

Exhibit RWE-006

Witness Statement of Julio Jurado

December 22, 2014

English Translation

UNDER THE UNCITRAL ARBITRATION RULES AND 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)*

vs.

*Republic of Costa Rica.
(Respondent)*

ICSID Case No. UNCT/13/2

**Witness Statement of Julio Jurado
General Director of SINAC**

December 22, 2014

I. INTRODUCTION

1. My name is Julio Jurado. As of June 2014, I was appointed Executive Director of the National System of Conservation Areas [*Sistema Nacional de Areas de Conservación* (“SINAC”)]. I am a lawyer from the University of Costa Rica where I graduated in 1986. In addition, I have a doctorate in Law from Universidad Carlos III of Madrid, Spain.

2. Before my appointment as Executive Director of SINAC, I worked in the *Procuraduría General de la República* (“*Procuraduría*”) as a *Procurador* from 2000 until 2006. My responsibilities included the preparation of legal opinions and *dictámenes* through which the *Procuraduría* answered the queries made by the Administration. Specifically, I was involved in drafting the legal opinion (2004) and the *dictamen* (2005) that the *Procuraduría* issued with respect to the interpretation of Article 1 of the 1995 Law Establishing the *Las Baulas* National Marine Park [*Parque Nacional Marino Las Baulas*]. In addition, between 2006 and 2010, I worked

on a project of the Government of Costa Rica funded by the Inter-American Development Bank, for the development of a cadastral map of Costa Rica. In 2010, I returned to the *Procuraduría* as a *Procurador*.

3. In this witness statement, I will respond to Claimants' allegations with respect to the opinions issued by the *Procuraduría*¹ and relating to the suspension of the expropriation proceedings currently in force by the Administration.² First, I will explain the process undertaken for the issuance of the opinions of the *Procuraduría* with respect to the interpretation of Article 1 of the Law Establishing the Park. Second, I will explain the progress the SINAC has made with the compliance of the 2010 *Contraloría's* report.

II. THE INTERPRETATION OF THE PROCURADURÍA ON THE LAW ESTABLISHING THE PARK

4. In their Reply, Claimants allege that the 2004 legal opinion and the 2005 *dictamen* were irregularly issued.³ Likewise, they claim that these opinions do not have legal effects and that they were not made public.⁴ Finally, they allege that I, as the *Procurador* who signed both pronouncements, had a conflict of interest at that time.⁵ All these claims are incorrect.

5. The *Procuraduría* issued two opinions relating to the interpretation of Article 1 of the Law Establishing the *Las Baulas* Nation Park. A legal opinion was issued on February 10,

¹ See Claimant's Reply on the Merits and Counter-Memorial on Jurisdiction, October 3, 2014 ("Claimants' Reply"), paras. 98-103.

² See Claimants' Reply, paras. 14, 18, 19, 133.

³ See Claimants' Reply, paras. 98-103.

⁴ See Claimants' Reply, paras. 98-100, 103.

⁵ See Claimants' Reply, para. 102.

2004,⁶ in response to a query sent by the Ministry of Environment in May 2003;⁷ and a *dictamen* was issued on December 23, 2005,⁸ in response to a query that was sent by the Ministry of Environment in October 2005.⁹ In both opinions, the *Procuraduría* concluded that the Park included a 125-meter strip of land from the mean high tide mark. In the opinions, it is detailed that there was a contradiction in the Law Establishing the Park, as the reference “seaward” was contrary to other provisions in the law and to the main object of establishing the Park—the protection of the nesting sites for leatherback sea turtles. Therefore, the *Procuraduría* concluded that the reference to “seaward” was an obvious mistake within the law and that the 125-meter strip was inland.

6. First, both the 2004 legal opinion and the 2005 *dictamen* were issued in accordance with Costa Rican law. Claimants allege that the 2004 opinion was issued in an unorthodox fashion because the query of the Ministry of Environment was not accompanied by the legal opinion of the Ministry’s legal department, as set forth in Article 4 of the Organic Law of the *Procuraduría*.¹⁰ This statement is incorrect.

7. The opinion of the *Procuraduría* was not issued in an unorthodox fashion. The *Procuraduría* responds to queries from the Administration through two types of opinions: *dictámenes* (which are identified by the letter C), and legal opinions (which are identified by the

⁶ See Report by the Attorney General re interpretation of Law 7524, February 10, 2004 [Exhibit C-1t].

⁷ See Request of Consultation from MINAE to the *Procuraduría*, DM-821-2003, May 5, 2003 [Exhibit R-093].

⁸ See Letter from the Attorney General to the Minister of the Environment and Energy (MINAE), December 23, 2005 [Exhibit C-1g].

⁹ See Request from MINAE to the *Procuraduría* on the Interpretation of the Law Creating the *Las Baulas* National Park, Attaching Study from Legal Department, DM-1725-05, October 19, 2005 (“Request for Consultation by the MINAE to the *Procuraduría* 2005”) [Exhibit R-094].

¹⁰ See Claimants’ Reply, para. 100.

letters OJ). Article 4 of the Law of the *Procuraduría* requires the opinion of the legal departments for the issuance of a *dictamen*, not a legal opinion. Therefore, the fact that the MINAE [Ministry of Environment and Energy] did not attach a legal study of its legal department does not affect the validity of the legal opinion of 2004. As demonstrated earlier, a legal study is not necessary when a non-binding legal opinion is issued. The Attorney General's office is used to issuing legal opinions in response to queries sent without the legal opinion of the legal department of the entity or body making the query, as it is estimated that they must be answered, as they deal with topics of high interest. This is precisely what happened in this case: the *Procuraduría* answered the query of the Ministry of Environment through a legal opinion as it was a topic of high interest.¹¹

8. At that time, the Ministry made it clear that the legal study was not sent due to an error. After having received the legal opinion of the *Procuraduría*, the Ministry sent the required legal study to the *Procuraduría*, seeking the issuance of a binding ruling.¹² However, the *Procuraduría* explained that the delivery of a subsequent legal study did not remedy the error, and that it would be necessary for the Ministry to present a new query to the *Procuraduría* so that it could respond through a *dictamen*.¹³ At that time, the *Procuraduría* also clarified that, while the legal opinion is not binding, it is a guide that influences the decisions of the Administration.¹⁴ Thus, the legal opinion of 2004 was properly issued.

9. The 2005 *dictamen* was also issued in accordance with Costa Rican law. In October

¹¹ See Report by the Attorney General re interpretation of Law 7524, February 10, 2004 [Exhibit C-1t].

¹² See Letter from MINAE to the *Procuraduría* Attaching Legal Study, February 24, 2004 [Exhibit R-095].

¹³ See Letter from the *Procuraduría* to MINAE about the Study from the Legal Department of MINAE, March 4, 2004 [Exhibit R-096].

¹⁴ See Letter from the *Procuraduría* to MINAE about the Study from the Legal Department of MINAE, March 4, 2004, p. 2 [Exhibit R-096].

2005, the Ministry once again sent a query to the *Procuraduría* so that it would issue a *dictamen* on the interpretation of Article 1 of the Law Establishing the *Las Baulas* National Park.¹⁵ On this occasion, the Ministry did attach the legal study from its legal department.¹⁶ In response, the *Procuraduría* issued the *dictamen* of December 2005, which is binding for the consulting Administration pursuant to Costa Rican law.¹⁷ In this response, the *Procuraduría* confirmed the interpretation issued in the 2004 legal opinion.

10. Second, Claimants allege that neither the 2004 legal opinion nor the 2005 *dictamen* generate legal effects and were not made public.¹⁸ This is also incorrect. The *Procuraduría* must do a technical-legal analysis of the query in all of its pronouncements. That is, it performs a detailed and technical analysis of the applicable rules – it is not a question of the personal opinions of the attorneys involved in each case. Both the legal opinion and the *dictamen* that a particular *Procurador* prepares is reviewed and approved by the *Procurador General* or the *Procurador General Adjunto*. The process of review of Article 1 of the Law Establishing the Park was not different. In each one of the opinions, we followed the rules of interpretation of the Costa Rican legal system, and made a detailed analysis of the law. For this reason, these opinions do generate legal effects. While the legal opinion does not have a binding effect, it works as a guide in the actions of the Administration.¹⁹ The *dictamen*, as

¹⁵ See Request from MINAE to the *Procuraduría* on the Interpretation of the Law Creating the *Las Baulas* National Park, Attaching Study from Legal Department, DM-1725-05, October 19, 2005 [Exhibit R-094].

¹⁶ See Request from MINAE to the *Procuraduría* on the Interpretation of the Law Creating the *Las Baulas* National Park, Attaching Study from Legal Department, DM-1725-05, October 19, 2005 [Exhibit R-094].

¹⁷ See Letter from the Attorney General to the Minister of Environment and Energy (MINAE), December 23, 2005 [Exhibit C-1g].

¹⁸ See Claimants' Reply, paras. 98-100, 103.

¹⁹ See, e.g., Letter from the *Procuraduría* to MINAE about the Study from the Legal Department of MINAE, March 4, 2004, p. 2 [Exhibit R-096].

mentioned earlier, does have binding effect on the Administration that makes the query.²⁰ Additionally, both opinions were made public. The *Procuraduría* publishes all its legal opinions and *dictámenes*, among others, in the web page of the National System for Valid Legislation within the Costa Rican Legal Information System (“SCIJ”). This system was created in 1997.²¹

11. Third, Claimants allege that I had a conflict of interest at the time I drafted both the 2004 legal opinion and the 2005 *dictamen*.²² This is also incorrect, and is a very serious allegation for which Claimants have presented no evidence whatsoever. I did not have a conflict of interest at that time, nor currently. First, Claimants appear to suggest that I was “strangely” assigned to the Board of Directors of the Center for Environmental Law and Natural Resources [*Centro de Derecho Ambiental y de los Recursos Naturales* (“CEDARENA”)] after Minister Rodriguez resigned from that position. I must make it clear that I found out through this arbitration that Minister Rodriguez was a member of the Board of Directors of CEDARENA. I had no relationship whatsoever with Minister Rodriguez. CEDARENA is a Non-governmental Organization (“NGO”) that seeks to promote sustainable environmental policies.

12. Second, Claimants state that due to my activities with CEDARENA, I had a conflict of interest at the time I drafted the two pronouncements in question. This is also incorrect. When the legal opinion of 2004 was drafted, I was not a member of the Board of Directors of CEDARENA, therefore, there is no conflict of interest whatsoever. I was part of the Board of

²⁰ See Law 6815 related to the Attorney General, September 27, 1982, Art. 2 [Exhibit C-1o].

²¹ See Law that Modifies the Organic Law of the *Procuraduría* (Creating the National System for Valid Legislation), Law No. 7666, April 14, 1997, Art. 3 [Exhibit R-098].

²² See Claimants’ Reply, para. 102.

Directors of CEDARENA from November 2005 until October 2008.²³ At the time the 2005 *dictamen* was drafted and issued, CEDARENA was not carrying out any activity related to the *Las Baulas* National Marine Park. Therefore, there was also no conflict of interest whatsoever. Additionally, it should be noted that I was appointed to the Board of Directors of CEDARENA because of my academic qualifications and not because of my condition as *Procurador*. Since 2004, I have been the Director of the Masters Degree in Environmental Law at the University of Costa Rica.

13. In addition, both the legal opinion and the *dictamen* were approved by the *Procurador General* (2005 *dictamen*) or the *Procurador General Adjunto* (2004 legal opinion), as required by Costa Rican law. For this reason, they are opinions that represent the opinion of the *Procuraduría*, and not of a lawyer within the *Procuraduría*. Finally, I must make it clear that the query that was sent by the Ministry in 2003 and 2005 was randomly assigned to me by the *Procurador General*, just as many other queries were assigned to me. I resolved these queries based on independent and technical criteria, not on personal or political beliefs.

14. Claimants have alleged that I have been a member of several Boards of Directors of NGOs that have been related to the expansion of the *Las Baulas* National Marine Park.²⁴ This is false. I have only belonged to the CEDARENA's Board of Directors, as I discussed earlier. As I have already explained, during the time that I participated as a member of the CEDARENA Board of Directors, I understood that this NGO was not involved in any claim for the expansion of the *Las Baulas* National Marine Park.

²³ See Certification of CEDARENA on the Board of Directors [Exhibit R-168].

²⁴ See Claimants' Reply, para. 204.

III. COMPLIANCE WITH THE *CONTRALORÍA*'s 2010 REPORT

15. Claimants also allege that SINAC has suspended the expropriation processes to avoid having to make due payment to the owners.²⁵ This is not correct. I must make it clear that SINAC currently has a budget item set aside exclusively for the payment of expropriations, so it is not avoiding any payment. Additionally, I understand that the suspension of the expropriation proceedings was done as a response to the 2010 *Contraloría*'s report. I was not a SINAC official when the decision was made to suspend the expropriations. I also understand that this suspension will be lifted once SINAC complies with all the recommendations issued by the *Contraloría* in said report. Currently SINAC has met nine of the thirteen recommendations and is now working to comply with the remaining four.²⁶ Each one of these recommendations has required the preparation of various studies, maps and legal proceedings which take time. However, SINAC is working to comply with the report as soon as possible and to be able to continue with the expropriation proceedings that are necessary once it completes the implementation process of the recommendations issued by the *Contraloría*.

²⁵ See Claimants' Reply, para. 17.

²⁶ See Chart of MINAE and SINAC Compliance with Contraloría's Report No. DFOE-PGAA-IF-3-2010, November 21, 2014 [Exhibit R-097].

The facts contained in this statement are true to the best of my knowledge and belief.

[signature]
Julio Jurado

Date: December 22, 2014