regardless of who the claimant is and of whether they have scientific or technical knowledge on the matter. The contrary would imply a violation to the right held by all the people of Costa Rica to live in a healthy environment, established in Article 50 of the Political Constitution of Costa Rica.

What Ms Vargas and others in the government are missing, and that Jorge Briceño was not missing when he tried to warn them of their illegalities was this; the developers had followed all the rules and already spent over million dollars in legal fees and professional fees in getting all the required SETENA permits and construction permits and was months into infrastructure construction. At that point the legal agencies had spoken and Ms. Vargas was supposed to comply with the law in the permits. Ms. Vargas hit others simply refused to obey and comply with the law. Instead they went on an illegal rampage the shut down the project and and failed to listen to the dire warnings of Mr. Briceño.

18. In his statement, Mr. Damjanac completely distorts the content of my reports:

In the [Official Letter DeGA-049-2009"], despite not having competence to determine the existence of a wetland, Ms. Vargas wrote that the developers of Las Olas were "*apparently refilling a wetland area*" and that "*the wetlands can be observed*" in the land. She repeats these accusations throughout her witness statement."⁷

19. This is completely false. I never reported that wetlands could be observed. I reject the everything that Mr. Damjanac made up since the report literally states that:

SETENA had spoken, there were not wetlands. Ms. Vargas was required by law to comply with that Government order.

Resultando

1. Se realiza una inspección el día 26 de abril del 2009 en la localidad de Esterillos Oeste, debido a una denuncia interpuesta por vecinos de la comunidad, ya que aparentemente están relleno una zona de humedal.
2. Se observa en el sitio do calles pavimentadas con dirección de este a oeste, y relleno en el sitio.

Considerando De los hechos

Primero. Conforme a la visita realizada, el terreno se encuentra en una zona baja, se caracteriza por tener suelos inundables y posiblemente saturados en época lluviosa.

Segundo. Que según lo indican los vecinos de la zona, este lote en época lluviosa, se comporta como una laguna, y se observan fauna característica de los humedales.

Tercero. Que en el sitio, no solo se observa la sedimentación de la laguna, sino también, corta y quema de árboles, por lo que no se logra determinar las especies que se ubicaban en el terreno.

20. The Section on "Recitals of the Facts" clearly states that the neighbors, and not I, are the ones who observe the wetlands. This is the reason why I requested cooperation from the competent authorities to categorize the area.

Minae had spoken on this on April 2, 2008, in a letter to SETENA. No Wetlands, Minae spoke in a Letter on March 27, 2008 in a report, no wetlands, SETENA had Spoken in a Resolution on June 2. 2008, not wetlands. MINAE spoke in January, February and in July of 2010, other reports, no wetlands. SETENA spoke again in another resolution in September of 2010, no wetlands. The problem is Ms. Vargas and other were not listening and complying with the law stating they were required by law to follow those Government orders.

21. Mr. Damjanac further accuses me of having declared the existence of wetlands in the request for investigation dated June 15, 2010, which I addressed to the MINAET and the TAA (C-69 and the request for categorization of the area dated June 16, 2010 sent to SINAC-ACOPAC (C-70):

"Moreover, both reports of Ms. Vargas go far beyond the competence of Ms. Vargas (since each of them declares that there are "wetland areas" that are "being refilled").⁹

22. This is completely false. In my request for investigation dated June 15, 2010, I always refer to the *"refilling of an area whose category has not yet been defined"*. I never affirm or declare that *"wetland areas are being refilled"*:

He venido gestionando desde el año 2009, una denuncia sobre el relleno de una zona cuya categoría no se encuentra definida sin embargo con características de humedal, en la localidad de Esterillos oeste. Sin embargo, a pesar que el MINAET- ACOPAC a realizado varias veces la visita al sitio aún no se cuenta con ningún expediente formal, así como informe sobre las características o categorización del lugar.

Esta situación es de gran preocupación ya que una empresa contratada por el ICE, realizó la instalación de líneas eléctricas en el lugar, en el cual la Municipalidad intervino debido a que no existe ninguna autorización del municipio para la colocación de los postes, sin embargo, no podemos negar algún permiso que se solicite a futuro debido a que no contamos con un documento oficial valido para argumentar la protección de una zona de humedal.

El departamento de gestión ambiental esta interviniendo en este proyecto con la finalidad de cuidar los recursos de nuestro cantón en especial a aquellos que pueden ser parte de un sitio RAMSAR, pero para ello, necesitamos la colaboración del MINAET y evitar la destrucción de zonas con ecosistemas únicos. Esta zona en Esterillos ya a sido fuertemente impactada, a tal punto que hay relleno de la zona, construcción de dos calles ilegales, así como quema de árboles.

10

23. The text of the request for categorization of the area dated June 16, 2010 sent through document No. SINAC-ACOPAC (C-70) is already part of my first witness statement, for which

reason it is not necessary for me to quote it again here.¹¹ Anyways, I repeat that the Claimants put words in my reports that are not true, and I strongly reject such statements made up by the Claimants.

3. **THE COMPLAINTS OF THE NEIGHBORS AGAINST THE LAS OLAS PROJECT**

24. The Claimants argue that:

"The only specific complaints that Ms. Vargas makes reference to in her First Witness Statement are the ones of Mr. Bucelato, and such complaint was the one that served as basis for the decision of the officer to carry out an investigation."¹²

"[M]s. Vargas based her reports and allegations solely upon hearsay opinions and observations of "neighbors" or from viewing the property from the borders of the project site, but never going onto the site.

Actually, when Ms. Vargas refers to the complaints of "neighbors" or the "community", she is speaking about the only source: Mr. Steve Bucelato."¹³

"Many of the groundless arguments initially raised by Mr. Bucelato may be now found in the witness statement of Ms. Vargas and in the municipal reports she is the author of. **Actually, whenever Ms. Vargas describes the complaints of the "neighbors" regarding the Las Olas property, undoubtedly she refers to the complaints of Mr. Bucelato."**¹⁴

25. First, I do not understand why the Claimants give so much importance to Mr. Bucelato. If one person, or a thousand people, file a complaint, then the DeGA has the obligation to process it. I insist, whether the claimant is one person or a thousand people, such complaints shall have the same validity. The follow-up and control of complaints filed before the DeGA shall be performed regardless of the number or identity of the people appearing as claimants.

Based on complaints from the neighbors or neighbor, SETENA did what they were required to do by law and they conducted another investigation. In August of 2010. MINAE did the same in July 2010. Both of those reports came back saying there was no wetlands. The problem is Miss Marcus totally ignored both reports and failed to comply with a legal government order. This is what Jorge Bircenio was screaming about and trying to make them understand that what they were doing was totally illegal. But these stupid idiots did not get the message.

26. It is important to make it clear that my responsibility as Municipal officer is to follow-up any type of complaint for any situation filed with the entity: from a wrongly placed bin, the cutting down of a tree, an open-air dump, a possible environmental damage, anything that the potential affected parties may bring before us.

Let me make it clear to Mr. Vargas, her duty was to comply with the law and she failed to do so, after being mourned continually by Mr. Bricenio

27. Secondly, I do not consider that Mr. Bucelato was the "only source" for the complaints against the Las Olas project. In the community, there was generalized unrest generalized due to the

activities that were being carried out within the Project. That can be evidenced, for example, on the fact that the complaints that the Municipality received were signed by many members of the community of Esterillos Oeste.¹⁵

Mr. Bucelato was the only source for the SETENA, MINAE, TAA, Defernoria, and the prosecutor office complinats. Those were the only ones that really mattered.

28. Additionally, I remember that Ms. Rosemary Chamberlain, neighbor of Esterillos Oeste, would permanently call me over the phone to report the cutting-down of trees and the burning of trees at the project site. Ms. Chamberlain also signed the complaints filed against the Project in the year 2010.¹⁶

Where is Miss Chamberlain's witness statement. Where is Mr. Bucelato's witness statement? They don't exist.

29. In conclusion, Mr. Bucelato was not the only neighbor of Esterillos Oeste who reported the environmental damages that the Claimants were causing. But, if it had been that way, the DeGA still had the obligation to process his complaints and contact the competent authorities for them to initiate the pertinent investigations, which actually happened.

4. **ABOUT THE CUTTING-DOWN AND BURNING OF TREES**

30. Mr. Aven denies the cutting-down and burning of trees that was reported by the neighbors to have occurred:

"Ms. Vargas affirmed in paragraph 14 of her witness statement that during the weekends, we would cut down and burn trees, for which she makes reference to her own report dated January 20, 2010, where she reiterated the accusations of Mr. Bucelato, who, according to her, only complied with the "visual inspections from the borders of the property".¹⁷

"[W]hen Ms. Vargas visited the site in May 2010, a team of people was developing cleaning tasks, including the burning of accumulated grass and shrubs, but they were not cutting down and burning any trees."¹⁸

31. I reject the statement of Mr. Aven, and I strongly affirm what I statement in such report, since it is a fact that I know is true since I observed it myself; the neighbors observed it and, besides, the case file contains pictures of the burnt land.

Ms. Vargas's statement now contradicts her testimony at the criminal trial. She said nothing of this we share the opportunity at the criminal trial. So what she lying then or is she lying now?

32. On his part, Mr. Damjanac argues that:

"In subsection 14 of her Witness Statement, Ms. Vargas manifested that "*according to what the neighbors told me*", the "*cutting-down and burning of trees activities...were performed at the weekends, because the public officers do not work on those days*". **This accusation is false (and weird), based on second-hand biased reports.**

We were not cutting down or burning any trees; we were just doing some maintenance to our property by cutting the "Secate" (a long grass that, according

to our attorneys, does not constitute protected vegetation, pursuant to the forestry legislation of Costa Rica). In Costa Rica, grass grows the 24 hours of the day, the 365 days of the year.

Moreover, Las Olas is located in a region where every year, big trees, branches and waste from the forests fall down due to natural reasons, like the wind and the storms, and they are left lying on the ground. We have the obligation to keep the property safe and free from waste and the site had been closed; therefore, we would clean the waste of the land, the trees that had already fallen down, the branches, the dead trees and the dry grass. We would also open paths through a cattle pasture zone that had been blocked by vegetation, so that we could walk through the land. These activities are not illegal."¹⁹

33. I reject the statements of Mr. Damjanac claiming that my statements are false for the simple reason that I myself observed the facts.

Again her statements she's making now contradicts her testimony at the criminal trial we're she said none of this. Further, the statement she is making out our self-serving and without evidence. if we were doing something illegal, miss Vargas could've called the police and they could've addressed us or given us a ticket for the illegalities we were committing. That didn't happen.

34. Moreover, I note that the statements of Mr. Damjanac provided above refer to my visits in January and May 2010. Mr. Damjanac, without being a professional with any experience in environmental matters in Costa Rica, dares to categorize the vegetation, which he admits was being cut down, as "zacate" (not "Secate" as he incorrectly affirms). To provide this technical categorization of the vegetation type, anyone would assume that Mr. Damjanac counted on any advisor or technical consultant who could have informed him about such categorization of the vegetation.

In September 2010, I engage the services of MR. MINOR and he told us what we could not doing the project site, and we followed his recommendations to that T. neither Jovan or myself may have expertise in environmental matters, but we can't follow instructions from the experts, and that's exactly what we did.

35. What is surprising is that Mr. Arce, who affirms to have visited for the first time the project site to "*analyze whether some trees could be cut-down*" in the site, only went to the site in September 2010. Only after this visit, Mr. Arce could have recommended to the claimants that the cutting-down of trees that they had performed "was not illegal". Then I do not understand how Mr. Damjanac affirms that for January and May 2010, he already knew that what they were cutting down was "zacate".

Jovan obviously got that information from from either Esteban Bermudez or someone else that informed him about it.

5. NOTIFICATION OF THE INVESTIGATION TO THE CLAIMANTS

36. As I have already explained in my first witness statement, within the process followed by the DeGA for complaints against urban development projects, investigation is requested from

the pertinent public institutions. For this reason, it is not necessary to notify the developer about the communications among the diverse institutions involved, until there is a final judgment by the pertinent authority.

37. When a complaint is filed before the DeGA, cooperation is requested from the pertinent entities, like the MINAE or the TAA, and if such entities confirm that there exists damage to the environment, file is closed at the Municipality. On the contrary, if evidence is found that the allegations made in the complaints are true, such entities are the ones which suggest to the Municipality the actions to be taken.

38. Despite the above, the Claimants continue to complain that they were not notified of the procedure followed by the DeGA:

"In everything related to the witness statement of Ms. Vargas, it contains groundless affirmations regarding an **alleged investigation of the project Las Olas carried out by the municipality, on which neither me nor the Claimants never received any notification whatsoever.**" ²⁰

"The witness statement of Ms. Vargas contains groundless affirmations regarding an alleged investigation carried out by the Municipality on the Las Olas project, **in relation to which neither I nor the Claimants ever received any notification whatsoever.**" ²¹

39. Let me reaffirm what I mentioned in paragraphs 83 and 84 of first witness statement, and I deny that there has existed any type of violation to the rights of the Claimants on the grounds that they were not notified about the coordination process carried out by the DeGA with the competent authorities in the case related to the Las Olas project.

Miss Vargas's statement is in direct contradiction to the statement of Mr. Bricenio, who plenty said everything that she was doing along with all the others was totally illegal

40. Below I specifically refer to some of the statements of the Claimants regarding this issue in particular.

About my conversation with Mr. Vargas Roldán

41. In paragraph number 85 of my first witness statement, I explained that the developers were contacted on several occasions. Additionally, I explained that the developers not only decided to ignore the notifications served to them but they even denied to have received them.

What documents and evidence proves the veracity of the above statement by Ms. Vargas? If there're any that exist please get it to me because I need to prepare for my cross examination. I am I haven't seen any evidence but some exist then I need to see it.

42. On this topic, I would like to make it clear that on September 7, 2010, I myself required from Mr. Sebastián Roldán Vargas to inform the Environmental Manager about the complaints filed against the Las Olas project for the damage caused to the wetland and the

cutting-down of trees without proper authorization.²² Mr. Aven accuses me of having lied in my statement²³, which is false. Ms. Jacqueline Calderón, assistant of the Department of Urban Development and engineer Kattia Castro, Head of the Technical Unit of Road Management were present during that short conversation I had with Mr. Vargas Roldán and they can attest that what I am saying is true.

I will categorically say that Ms. Vargas is lying. If she will look on the construction permit she will see that it was issued by the municipality on September 7, 2010. I was there with Mr. Sebastian Vargas to pick up that permit. We did not speak to Miss Vargas or anyone else and of that I am sure. Where are the witness statements of Ms. Calderón and Ma Castro, once again they don't exist. Why would the municipality issue a construction permit on September 7, 2010 and others complain about hey wetlands. Once again SETENA had ruled on that twice and Ms. Vargas simply refuse to comply with legal government orders, the SETENA Resolutions

About the refusal of Mr. Damjanac to receive documents from the Municipality

43. Contrary to the facts documented in the official reports of the Municipality, Mr. Damjanac denies to have refused to receive notifications by the municipal inspectors: "In order to shaping her accusation that "it is absolutely false that the developers were not aware of the pending procedures before the Municipality", Ms. Vargas manifests in subsection 85(3) of her statement that "on May 11 2011, through Note OIM No. 119- 2011, the manager of Urban and Social Development of the Municipality notified the Las Olas project about the Resolution No. 839-2011 SETENA, requiring the stoppage of the works, which MR. Jovan Dushan Damjanac refused to receive and, therefore, it was necessary to request police presence."

This is an absurd accusation and I was more than surprised when I saw my name included in a municipal document, where it was stated that I had received (or that I had refused to receive) such notification in the presence of officers.

I have never refused to sign any document or to sign any acknowledgement of receipt of the reports I really received. In fact, I had received specific instructions from Mr. Aven to accept any and all the documents delivered in our office and to immediately send to him such documents."²⁴

44. I want to make it clear again that the department I work at, the DeGA, does not process construction permits, for which reason I was not physically present during the notification on May 11, 2011 to Mr. Damjanac. However, the reports of the notifying servants of the Municipality and the public force clearly describe the situation:

TERCERO: La Municipalidad de Parrita, realizó las gestiones de notificación y paralización de obras del proyecto Condominio Horizontal las Olas.

CUARTO: Que dicha notificación se debió realizar acompañado de los oficiales de la Fuerza Pública Mauricio Quesada Mora cédula 1-1000-183 y Mario Vargas Álvarez cédula 5-233-999, debido a que los representantes del proyecto se negaron a recibir la notificación OIM N° 119-2011.

QUINTO: Que dicha notificación se entregó al señor Jovan, en presencia de los oficiales de la Fuerza Pública de Esterillos, Quesada Mora y Vargas Álvarez.

25

45. Pursuant to Mr. Damjanac, then not only the notifying servants but also the members of the public force lied about the events on May 11, 2011.

About the notification of document OIM 114-2010:

46. Mr. Damjanac denies to have been notified of document OIM 114-2010 where the Department of Urban Development requested him to obtain construction permits before continuing with earth moving activities and works on private streets:

"First, even though Mr. Aven shall confirm this, we never received the notification mentioned in the Documentary Proof No. 35 of the Respondent, which is a document called "OIM No. 114-2010". Then it is not surprising that Ms. Vargas cannot prove any signs that we have received at any moment any notification through such document."²⁶

47. The case file record of the Department of Urban Development shows that the Claimants were indeed notified via fax on June 15, 2010, through this document.²⁷

Faxes are not proper forms of notification.

48. Mr. Damjanac further denies that earth-moving activities were performed in the Project, contrary to what the Department of Municipal Engineering reports:

"Secondly, we neither performed any works on such date, apart from general cleaning, like the planting and raking of leaves and waste. I am not sure about what Ms. Vargas describes as "earth moving activities", since there is not a specific definition for that, but if raking leaves and waste means that, then I suppose we were involved in that limited activity."²⁸

49. This document is part of the case file assigned to the Project Las Olas in the Municipality and this is why I included it in the statement of the events in my first witness statement. However, I do not work for the Department of Municipal Engineering, for which reason Mr. Damjanac cannot personally accuse me of declaring the existence of "earth moving activities" in the property. This is something that was reported by the pertinent Department and notified via fax to the Claimants in the year 2010.
50. The Claimants simply question the truthfulness and legitimacy of each of the reports that does not favor their interests.

About the notification of document OIM-558-2012

51. Again, Mr. Aven denies to have been notified with document OIM-558-2012 through which a query of Mr. Sebastián Vargas Roldán, his attorney, was replied, on the legality of the permits for the construction of works of the Las Olas Project.²⁹
52. The case file shows that such query was made by Mr. Vargas Roldán on August 7, 2012 before the Municipality. The Department of Urban Development served the query of Mr. Vargas Roldán on August 20, 2012 through document No. 558-2012, which document Mr. Aven denies to have received.

I stopped using Sebastian Vargas is my attorney the end of 2011 and began using Manuel Ventura. Ms Vargas and everyong else at the MUNI knew that since Manuel was down there quite often druing 2012. Whatever Mr. Mr. Vargas was engaged in in 2012 was not authorized by me and I have no idea of what she's talking about.

53. \Not only does the case file show that such document was notified via fax to Mr. Vargas Roldán but also through a letter dated August 22, 2013, addressed to the Municipality, Mr. Vargas Roldán admits to have received the document No. 558-2012 and requests additional information:

Ahora bien, mediante oficio OIM No. 558-2012 de fecha 20 de agosto del 2012 el señor Ing. Jorge Alvarez Mondragón, en su condición de Gestor de Desarrollo Urbano y Social de la Municipalidad, me informa en respuesta a mi carta que en virtud de la orden recibida por parte del Tribunal Ambiental Administrativo se aplica restricción para cualquier actividad constructiva en el lote de mi propiedad, orden que le fuera emitida con posterioridad a la compra que hice del inmueble.

30

54. I do not understand how Mr. Aven argues that they were never notified of such document, if it was Mr. Vargas himself who requested more information after having received such document. It is the accusation of Mr. Aven which "lacks true grounds".

Again, I stopped using Sebastian Vargas is my attorney the end of 2011 and began using Manuel Ventura. Ms Vargas and everyong else at the MUNI knew that since Manuel was down there quite often druing 2012. Whatever Mr. Mr. Vargas was engaged in in 2012 was not authorized by me and I have no idea of what she's talking about.

6. ABOUT MY TESTIMONY IN THE CRIMINAL TRIAL

55. Mr. Aven raises personal criticism about my testimony during the criminal trial:

"During the trial, Ms. Vargas admitted that she had never seen swamps at the project site, that she was not an expert on the matter, that she never saw Mr. Damjanac or me doing anything illegal at the site, that she did not even know me, and that, in fact, she had never entered the project site. **It is clear that during her testimony in the trial, the lack of first-hand knowledge of Ms. Vargas challenge her credibility. Her testimony lasted some 20 minutes and she could say anything supporting the arguments of the office of the attorney general, and she did not submit any direct evidence proving that we had committed any of the crimes we were accused of.**"³¹

56. Neither the Municipality nor the Environmental Management department are the ones

certifying the existence of wetlands, of forests, of the type of forests, if any, if an area is a protected area or others. These competences belong to the pertinent institutions so determined by the law, in this case, the SINAC-MINAE. It would be irresponsible and unethical on my part to manifest with utmost certainty that there existed within the Las Olas Project a protected zone, like a wetland.

57. The Environmental Management departments of the Municipalities look after the care, protection and safeguarding of nature, but we do not provide categorizations of the zone type. For that reason, the SINAC is always requested to intervene and verify if in an area there exists a forest, grassland, dense thicket, or any other ecosystem deserving special consideration.
58. In any case, the personal opinions of the Claimants on my testimony during the criminal trial are irrelevant, since I understand that the only authority with competence to issue an opinion on my testimony within the criminal trial followed against Mr. Aven is a criminal judge of the Republic of Costa Rica.

There is a trial transcript of what Ms. Vargas said, can we please check to verify that what I'm saying about Ms. Vargas testimony is true. Again I need to prepare for my cross-examination. We don't need a trial just to explain testimony at the criminal trial, we all can understand words and what they mean.

7. **ABOUT THE ACCUSATIONS OF MR. AVEN**

59. Even though in my testimony before the criminal judge I indicated that I did not know Mr. Aven, he accuses me of making "false and ridiculous" statements against him:

"During the testimony of Ms. Vargas in my criminal trial, it was clear enough that she did not even know me, but that did not prevent her from making her false and ridiculous statements. If she did not know me, on which elements does she ground her statement? What I am sure about is that Ms. Vargas had no interest in complying with the resolutions of the SETENA, which are enforceable pursuant to the Costa Rican law."³²

The above statement I made before was true and it still is true. So what is she saying that is contradicting my statement.

60. I want to highlight that I do not know Mr. Aven and, for that reason, he cannot argue that my relation in the investigation to the Project Las Olas originated in a "personal situation" against him. At all times I acted pursuant to the precautionary principle and I would have done the same if the case would be about a developer of Costa Rican nationality or of any other origin who was acting against the environment.
61. Following I will specifically refer to some of the allegations of Mr. Aven against the events reported by the DeGA.

Machinery operating at the site

62. Mr. Aven denies the facts reported in my report dated June 16, 2010 (DeGA-091-2009):

"In paragraph 62 of her Witness Statement, Ms. Vargas also refers to a report on a site inspection that an officer of the ACOPAC-MINAET carried out in January 2010 due to the "machinery operating at the site". This is another defamatory and false accusation that is groundless. There could not have been any heavy machinery at the site at that time, in January 2010, since Jovan Damjanac had just resumed the operations in that month and no work was being then developed. Therefore, there is no possibility that any type of machinery was at the site, unless that for Ms. Vargas some loan mowers are "machinery".³³

63. This is completely false. There exist photos of the situation present at the site. Additionally, I was not the only person who went to the site, since I was joined by the officers of the MINAE, who could verify the presence of heavy machinery operating at the property. I reject the unfortunate, rude and unwise accusation of Mr. Aven that, supposedly, I am not capable of noting the difference between "a mower" and the heavy machinery that was in operation at the site.

Again no statements no witness statements from anybody, no statement of what kind of machinery it was, nothing except false and unsupported accusations and allegations know evidence that will be supported in any trial or hearing

Collapse of the storm water system

64. Mr. Aven accuses me of "cast doubt" on his project for having referred to the content of a report sent to the Claimants by the Department of Urban Development Management informing them that the driveline of storm waters coming out from the Las Olas project site had caused floods in the town (Document OIM 244-2011). Mr. Aven represents that:³⁴

"In the witness statement of Ms. Vargas, she makes numerous attempts to cast doubt (groundless) on the Las Olas project. Another example of this tactic is her description of the collapse of a storm water system at the project site, which she inexplicably attributes to Las Olas since, in her view, the "construction information in the blueprints submitted to the municipality did not match what had actually been constructed". Again, this is another defamatory and false accusation that is groundless. Ms. Vargas omits to provide any type of specific information whatsoever on any of her accusations."³⁵

65. Firstly, I did not prepare this report, and I have never taken authorship of it. It clearly arises from the text of the report sent by the Manager of Urban Development of the Municipality to the Claimants. I was never involved in the preparation of the report, and I only mentioned it in my witness statement, since this is one of the many documents, filed with the case file, which were sent to the developers, where they were informed of the issues of the Las Olas Project in the Municipality.
66. Secondly, Mr. Aven awards to me the authorship of the statements contained in the report. I have never said that I myself prepared or that I am responsible for Document OIM 244- 2011. Paragraph 85(4) of my statement clearly states that:

"On August 10 2011, the **Municipality notified** Mr. David Aven and Mr. Jovan Dushan Damjanac of the fact that the collapse of the driveline of storm waters coming out from the Las Olas project site had caused floods at the town and that the construction details submitted in the blueprints to the Municipality did not match what was actually constructed. This is why it was requested to submit some relevant technical information as soon as possible."

67. I do not understand how Mr. Aven can understand from such paragraph that I "*have attributed the collapse of the storm waters driveline to Las Olas*" or how I could be the person making an opinion on the blueprints and constructions when that is not a competence of the DeGA, the entity I exclusively work for.

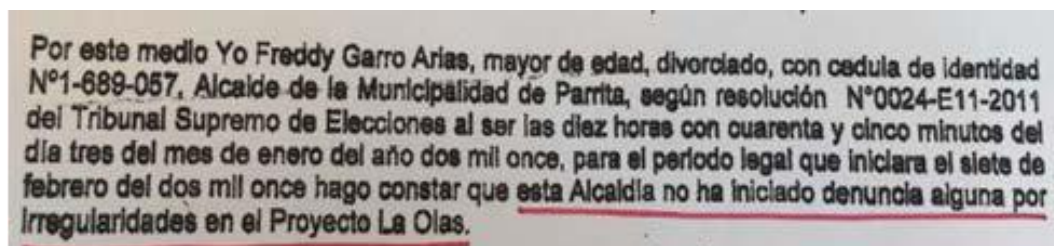
I guess the problem with Miss Vargas is she keeps making hearsay statements that are not supported by facts and evidence. she has the direct knowledge about statements that she's making, she simply should not make them and stop making hearsay statements which he has no knowledge of.

Letter from the Major

68. Mr. Aven refers to a letter sent by the Major of Parrita to the Claimants certifying that "*there existed no irregularities*" in the Las Olas Project.³⁶ Moreover, he mentions that:

"Ms. Vargas made her false statements despite the existence of the letter that Mr. Freddy Garro, mayor of Parrita, **sent to me, confirming that we were never notified of any complaint regarding irregularities in the Las Olas project.**"³⁷

69. Firstly, I want to make it clear that I am unaware of the origin of this letter, since I had never seen it before participating in this arbitration.
70. Secondly, the letter never confirms that there existed no irregularities with the Las Olas Project; the letter certifies that "the Town Hall has not filed any complaint for irregularities in the Las Olas Project":



Por este medio Yo Freddy Garro Arias, mayor de edad, divorciado, con cedula de identidad N°1-689-057, Alcalde de la Municipalidad de Parrita, según resolución N°0024-E11-2011 del Tribunal Supremo de Elecciones al ser las diez horas con cuarenta y cinco minutos del día tres del mes de enero del año dos mil once, para el período legal que iniciara el siete de febrero del dos mil once hago constar que esta Alcaldía no ha iniciado denuncia alguna por irregularidades en el Proyecto La Olas.

38

71. One thing is to say that no formal complaint has been filed against the project and another different thing is to affirm that "there exist no irregularities with the Project." The affirmation of the Major was correct; the Municipality never filed a criminal complaint against the Las Olas Project. The coordination tasks performed by the DeGA never ended in a formal complaint against the Project. I understand that other bodies, like the SINAC, did indeed file a criminal complaint against the Project.
72. The letter neither affirms that "they were never notified of any complaint", as provided by Mr. Aven. I repeat this, the letter affirms that the Town Hall did not file any complaint against the Las Olas Project.

Now unless Ms. Vargas cannot read understand the Spanish language, she could've seen that the letter was written by her boss the mayor. However, it appears she failed to have a discussion with him to determine exactly what he meant by sending a letter. The letter states that he checked the files any municipality and there was no irregularities going on at the Las Olas project site. He further stated, any also check the files of the previous and ministration and going find no complaint letters there as well. So once again, no witness statements contradicting what I said in my witness statement.

73. Additionally, I wish to mention that on May 5, 2011, I prepared, upon request of major Freddy Garro, a report on the Las Olas Project situation (DeGA-061-2011), where I indicated that the DeGA requested the ACOPAC- MINAE to initiate an investigation on the situation in Las Olas, and that an investigation had been requested from the Administrative Environmental Court on the situation of the Project.³⁹

8. **ABOUT THE ASSESSMENT OF MR. MINOR ARCE SOLANO**

74. Mr. Arce states to have reviewed the reports issued by the DeGA in reference to the Las Olas Project. Before referring to my reports, Mr. Arce criticizes the complaints filed by the neighbors in 2009 before the Municipality, which were the ones indicating the procedure carried out by the DeGA.⁴⁰ Mr. Arce mentions that:

"The complaint does not accredit that the neighbors filing complaints are experts neither in forestry matters, nor in fauna matters or wetlands."⁴¹

75. Mr. Arce seems to be totally unaware of the precautionary principle under which any person, an expert or not, with or without technical and scientific grounds, has the right to file complaints evidencing or suspecting damage to the nature, and these complaints shall be duly served by the public institutions.

Ms. Varga seems to be totally unaware about her responsibility under the law to obey and comply with SETENA resolutions

76. The Claimants, in reference to the "review" of my reports made by Mr. Arce, argue that such review has allowed them to prove how my reports lack any "reliability":

"Moreover, Mr. Arce explains why the conclusions of Ms. Vargas regarding the presence of a forest in Las Olas lack any grounds, and therefore, any reliability"⁴²

77. Following, I will refer to his specific statements on the "lack of reliability" of my reports.

About my report dated April 26, 2009 (DeGA-049-2009)

78. About my report dated April 26, 2009 (R-26), which gave follow-up to the complaints filed by neighbors against the Claimants and which reported the cutting-down and burning of trees at the Las Olas Project site, Mr. Arce states that:

"Ms. Vargas informs that she observed at the distance, since she could not access the property, the cutting-down and burning of trees, but the trees are not identified. In that regard, we must make it clear that not all the trees cutting-down activities in Costa Rica are prohibited, and as I indicated, at the moment of my visit to the site in September 2010, I found trees species inside the property that require no authorization for cutting-down. Therefore, it is possible that Ms. Vargas has observed the cutting-down of trees that requires no authorization. **Another important** clarification that must be made is that most of the forest fires are due to a criminal hand, as I explain in paragraph 14 of this statement."⁴³

79. Mr. Arce insists on justifying the illegal cutting-down and burning of trees carried out in the Las Olas project from the year 2009:

"In relation to the burning of trees identified by Ms. Vargas in the month of April of the

year 2009 (R-26), it is directly linked to the driest period of the year in which fires are more likely to happen. **Moreover, we must remember that the most of fires in this area are caused by a criminal hand, accidents, agriculture activities, and also as a consequence of activities of illegal hunting, among other actions.** So, there is no absolute certainty on how the alleged burning was performed. It could have been caused by any of the above-mentioned causes."⁴⁴

When Mr. Vargas simply doesn't understand is that in 2009 there was no work going on whatsoever on the Las Olas Project site. The project was closed completely for the entire year of 2009 due to the financial crisis of 2008. So what you saying you regarding 2009 is totally fabricated. We were not even doing any any maintenance on the property site whatsoever. No one was cutting grass or cutting any trees nothing Nota de Nada.

80. The possible causes that Mr. Arce mentions for justifying the cutting-down and burning of trees make little sense. Should the fires have occurred as a result of a "criminal hand" as provided by Mr. Arce, the minimum thing one would expect is the filing of a criminal complaint by the developers. To my knowledge, the Claimants never filed any such complaint or claim. Moreover, since the burnings were reported during the weekends, they were not an isolated event. In fact, it makes little sense that the "criminal hand" would only operate at the weekends. Could it then be that the alleged arsonists to whom Mr. Arce attributes the burning of trees only commit crimes at weekends? Under the theory of Mr. Arce, these criminals attacked the property of the Claimants on several occasions, since the surrounding properties suffered no burning whatsoever.
81. Additionally, there existed no type of agricultural activity in the project, for which reason this could neither be a cause of the burning. If it had been an accident, it could not be understood why the neighbors permanently complained and even called me during the weekends. An accident may occur during an isolated occasion but the cutting-down and burning of trees for a term longer than one year (from 2009 to 2010) cannot be attributed to "an accident".
82. Mr. Arce further states:
"It is curious that April 26, 2009 was a Sunday, and that in paragraph 14 of her witness statement he indicates that public officers do not work at weekends." ⁴⁵
83. I do not understand which the point that Mr. Arce wants to prove here is. If the date appearing in my report was a Sunday, probably it was a mistake. And, anyway, the fact that the report was not prepared on a business day does not mean that a public officer cannot process it and approve it should it be necessary. By virtue of the precautionary principle, this is what actually happened, and not the contrary. Additionally, the fact that the report was approved on a non-business day or at non-business hours does not mean that the tasks of the public officers are invalid.
84. Moreover, as I mentioned above, I would receive calls from the neighbors complaining about the burning at the Las Olas Project during the weekends. Ms. Chamberlain called me on several occasions to report these incidents.
85. Mr. Arce mentions that:

"Lastly, in the report, I note that there is no reference to her credentials as expert on forestry matters of Ms. Vargas. This is a very common aspect in Costa Rica: that every person believes to be an expert in forestry matters when actually it is a highly specialized engineering branch and with a very solid legal framework. Additionally, it is clear that the people refer to a group of trees as a forest without having any forestry knowledge and what we legally consider a forest, since not every group of trees can be legally considered as a forest. There exist very varied legal and technical criteria going from the tree species, going through physical features related to the diameter, height to other aspects that have to do with the density of trees, to mention but a few."⁴⁶

86. Document DeGA-049-2009 clearly reads "[...] can be observed"; there is affirmation on trees species, or type of damaged area, or technical-forestry judgment whatsoever. On the contrary, for such reason, the cooperation of the MINAE is requested, for such entity to technically determine what happened. As clearly stated by Mr. Arce, I do not have those credentials to certify the existence or not of a specific type of vegetable species, this is why I requested the cooperation of the pertinent institutions like the SINAC. It would be very irresponsible on my part to ignore the situation reported by the neighbors or to affirm with certainty which the species affected by the cutting-down and burning were.

87. Mr. Arce again criticizes the "methodology" of my report:

"In relation to the methodology, as I indicated above, it is a simple observation based on the stories of alleged neighbors of the area. However, no scientific or solid element arises that may serve as methodological grounds for the conclusions arrived at."⁴⁷

88. My report does not constitute, and I never intended it to constitute, a technical categorization of the area; it was simply reported what was going on at the project site, and the judgment of the MINAE was requested as an entity responsible for making technical specifications Mr. Arce so often speaks about. Moreover, I repeat that the neighbors have no reason why exposing technical or scientific elements for the DeGA to investigate facts that, at a glance, constitute possible violations to the environmental legislation. The investigation in which the technical and scientific criteria are collected on violations to environmental laws is carried out later on by the competent institution, in this case the SINAC-MINAE.

89. Lastly, Mr. Arce pays close attention to the caption of Figure No. 4 of my report:

"Fig. 4- A description that is not precise is added, since it indicates that there is a "forest at the back". However, the term "forest" has a legal connotation (Art. 3 of the Forestry Law) and that picture shows -at a first glance- herbaceous vegetation that cannot be classified as a forest. This classification is supported in my 31-year experience that allows me to count on sufficient elements in order to determine whether an area qualifies as a forest or not. It is clear that for such purposes, a more detailed study must be conducted, but there is no doubt that the reference picture is clear enough and shows no signs whatsoever that the area concerned can be a forest pursuant to the legal content of Article 3 of the Forestry Law."⁴⁸

"In this context, considering the report of Ms. Vargas, in particular figure 4 supported by the caption "Forest at the back", it is not technically correct to state that it is a forest, since **there is no evidence whatsoever to determine that the legal requirements therefor are met, and from the analysis of figure 4 no forest can be observed and there are no signs of any burning.**"⁴⁹

90. It is very surprising to me that Mr. Arce affirms that "there is no evidence whatsoever" of "any forest" nor of "signs of burning". It seems that Mr. Arce only saw the picture of the report in black and white provided by the Claimants and not the color pictures filed with the case file at the offices of the DeGA and the picture that Costa Rica provided within the Arbitration as annex R-26:

Picture contributed by the Claimants:



Picture contributed by Costa Rica:



91. Clearly, any person, without the technical or scientific knowledge that Mr. Arce so much insists that must be applied, could note that the cover of the soil observed in color black corresponds to the burning; and the areas in grey correspond to the ashes, as a result of the burning. If Mr. Arce were interested in finding the real truth about the facts, it would be allowed the possibility to recognize that there is evidence of burning and of forest presence, and the grounds therefor would be investigated, instead of justifying a defense without any grounds, ignoring the precautionary principle and the principles of the profession he so much defends.

About my request for information to the Construction Department (DeGA-090-2010)

92. Mr. Arce wrongly qualifies this document as a "report" and accuses the "report" of non-stating "vegetation that can lead to conclude that a zone is a wetland."⁵² From the text of the document, it clearly arises that it was neither a "report" nor any technical study seeking to identify or determine elements that are intrinsic to a wetland. The only purpose of Document DeGA-090-2010 was to request information from the Constructions

Department of the Municipality on the Las Olas Project:

Señora: Ing. Shelen Castro

Departamento: Construcciones

Asunto: Solicitud de información sobre proyecto las Olas, Esterillos oeste, Parrita.

Estimada ingeniera,

El departamento de gestión ambiental ha recibido por parte de algunos vecinos de la comunidad de Esterillos la denuncia sobre construcciones del desarrollo las Olas, en Esterillos Oeste, ya que la zona según los vecinos es un sitio de humedal.

Sin embargo, no existe ninguna certificación que acredite este lugar como humedal, pero debido a la complejidad y delicadeza de la situación y mientras el departamento de Aguas del MINAET se pronuncia para determinar la categoría del sitio, le solicito se me brinde toda la información sobre el expediente de este desarrollo.

Esto con la finalidad de poder justificar cualquier situación que se presente a futuro.

Agradezco toda la colaboración.


Mónica Vargas Quesada
Departamento Gestión Ambiental
Municipalidad de Parrita


R/
3/06/10
8:37 a

53

93. I really do not understand how Mr. Arce would expect that in a request for information, internal among the departments of the Municipality (and a "report" as wrongly qualified by Mr. Arce), I could describe "*vegetation of a wetland zone*", which is neither my competence as an environmental manager nor the competence of the Municipality, but of the SINAC- MINAE.

About document DeGA-091-B-2009 dated June 16, 2010

94. Document DeGA-091-B-2009 was sent to the SINAC-ACOPAC informing it about the complaints filed against the Project and requesting the categorization of the area. Mr. Arce accuses me of basing myself on observations of the neighbors and not on "scientific grounds":

⁵³ R-29, Document DeGA-090-2010.

"In the part containing her motivation, **Ms. Vargas bases on the stories of neighbors talking about alleged activities that are performed at the weekends. In that regard, I reiterate what I indicated in the previous answers, in particular, that it is not accredited whether the neighbors are experts on forestry aspects, since there exist no scientific or technical grounds to indicate that the trees allegedly cut-down belong to species requiring permits for cutting-down.**"⁵⁴

95. I insist that it is precisely for that reason that the DeGA requests the intervention of the MINAE for it to investigate whether the developers are violating the environmental laws. The DeGA simply gives follow-up to the complaints and coordinates the investigation with the pertinent authorities to confirm whether the complaints are true and if it is necessary to impose a sanction on the developer.

96. I agree with the statement of Mr. Arce in paragraph 24 of his statement since he admits that:

"What Ms. Vargas indicates is an observation without applying technical-legal criteria or simply what the neighbors have commented; there is nothing in concrete identifying the type of tree, size, features, whether these trees required permits for cutting-down or whether they were of free cutting-down."⁵⁵

97. In fact, what I reported in my reports were my observations; I requested the technical criteria from the competent authorities, who, I understand, confirmed the existence of a forest and a wetland at the project site, thus confirming what the neighbors had been reporting from the year 2009.

Ms. Vargas lived in the Village and she certainly knew that there was nothing going on in 2009 because because the project was completely shutdown and in hibernation due to the financial crisis as stated above.

9. CURRENT SITUATION OF THE SITE

98. As I explained in my first witness statement, I became aware of the situation of the land squatters in the Las Olas Project through an oral complaint of a neighbor of Esterillos Oeste. As I will describe below, the Municipality has taken important actions to solve break-ins in the Las Olas Project.

99. This is why it was very surprising to me that Mr. Aven dare to affirm that:

"Unfortunately, the Costa Rican authorities have no taken any specific measure to vacate the occupants, who have not left the property to date. From November 2015 [I have] written three letters (the last of them sent on July 19, 2016) to the Ministry of Justice, Mr. Martínez, the municipality of Parrita and even to president Solís to request them to comply with the laws and vacate the illegal occupants and stop the irregularities that are taking place."⁵⁶

"Despite the above, they have taken no action before the terrible environmental damages that are being caused to the project site, with illegal construction works, construction of irregular streets, theft of electricity and water services and sewage illegal systems that are causing healthy problems to the community. **Where are the voices of Mr. Martínez, Mr. Piccado, Mr. Bogantes and Ms. Vargas?**"⁵⁷

100. I reject these accusations of Mr. Aven against the Municipality. The cooperation of the Municipality has been such that it has called public institutions to settle an issue taking place in a private property and not in a public one. The Municipality has tried to solve the situation

even more than the developers themselves.

101. In particular, the Municipality has taken the following actions to help the developers:

- a) October 16, 2015, some municipal inspectors visited for the first time the surroundings of the property and prepared a preliminary report addressed to the Manager of Urban and Social Development.⁵⁸
- b) October 20, 2015, the City Council informed the Public Force, the Ministry of Health and the MINAET about the situation in the Las Olas Project and requested their action within their field of action in order to support the developers.⁵⁹
- c) October 21, 2015, the Major of Parrita requested the Department of Social and Urban Health to coordinate the closing of the illegal constructions in the Las Olas Project.⁶⁰
- d) October 23, 2015, the Municipality called the Departments of the Municipality, the Ministry of Health, Public Force, National Infancy Institute, the Association Administering Aqueducts and Sewage Systems, among other, to make up an inter-institutional commission in order to help the developer out with the situation about the land squatters.⁶¹
- e) October 23, 2015, municipal inspectors joined by members of the Public Force visited the project site and closed 25 ranches built in an illegal manner.⁶²
- f) October 26, 2015, a work meeting was held at the Municipality with members of the Municipality, the Ministry of Health, the Public Force, the National Infancy Institute, the Association Administering Aqueducts and Sewage Systems and representatives of the civil society.⁶³ In the meeting, the developers were required to file the pertinent complaint before the Ministry of Public Security for the other institutions to be able to intervene.
- g) On November 16, 2015, the City Council requested information from the Director of the Eviction Department of the Ministry of Public Security on the submission of the request for eviction by the developer.⁶⁴
- h) On November 18, 2015, municipal inspectors and members of the Municipal Town Hall visited the project to give follow-up to the illegal construction of ranches.⁶⁵
- i) On November 26, 2015, municipal inspectors joined by members of the members of the Public Force made a second visit to the site and closed other ranches illegally constructed.⁶⁶

102. I met the representatives of the developers during the inter-institutional meeting called by the Municipality. Additionally, I understand that the major talked with Mr. Ventura on several

occasions. I myself sent the call on October 23 to the representatives of the public institutions⁶⁷ and I sent a representative of the DeGA, Liseth Montero Astua, to two of the inspections conducted at the property.

103. From the very beginning, the Claimants were informed that it was **their responsibility** to file the pertinent legal actions before the competent institutions in order to carry out the process for eviction of the occupants.

104. In the minutes of the meeting dated October 26, 2015, it is stated that bachelor Ingrid Jiménez indicated to the developers that "*the public institutions cannot do much about [the] situation*" and that it was necessary for the owners of the lots

Affected file a formal complaint before the Public Ministry, the entity competent to process an administrative eviction process.⁶⁸

105. The minutes also state the warning made to the Claimants by the head of the police, Mr. Didimo Lopez, who indicated that as far as a formal complaint is not filed before the Public Ministry, the Public Force could not carry out any physical eviction.⁶⁹ The Major confirmed that the developers, to date, had not filed any complaint before the Public Ministry.⁷⁰

106. The last items on the minutes of the meeting clearly show that, by consensus of the representatives of the public institutions, the developers were made aware of the fact that it was **their responsibility** to initiate the process before the Public Ministry:

NUEVE. Se le recalca al señor Jovan que, para que el proceso de desalojo inicie es necesario que ellos pongan la denuncia formal al Ministerio de Seguridad, y que por lo tanto, no se haya puesto esta denuncia es difícil que las instituciones como Municipalidad, Fuerza Pública y otras puedan resolver esta situación.

Por lo tanto, las acciones interinstitucionales van dirigidas al dueño registral.

71

The competence of the Municipality

107. As it was explained to the Claimants in the meeting held on October 26, 2015, the physical eviction of the occupants is not an action that corresponds to the Municipality or the institutions of the Parrita canton, but it an exclusive competence of the Public Force, which carries out this action upon request of the Ministry of Public Health. This is why it is surprising to me that Mr. Aven mentions that it is the Municipality the entity responsible for evicting the occupants:

"My attorney, Mr. Ventura, has exchanged numerous text-messages with the major and visited the municipality on several occasions, the Ministry of Security, the court and the offices of the police to submit letters and requests to evict the occupants. Despite the representatives of the Ministry of Justice and the **municipality of Parrita have said on several occasions that they would evict the occupants, nothing has happened so far.**"⁷²

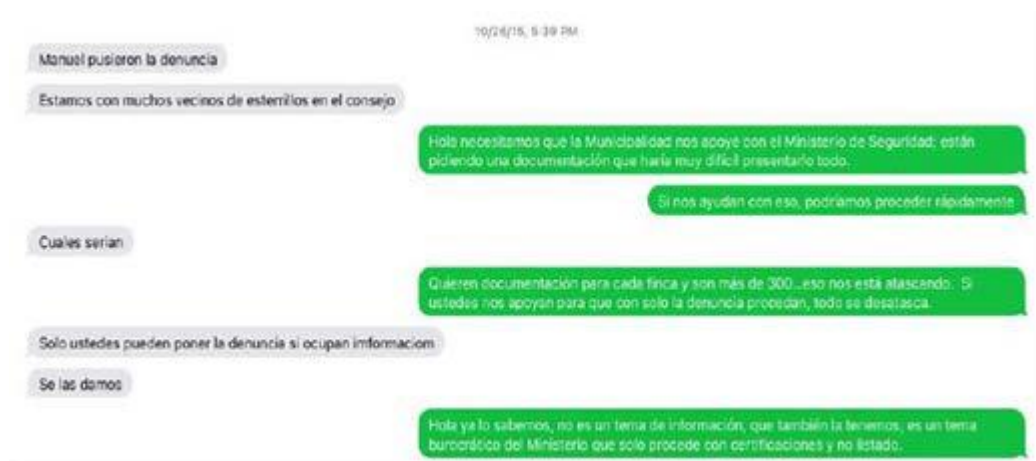
108. The Municipality cannot carry out any eviction processes in private lands and both the Claimants and their attorneys perfectly know that. In the meeting held on 26

October 2015 it was registered in the minutes of the meeting that Bachelor Ingrid Jiménez explained that:

CUATRO. La Lic Ingrid Jiménez, del dpto legal de ZMT, indica que es poco lo que las instituciones públicas pueden realizar con esta situación, que se requiere que los propietarios de los lotes envíen una denuncia formal al Ministerio Público para poder iniciar un proceso de desalojo. No se pueden invadir competencias.

73

109. In the same way, the messages presented by Mr. Ventura about his talks with the Major, show that the on October 26, 2015, the Major highlighted to Mr. Ventura that only "the owners" could file a formal complaint:



74

110. Even though the Municipality cannot get involved since the land concerned is a private property, and since the process shall be processed by the owners, both the Major and the representatives of the DeGA made visits to the Eviction Department of the Public Force in order to coordinate the necessary processes for the eviction. In such Department, they indicated that this was an issue that should be completely dealt with by the owner of the property. However, the Municipality tried, at all times, to cooperate in the finding of a solution, which once more serves as evidence that I had nothing personal against the Claimants or their project.

111. I do not then understand how Mr. Ventura affirms that during the course of this year he has been putting pressure on the Municipality for it to process the eviction:

"Then, I made a visit to the Municipality in order to put pressure on the authorities for them to process the eviction immediately."⁷⁵

112. It surprises me that Mr. Ventura, despite being a lawyer "*specialized in administrative Law*"⁷⁶ keeps insisting on the fact that the Municipality should have taken actions regarding the eviction. Mr. Ventura well knows that the Municipality has no municipal police but that it always must resort to the support of the Public Force for processes involving any type of use of the public force.

113. I have witnessed that the Claimants have shown great disinterest in taking legal actions against the occupants living in their property. First, I remember that the Major had to call Mr. Ventura on several occasions to process the eviction process before the Ministry of Public Security, the institution in charge of carrying out administrative eviction processes in Costa Rica.
114. Second, I understand that a person safeguarding the property lives at in the house built in the property of the Claimants. Such person is the one that supplies water and probably light to the occupants living in the property. If the Claimants hired a keeper for protecting their property, how can it be possible that this person not only has allowed foreigners to take hold of the land but he also supplies them with the basic services for them to be able to continue living there?
115. Third, on November 16, 2015, the City Council, before the lack of information on the part of the Claimants, requested the Director of the Eviction Department of the Ministry of Public Security to inform whether the Claimants had submitted the request for eviction.⁷⁷ In that document, the City Council explained that:
- "[t]he Municipality of Parrita has tried to cooperate to the best of its ability, it has sent notes to the Ministry of Health, MINAE, the Public Force, in addition to conducting an inspection and issuing seals for the constructions without the corresponding construction permit, the situation has been communicated to Ms. Paula Murillo Alpizar, Legal Representative without limitation of Trío Internacional Inc. S.A., but she has not come to the Municipality and it is unknown to us what steps [the owners] have undertaken before the Ministry of Public Security, today, a neighbor filed a copy of a document which apparently Ms. Paula Elena Murillo Alpizar filed with the Ministry of Public Health requesting the eviction of the people who accessed the properties; however, this note is only a copy, and it is not accompanied of an acknowledgment of receipt of the Ministry of Public Health or a fax document verifying its delivery, the fax document contributed seems to have a wrong date, for which there is doubt about its existence."**⁷⁸
116. This document clearly shows the concern of the Municipality to know whether legal actions had been initiated by the Claimants given their lack of communication with the authorities.
117. On this matter, I also want to shed light on the issue of the note I observed in the mobile phone of the Mayor of Parrita, the existence of which Mr. Ventura denies. In my first witness statement, I explained that the owners of the project had sent a handwritten note to the police which *"showed their complete disinterest on the matter since such note did not comply with the minimum requirements for it to be considered a formal complaint."*⁷⁹ Mr. Ventura affirms that *"no note was ever sent"* and that my statement *"is completely false."*⁸⁰
118. I do not agree with the statements of Mr. Ventura. I reaffirm that I saw the picture of the handwritten note submitted to the police of Parrita in the mobile phone of the Mayor. Given the insistence of the Claimants and the false statement of Mr. Ventura, I have had the Mayor send me the photo that Mr. Ventura sent to his mobile phone:



81

119. As I explained in my first witness statement, the note dated October 2015 is addressed to the Public Force and it was signed by Mr. Damjanac, the representative of the Claimants.
120. Additionally, I observe that in the messages exchanged between the Mayor and Mr. Ventura, Mr. Ventura himself refers to the note submitted before the Public Force

(Parrita police) admitting that "*he has a copy of it*", also that the note was "**submitted in writing**" and that "**the formal complaint** would be filed on such date with the Ministry of Security".



82

121. This conversation shows, as admitted by Mr. Ventura, that the "handwritten note" described in my first witness statement or the note "submitted in writing" (as called by Mr. Ventura) did indeed exist, and the Claimants are the ones who have not wanted to submit a copy within the Arbitration. Precisely Mr. Ventura sent this note via e-mail to the Mayor:

Enviado desde mi iPhone

Inicio del mensaje reenviado:

De: "Manuel E. Ventura" <mventura@faciolegal.com>
Para: "Freddy Garro" <freddygarro@hotmail.com>
Asunto: Documento Policía

[cid:BA3489DE-C7ED-42DF-89C3-607CAEAA79C1@epvgi-config.loc]



83

122. Lastly, I note that Mr. Ventura affirms to have **delivered** to me two letters, on November 2, 2015 and December 9, 2015.⁸⁴ I deny having received such letters. Mr. Ventura never delivered to me any letters and I am not aware of their existence or content. Mr. Ventura has not presented any pieces of evidence or any proof that either I nor someone from the DeGA received such letters.

10. **ABOUT THE MÁLAGA PROJECT**

123. I note that at the end of his witness statement, Mr. Damjanac makes several statements regarding the Málaga Project.
124. As far as I understand, this project, during its construction process has received several inspections, not only by officers of the Municipality but also by an inter-institutional commission made of members of the Municipality, the Federal Association of Engineers and Architects and the National Insurance Institute.
125. To finish, I can confirm that no type of complaint against the Málaga Project has been filed with the DeGA. However, if the Claimants consider that this or other development processes are affecting the environment, I invite them to file a complaint before the DeGA for it to be processed. As with the Las Olas Project, the Municipality has the obligation to serve any and all complaints filed and to process them through the request for investigation to the competent authorities.

11. **STATEMENT OF TRUTH**

I, Mónica Vargas Quesada, ratify the content of this witness statement and declare that the content and the affirmations therein contained are true.

Signed,

A handwritten signature in dark ink, appearing to read "H. Mesa". The signature is fluid and cursive, with a large initial "H" and a stylized "Mesa".

October 28, 2016