

Exhibit RWE-003

Witness Statement of Sabrina Loáiciga Pérez

July 14, 2014

English Translation

[Translation]

**UNDER THE UNCITRAL ARBITRATION RULES (2010) AND CHAPTER 10,
SECTION B OF THE UNITED STATES – CENTRAL AMERICA – DOMINICAN
REPUBLIC FREE TRADE AGREEMENT**

*Spence International Investments, LLC, Bob F. Spence,
Joseph M. Holsten, Brenda K. Copher,
Ronald E. Copher, Brett E. Berkowitz,
Trevor B. Berkowitz, Aaron C. Berkowitz and Glen Gremillion
(Claimants)*

v.

*Republic of Costa Rica.
(Respondent)*

ICSID Case No. UNCT/13/2

**Witness Statement of Sabrina Loáiciga Pérez
Registrar of the Industrial Property Registry
July 14, 2014**

I. INTRODUCTION

1. My name is Sabrina Loáiciga Pérez, I am a Lawyer and a Notary. I graduated from the *Universidad Internacional de las Américas* in 2001. I am currently the Registrar at the Commercial Trademarks Department, Industrial Property Registry, which is part of the National Registry.

2. Before working at the Industrial Property Registry, I worked in the Human Resources Office at the Ministry of Energy and the Environment in June 2004. I worked in the National Conservation Areas System (“SINAC”) as Legal Coordinator from July 2006 until May 2010. In that position, my duties were focused on supervising and

coordinating all legal activities at SINAC.¹ In that position, I had general knowledge of the private land expropriation process within the *Las Baulas* National Marine Park.

3. In this witness statement, I will explain the functions of SINAC in environmental protection management in Costa Rica. Then, I will provide a general explanation of the policy maintained by SINAC with respect to the consolidation of the *Las Baulas* National Marine Park. Finally, I will respond to Claimants' allegations regarding the actions by SINAC in the expropriation of their lands within the National Park, while I was in office.

II. FUNCTIONS OF THE NATIONAL CONSERVATION AREAS SYSTEM

4. SINAC was created in 1998 through Law No. 7788 ("Biodiversity Law"), for the purpose of implementing any policies necessary to achieve sustainability in natural resources management in Costa Rica.² Thus, SINAC is the agency in charge of institutional coordination and management to define strategies and policies to develop each Conservation Area into which the Costa Rican territory is divided. SINAC is a comprehensive conservation concept that offers the possibility to develop responsible public management, with participation from the government, the civil society, the private sector and any individual in the country who is interested in and committed to constructing a healthy, ecologically-balanced environment.³

5. SINAC is comprised of five main bodies: (i) the National Council of Conservation Areas; (ii) the Executive Secretariat; (iii) administrative structures within

¹ See Document of Sabrina Loáiciga's Duties [Annex SL-1].

² See Biodiversity Law, Law No. 7788, May 27, 1998 ("Biodiversity Law"), Art. 22 [Exhibit R-017].

³ See Political Constitution of the Republic of Costa Rica, Art. 50 [Exhibit R-018].

the Conservation Areas; (iv) the Regional Councils of the Conservation Areas; and (v) Local Councils.⁴ The main duties of SINAC include: (i) defining strategies and policies involving the consolidation and development of protected areas in Costa Rica; and (ii) supervising and auditing the technical and administrative management of Conservation Areas; defining guidelines, among others.⁵ SINAC is within the scope of the Ministry of Energy and the Environment and Telecommunications (“MINAE”).

6. SINAC is comprised of eleven Conservation Areas.⁶ Conservation Areas are territorial units within Costa Rica with administrative boundaries. The Conservation Areas are responsible for implementing applicable natural resources legislation within their geographic boundaries. In addition, the Conservation Areas must execute policies for consolidation of the protected areas approved by SINAC’s National Council of Conservation Areas.⁷ Each Conservation Area has a scientific and technical committee whose main function is to advise such Council in terms of the technical management of the area. These committees analyze and design the plans and strategies that must be implemented in each Conservation Area, which are then approved by the National Council.⁸ The *Las Baulas* National Marine Park is located in the Tempisque Conservation Area.

7. The *Las Baulas* National Marine Park was created to preserve the main nesting sites of the leatherback sea turtle in the American Pacific (the beaches of Playa

⁴ See Biodiversity Law at Art. 23 [Exhibit R-017].

⁵ See Biodiversity Law at Art. 25 [Exhibit R-017].

⁶ See Biodiversity Law at Art. 28 [Exhibit R-017].

⁷ See Biodiversity Law at Art. 28 [Exhibit R-017].

⁸ See Biodiversity Law at Art. 32 [Exhibit R-017].

Grande, Playa Ventanas, Playa Langosta). Apart from the main objective of preserving the turtles, now there are also other land and sea resources among the preservation objectives in this important protected area.

III. CONSOLIDATION PROCESS FOR THE *LAS BAULAS* NATIONAL MARINE PARK

A. THE EXPROPRIATION STRATEGY

8. The *Las Baulas* Marine Park was created in the 1990s for the purpose of protecting the leatherback sea turtles and, especially, preserving the main nesting sites of these turtles.⁹ The 1995 *Las Baulas* National Marine Park Creation Law provides that “the competent agency will process the expropriation . . . of properties within the defined area . . .”¹⁰ Until 2006, the agency responsible for executing these expropriations was MINAE, but that year the duty was transferred to SINAC.¹¹

9. The expropriation process for the properties within the National Park was initiated in 2003, at that time under the supervision and authority of MINAE. The government initiated expropriation proceedings in 2003 in order to protect the park area from additional development, which was being initiated at that time. Although this process was initiated years after the legal creation of the Park, this does not mean that the process for park consolidation was never going to take place. The owners of properties

⁹ The Guanacaste *Las Baulas* National Marine Park was created by Executive Decree No. 20518-MIRENEM, dated July 9, 1991 [Exhibit C-1b], and ratified by the Law Creating the *Las Baulas* National Park, Law No. 7524, July 10, 1995 (“*Las Baulas* National Park Law”) [Exhibit C-1e].

¹⁰ See *Las Baulas* National Park Law at Art. 2 [Exhibit C-1e].

¹¹ In 2006, the legal status of SINAC was ratified after being granted under the Biodiversity Law, but then challenged through constitutional challenge action. See Supreme Court of Justice, Constitutional Chamber, File No. 98-006524-0007-CO, Resolution No. 2006009563, July 5, 2006 [Exhibit R-019].

within the Park were fully aware that at some point, their lands were going to be expropriated pursuant to the Park Creation Law, Article 2, which was cited above.

10. The expropriation processes for the properties within the National Park were conducted according to a technical strategy that was established together with the Conservation Area. This strategy provides an order of priority to expropriate lands considering the most frequent nesting sites for turtles, the location of the properties, and the existence of infrastructure within the protected area. As a result, the following parameters were established according to the conditions of the properties to be expropriated:

- In the Playa Grande Sur area, where the lands located in open areas have the highest recorded frequency of leatherback turtles nesting;
- In the Playa Grande Norte area, which has the highest concentration of houses, but there are also undeveloped plots;
- In the Playa Ventanas area, where there are plots of land with few houses and turtles nest less frequently, but the infrastructure level is growing;
- In the Isla Verde area, which is the second most important nesting beach for leatherback turtles and where no development is expected in the short term;
- In the Cerro El Morro and Playa Ventanas area, where it is necessary to consolidate the park to maintain the species living in this area – an important buffer zone for future infrastructure developments outside the park; and
- Plots with houses which have been altered areas.

Thus, it is a reasonable strategy that responds to the main purpose of the National Park.

Over the time I worked at SINAC, the strategy was discussed informally. Although I was not at SINAC at the time, it is my understanding that this strategy was made official in 2012.

B. THE ADMINISTRATIVE STAGE OF THE EXPROPRIATION PROCESS

11. SINAC expropriated the plots located within the National Park in compliance with the Costa Rican Expropriation Law. This Law sets forth the applicable procedure to execute expropriations by the State.

12. The expropriation process starts with a Statement declaring that expropriating the property in question is a matter of public interest.¹² Then, an administrative appraisal is performed to determine the current market value of the property.¹³ These appraisals are conducted by professionals from the Regional Offices within the General Taxation Office of the Ministry of the Treasury. Once the appraisals have been performed, notice must be given to the landowners. Owners may accept or oppose the appraisal.¹⁴

13. If landowners oppose the administrative appraisal, the agency that initiated the expropriation (in this case, SINAC) issues the expropriation order (a reasoned resolution signed by Executive Branch authorities) and sends the file to the *Procuraduría General de la República* (“Office of Attorney General of Costa Rica”), which will initiate special expropriation proceedings as the legal representative for the State. In that case, SINAC must make the amount determined according to the administrative appraisal available to landowners in an account, which landowners may withdraw at any time.¹⁵

¹² See Expropriation Law, Law No. 7,495, June 8, 1995 (“Expropriation Law”), Art. 18 [Exhibit C-1c].

¹³ See Expropriation Law at Arts. 21 and 22 [Exhibit C-1c].

¹⁴ See Expropriation Law at Art. 25 [Exhibit C-1c].

¹⁵ See Expropriation Law at Art. 34 [Exhibit C-1c].

14. If expropriated owners do accept the administrative appraisal, the file is submitted to the State Notary's Office (which is within the scope of the *Procuraduría*) for the required conveyance deed of land to be prepared. Upon execution of such deed, the administrative appraisal amount is paid immediately.¹⁶

15. As has been explained, expropriation payment is made at different times depending on whether the landowner opposes the appraisal or not: if the appraisal is not accepted by owners, the amount must be ascertained by the courts, following fair price parameters set forth in the same Law. And, finally, applicable expenses and interest are paid at the time they are requested by the expropriated owner.

16. SINAC has a budget allocated to pay for expropriation compensation.¹⁷ In the event that such budget is insufficient, SINAC may submit a request for extraordinary budget allocations up to three times per year, in order to fully comply with its payment obligations with expropriated landowners.¹⁸

C. ALLEGED DELAYS IN THE EXPROPRIATION PROCESS FOR CLAIMANTS' PLOTS OF LAND

17. Claimants have stated that the government decided to stay expropriation proceedings in process at the administrative stage with the sole purpose of avoiding paying the administrative appraisal value to landowners.¹⁹ This is not true. SINAC has

¹⁶ See Expropriation Law at Art. 49 [Exhibit C-1c].

¹⁷ See, e.g., Ordinary and Extraordinary Budget Law of the Republic for the Financial Period of 2013, Budget Item for MINAE No. 70102.280.2310.2240.220, December 4, 2012 [Exhibit R-003].

¹⁸ See Law on Financial Administration and Public Budgets, Law No. 8131, October 16, 2001, Art. 45 [Exhibit R-020].

¹⁹ See Claimants' Memorial on the Merits, April 25, 2014 ("Claimants' Memorial on the Merits"), para. 287. The properties in this condition are plots V30, V31, V32, V33, V38, V39, V40, V46 and V47.

always tried to fully comply with its obligations to landowners in the process of being expropriated.

18. Expropriation proceedings at the administrative stage were stayed as a response to the study that the Office of the *Contraloría General* was conducting on expropriations at the *Las Baulas* National Marine Park at the time. Processing the expropriation of properties in protected areas, including the *Las Baulas* National Marine Park, has not been an easy task. This is precisely why the *Contraloría* decided to audit the expropriations at the *Las Baulas* National Marine Park. The audit was initiated in mid-2008, when the *Contraloría* held several meetings with SINAC officials, including myself, in order to fully understand the details of the National Park expropriations.

19. At these meetings, it became evident that the *Contraloría* would recommend a stay of proceedings in its final report in order to improve the expropriation process and protect owners' interests. Therefore, for the purpose of allowing for improvement of the expropriation process, SINAC decided to stay expropriation proceedings that were in process at the administrative stage. In addition and for the same reason, SINAC decided not to initiate new expropriation proceedings until the tasks recommended by the *Contraloría* were concluded.

20. The *Contraloría* issued its final report in 2010.²⁰ In short, the *Contraloría* issued recommendations to MINAE, SINAC and the General Taxation Office regarding park management and administration, administrative processes involving the National Park, including expropriation proceedings, and in general regarding the steps needed to

²⁰ See Report by the *Contraloría General de la República*, Report No. DFOE-PGAA-IF-3-2010, February 26, 2010 [Exhibit C-1zk].

achieve park consolidation, which required a strategic administrative action plan to prove compliance with the orders from the audit agency.

21. Once the report was issued, SINAC and MINAE started fully implementing the recommendations from the *Contraloría*. In fact, at the time when the term for which I was assigned at SINAC expired, SINAC was implementing these recommendations. However, I have no information regarding actions taken by SINAC to comply with the recommendations from the *Contraloría* after I left SINAC. Thus, the stay in the proceedings was not due to a lack of resources or unwillingness to pay, as Claimants have stated, but the result of an effort to improve the expropriation system.

22. Claimants also argue that Costa Rica is breaching its own legislation with respect to Claimants' properties at the administrative stage because it failed to comply with the six-month period to commence court proceedings in these cases.²¹ As I stated above, SINAC decided to stay expropriation proceedings once it was informed of the steps to follow to implement the recommendations from the *Contraloría*. This was a preventive measure for the sole purpose of improving the expropriation system in order to continue protecting owners' rights and prevent future impairments.

23. Further, Claimants argue that the properties which have been declared of public interest but have not passed to the court stage are in the worst status, as they have not even received the administrative appraisal amount and they have lost all rights over the properties.²² This is not true either. Because the expropriation proceedings never went

²¹ See Claimants' Memorial on the Merits at para. 286.

²² See Claimants' Memorial on the Merits at para. 292.

[Translation]

to the court stage, the Dispossession Order was never issued; therefore, the owners still have full ownership rights over these plots of land under Costa Rican law.²³

²³ See Organic Law of the Environment, Law No. 7554, May 27, 1998, Art. 37 [Exhibit R-004].

[Translation]

The information contained in this statement is true to the best of my knowledge and belief.

[signature]

Sabrina Loáiciga

Date: July 14, 2014

[Translation]

Annex SL-1

[Translation]



**NATIONAL CONSERVATION AREAS SYSTEM
EXECUTIVE SECRETARIAT
HUMAN RESOURCES OFFICE**



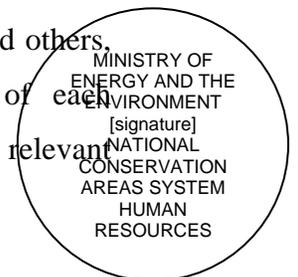
**MIRIAM VALERIO BOLAÑOS
COORDINATOR**

HEREBY CERTIFIES

That Mrs. **LOAICIGA PÉREZ SABRINA**, holder of Identity Card No. **110480896**, is an official of the Public Administration since June 01, 2004 and worked for the National Conservation Areas System until May 7, 2010, where she held the position classified as **PROFESSIONAL HEAD 2** (excluded from the Civil Service System).

According to the occupational analysis questionnaire, dated June 22, 2009 and signed by Guiselle Méndez Vega, Executive Director of the National Conservation Areas System, the tasks assigned to the position held by Atty. Loaiciga Pérez are as follows:

- To design, supervise and execute research, projects, studies, analyses and other legal activities involved in the coordination of the SINAC Legal Department.
- To participate in the planning, direction, coordination and supervision of professional technical and administrative activities of an agency.
- To direct, coordinate and supervise professional technical-legal and administrative activities conducted at the Legal Department by the personnel responsible by executing and implementing issued criteria, corrections and technical-legal suggestions, for the purposes of complying with legally required actions, avoiding any prejudice to citizens and ensuring fulfillment of Administration interests.
- To organize, coordinate, supervise and execute legal activities in several areas, such as: environmental law, forest law, administrative law, labor law and others, by proposing and holding meetings with the Legal Departments of each Conservation Area and endorsing training and refresher courses in relevant subjects,



Institutional Mission: SINAC is responsible for comprehensive management of sustainable use and conservation of wildlife, forest resources, protected natural areas, hydrographic basins and water systems together with social actors, for the benefit of present and future generations.



International Year of
Biological Diversity

[Translation]



**NATIONAL CONSERVATION AREAS SYSTEM
EXECUTIVE SECRETARIAT
HUMAN RESOURCES OFFICE**



in order to maintain updated institution-wide legal criteria and unify criteria across the Conservation Areas.

- To conduct research and analyses on the organization and disposition of the technical and administrative procedures involved in the work, applying the theoretical and practical principles of the legal profession in order to solve any issues that may arise, propose modifications, changes and other technical measures required.
- To coordinate and call meetings with the legal department of each Conservation Area, which must be duly called and scheduled in writing, in order to unify criteria on specific technical and legal issues involving the Conservation Areas.
- To prepare reports on activities conducted and submit any relevant recommendations, providing information on meetings and training sessions scheduled and their results in coordination with institutional management, for the purpose of fulfilling Administration goals and interests.
- To ensure proper application of the rules, orders, legislation and regulations that govern the activities conducted by maintaining applicable statutory and case law updated.
- To review, revise and sign documents related to the position by unifying the established legal criteria and instructions issued by superiors, in order to ensure proper processing.
- To prepare, review, analyze and revise documents such as executive decrees, legislation bills, agreements, letters of understanding, institutional handbooks where applicable legislation is incorporated, and opinions from the Attorney General for the Republic and on the General Public Administration Act, in order

MINISTRY OF
ENERGY AND THE
ENVIRONMENT
[signature]
NATIONAL
CONSERVATION
AREAS SYSTEM
HUMAN
RESOURCES

Institutional Mission: SINAC is responsible for comprehensive management of sustainable use and conservation of wildlife, forest resources, protected natural areas, hydrographic basins and water systems together with social actors, for the benefit of present and future generations.



International Year of
Biological Diversity

[Translation]

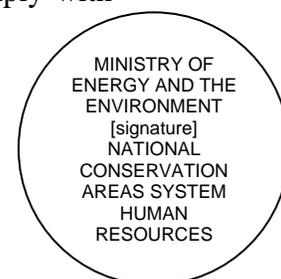


**NATIONAL CONSERVATION AREAS SYSTEM
EXECUTIVE SECRETARIAT
HUMAN RESOURCES OFFICE**



to submit final processes to superiors, as well as to ensure that publications comply with legal provisions.

- To prepare proposals for administrative official letters and orders involving specific cases or disciplinary administrative procedures, dismissal processes, among others.
- To monitor the tasks they are responsible for by establishing disciplinary administrative procedures, internal guidelines, Internal Control Rules or any other internal measure to ensure that controls are complied with according to the schedules, dates and terms established.
- To provide assistance to fully comply with the policies issued by institution superiors, to issue criteria and participate in decision-making processes in order to comply with institutional goals.
- To participate, together with the Human Resources Process coordinator involved, in the design and implementation of policies, programs and plans to establish, maintain, provide training for and develop the National Conservation Areas System by scheduling meetings and providing information on binding criteria in terms of the subject-matter of tasks and the preparation of the work plan, in order to facilitate decision-making in the Human Resources Administration involving legal implications.
- To perform professional activities aimed at conducting special audit studies in the financial, administrative and operative areas, analyzing the appropriate information and helping to provide information and legal criteria, to define work methodologies for the purpose of performing objective Audits that comply with legal provisions.



Institutional Mission: SINAC is responsible for comprehensive management of sustainable use and conservation of wildlife, forest resources, protected natural areas, hydrographic basins and water systems together with social actors, for the benefit of present and future generations.



International Year of
Biological Diversity

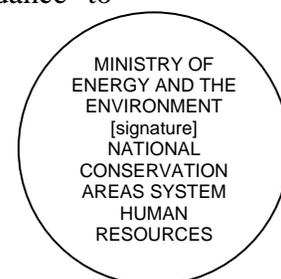
[Translation]



**NATIONAL CONSERVATION AREAS SYSTEM
EXECUTIVE SECRETARIAT
HUMAN RESOURCES OFFICE**



- To implement SINAC disclosure policies involving System officials, set legal criteria and provide supplementary information via e-mail, in order to consolidate institutional public functions.
- To train System personnel in subjects such as labor, administration, public functions, responsibilities, obligations and other areas involved in the scope of SINAC authority, to inform the personnel and update their knowledge on these topics.
- To advise the Human Resources Office Coordinator on activities involved in each work area, schedule and coordinate joint meetings and analyze cases so that decisions are made in compliance with applicable legislation in terms of human resources and labor management, with a view to providing efficient services.
- To advise the management of each functional department within SINAC and the Conservation Areas as required; to issue written or oral criteria and attend meetings where technical-legal participation is required to provide guidance in decision-making or action execution, according to the operative sector in each System department.
- To design policies and guidelines within SINAC and coordinate activities from each department with other SINAC managers and the Director's Office, which must be done by designing proposals and issuing guidelines effective for the institution, in order to ensure proper application of the provisions that regulate activities.
- To assist, participate, advise and propose issues or solutions at the National Council for Conservation Areas sessions, in order to provide guidance to members in decision-making and agreements.



Institutional Mission: SINAC is responsible for comprehensive management of sustainable use and conservation of wildlife, forest resources, protected natural areas, hydrographic basins and water systems together with social actors, for the benefit of present and future generations.



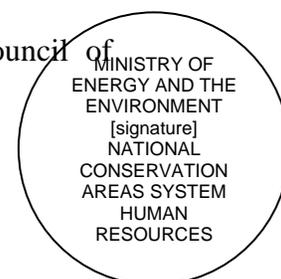
International Year of
Biological Diversity



**NATIONAL CONSERVATION AREAS SYSTEM
EXECUTIVE SECRETARIAT
HUMAN RESOURCES OFFICE**



- To represent SINAC in dismissal procedures against System officials before the General Civil Service Office, in order to conduct procedural, defense and evidentiary proceedings in dismissal procedures.
- To represent the System in contentious administrative proceedings, leading the defense for the agency according to the nature of the claim (environmental, forest, administrative, etc.), and submit documentary, expert witness and witness evidence to the proceedings.
- To attend hearings regarding full-cognizance proceedings, preferential summary proceedings and precautionary measures, at any administrative or judicial stage, representing the agency and its interests, to maintain or lift the precautionary measure, according to the interests and purposes of SINAC.
- To attend judicial inspections ordered within proceedings and go to central or regional Conservation Area sites, depending on the relationship with the subject-matter of the process; this is to verify facts and certify the evidence submitted to the proceedings, which are part of the administrative and judicial file.
- To coordinate the submission of evidence to the proceedings with personnel from each Area in order for inspections to be conducted satisfactorily, covering the Area that is subject to the proceedings.
- To approve contracts or competitive bids according to the Administrative Acquisition Approval Regulations, entering them into the Network Acquisition System from the Ministry of the Treasury, which requires password authorization, in order to comply with acquisition procedures and subsequently, upon approval, with contract performance.
- To review the documents subject to approval from the National Council of Conservation Areas (CONAC) to obtain approval and



Institutional Mission: SINAC is responsible for comprehensive management of sustainable use and conservation of wildlife, forest resources, protected natural areas, hydrographic basins and water systems together with social actors, for the benefit of present and future generations.


International Year of
Biological Diversity

[Translation]



**NATIONAL CONSERVATION AREAS SYSTEM
EXECUTIVE SECRETARIAT
HUMAN RESOURCES OFFICE**



legal criteria, where applicable, through an analysis of the scope and contents of documents such as decrees, guidelines, administrative orders, policies or agency guidelines, among others, to ensure that their scope complies with legal provisions and the administrative function.

- Internal approval of cooperation agreements entered into between SINAC and other entities by reviewing the contents of the agreement for performance thereof, in order to comply with minimum requirements from the *Contraloría General de la República* and with legal provisions.
- To visit the Conservation Areas to maintain a direct link connecting the Conservation Area personnel, their functioning and the operative sector.
- To review, revise and supervise proper preparation of orders to exhaust administrative remedies for approval from the National Council of Conservation Areas, which requires an examination and analysis of files and orders on which criteria must be issued according to applicable legislation, in order to reach a correct decision on appeals filed with CONAC.
- To attend meetings with superiors and subordinate personnel to coordinate activities in which the Executive Director's Office is represented.



This certificate is issued at the request of the interested party in the city of **San José, on this ninth day of June, 2010.**

Institutional Mission: SINAC is responsible for comprehensive management of sustainable use and conservation of wildlife, forest resources, protected natural areas, hydrographic basins and water systems together with social actors, for the benefit of present and future generations.

