

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Oded Besserglik v. Republic of Mozambique
(ICSID Case No. ARB (AF)/14/2)**

PROCEDURAL ORDER NO. 4

Mr. Makhdoom Ali Khan, President of the Tribunal
Hon. L. Yves Fortier PC, CC, OQ, QC, Arbitrator
Mr. Claus von Wobeser, Arbitrator

Secretary of the Tribunal
Ms. Martina Polasek

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1. On April 25, 2016, the Claimant submitted a Request for Documentation (“**RFD**”). In this RFD, the Claimant requested for the production of 17 sets of documents.
2. On May 10, 2016, the Respondent filed its Response to the RFD. It raised four general objections to the Claimant’s RFD. It also separately responded to each request. On the same date, the Respondent produced two-hundred and ninety-six pages in response to the RFD.
3. The Claimant was not satisfied with the documents produced by the Respondent. It, therefore, filed a Motion for Production of Documents on May 17, 2016 (“**MPD**”). The Respondent filed its Response to the MPD on May 24, 2016 (“**Response to MPD**”). The Claimant’s Reply to the Respondent’s Response to MPD was submitted on June 2, 2016 (“**Reply**”). The Respondent filed its Rejoinder to the Claimant’s Reply on June 20, 2016 (“**Rejoinder**”).
4. The Tribunal has considered the respective pleadings of the Parties on the RFD. The Respondent has raised four general objections to the MPD. The Tribunal will address these first. It will then address the Respondent’s objection to each of the requests for production of documents.
5. The Respondent has raised the following four general objections:
 - (i) The MPD should be dismissed because of the Claimant’s failure to confer with the Respondent to reach a reasonable resolution on the production disputes as required under Procedural Order No.1.
 - (ii) It is not required to produce legal opinions and communications between Dr. Silvestre Salomao Silindane and Mozambican government officials and between the Attorney General’s office and Mozambican government officials because these documents are covered by counsel-client privilege.

- (iii) It does not control Emopesca, Sulpesca, and ROC. These are separate legal entities and the Respondent cannot compel them to produce any documents.
- (iv) It is not required to produce documents relevant to damages at this stage since the issues of jurisdiction and liability (Stage I) and damages (Stage II) have been bifurcated.

General Objection 1: Claimant's failure to confer with the Respondent

6. The Respondent argues that, in accordance with Procedural Order No.1, the Claimant was required to first confer with the Respondent to attempt to reach a reasonable resolution of the production disputes. The Claimant only sent one email to the Respondent regarding production prior to filing its MPD. This email did not identify any deficiencies or disputes with regard to the Respondent's production. According to the Respondent, the Claimant failed to comply with the direction contained in Procedural Order No.1 and for that reason the MPD should be dismissed.
7. The Claimant submitted that the Respondent's response to its email was clear. The Respondent had taken the position that all responsive, non-privileged documents in its custody had been produced. The Respondent's response was, therefore, negative. The Claimant, however, requested that, if the Tribunal was of the view that a second attempt be made at conferring with the Respondent, the present motion be suspended to allow such discussion.
8. The Tribunal has considered the Respondent's objection and the Claimant's response. The Claimant has not denied that its sole attempt at conferring with the Respondent was a short email sent on May 14, 2016. The email failed to identify the deficiencies and disputes, which the Claimant wished to discuss with regard to the Respondent's production. The Respondent's response, however, was not encouraging. It categorically stated that, subject to its objection, it had produced all the documents in its possession that could be located after a reasonable search.

9. While this exchange does not suggest that a genuine attempt was made by either Party to resolve the disputes with regard to document production, in light of the positions taken by the Parties in their subsequent pleadings, the Tribunal is of the view that no purpose will be served by directing the Parties to confer at this stage. It will only result in unnecessary delay. The Tribunal has the authority and the obligation to ensure procedural efficiency and move matters forward. The Respondent's objection is accordingly rejected.

General Objection 2: The Respondent is not required to produce communications covered by counsel-client privilege

10. The Respondent submitted that legal communications between Dr. Silvestre Salomao Silindane and the Mozambican government officials are privileged. So also the communications between the Attorney General's office and government officials. As per the Respondent, this Tribunal cannot consider such documents or compel their disclosure unless the Government expressly waives counsel-client privilege. The Respondent contended that Dr. Silindane is an attorney and acted and advised in that capacity. Just because he was employed by a government ministry did not mean that he was not acting as an attorney when he advised the Ministry.
11. According to the Respondent, it never authorized anyone to provide a copy of Dr. Silindane's legal opinion dated June 12, 2008 to the Claimant. The copy was faxed to the Claimant from a chocolate shop in South Africa. The circumstances in which the Claimant received this opinion are suspect and do not constitute a waiver of the counsel-client privilege.
12. The Respondent further argued that simply because this opinion was provided in the course of an internal inquiry initiated by the Minister of Fisheries did not mean that it fell within the purview of public administration and was not subject to counsel-client privilege. The Respondent submitted that in this regard, the Claimant's reference to Articles 67 to 70 of Law 14/2011 dated August 10, 2011 was misplaced. This law does not provide that there

cannot be counsel-client privilege between a ministry and a lawyer employed by it as legal advisor.

13. The Claimant contended that Article 79 of the Articles of Association of the Mozambican Bar Association governs privilege between an attorney and a client. Such privilege could only be invoked where an attorney was acting in the course of his profession and not in any other kind of activity. The Claimant argued that an attorney could only disclose privileged information if he was authorized to do so by the Mozambique Bar Association (in particular by the President of the National Board). Any authorization given by a client to release such privileged communication was insufficient. According to the Claimant, Dr. Silindane was acting as a legal advisor to the Minister of Fisheries and not in the course of his profession as an attorney. As an experienced legal advisor and attorney, he was aware that no privilege would attach to his communication with the Minister of Fisheries.
14. The Claimant also argued that the legal advice dated June 12, 2008 was provided in the course of an internal inquiry when the Minister of Fisheries sought advice on the dispute between the Parties. It, therefore, fell under the purview of public administration. In accordance with Article 67 to 70 of Law 14/2011 of 10 August 2011, an interested party had the right to obtain such information.
15. The Tribunal has considered the Parties' respective submissions relating to counsel-client privilege. The counsel-client privilege serves an important public purpose. It is designed to encourage full and frank communication between an attorney and his client. It allows a client to make a full and frank disclosure of everything relevant to its counsel when seeking legal advice, without any apprehension that this information can be referred to or relied upon against it. It also enables the counsel to give candid advice. The privilege, therefore, extends to all communications between a professional legal advisor and his client where the latter is seeking legal advice from the former.
16. The Claimant has sought to contend that the privilege is restricted to communications between external private counsel and their clients. According to the Claimant, the privilege

does not extend to communications between legal advisors employed by the government or government officials. The Tribunal fails to see any reason to so restrict counsel-client privilege. It is not inclined to make a distinction between advice sought by clients from in-house and external legal counsel. In its view, the rationale for counsel-client privilege applies as much to communications between professional legal advisors employed by the government and government officials as it does to communications between clients and external counsel. A different conclusion would deny government officials the freedom to have full and frank discussions with their legal advisors.

17. When a professional legal advisor employed by the government provides legal advice to government officials, he is performing the same function as external counsel providing legal advice to a client. No distinction ought to be made in the protection afforded to such communications on the basis of whether legal advice is provided by an in-house counsel in the employment of the client or external counsel. When Dr. Silindane advised the Ministry of Fisheries, he was acting as a professional legal advisor. He was providing legal advice to the government. Such legal advice is protected by counsel-client privilege. Unless the Respondent waived such privilege, it could not be compelled by this Tribunal to disclose the advice to the Claimant.

18. If the Tribunal were to accept the Claimant's argument that such advice fell under the purview of public administration and, therefore, should be disclosed, it would deny counsel-client privilege to the government. All government actions relate to public administration and all government documents would be subject to disclosure irrespective of counsel-client privilege. In the opinion of this Tribunal, nothing in Article 67 to 70 of Law 14/2011 of 10 August 2011 dictates such an outcome. The public's right to information is subject to reasonable restrictions. Counsel-client privilege is one such restriction and it is reasonable. It becomes no less reasonable when invoked by a government with regard to advice received from its in-house legal advisors. The Tribunal is, therefore, of the view that while such advice may fall under the purview of public administration, it is nevertheless subject to counsel-client privilege.

19. The general principle having been stated, the discussion must now turn to the facts of this case. The Claimant has obtained a copy of the legal advice dated June 12, 2008. The Respondent has requested that since the advice is covered by counsel-client privilege, it should not be considered by the Tribunal. According to the witness statements of the Claimant and his son, this copy was faxed to the Claimant from Leonidas Chocolatier – a chocolate shop in Johannesburg, South Africa – on June 19, 2008. At the time, Dr. Silindane was visiting the Claimant in South Africa. The Claimant believes that Dr. Silindane or someone acting on his instructions faxed the document to him. A second signed copy of the legal advice was also received by the Claimant when he went to Dr. Silindane’s office to pick up some documents. This copy was among the documents handed over to him by Dr. Silindane’s secretary. Dr. Silindane, for his part, has denied faxing or providing the Claimant with a copy of the legal advice. The Respondent has contended that it never authorized anyone to provide this confidential document to the Claimant.
20. While the Respondent has claimed that the Claimant illegally obtained a copy of the legal advice, this allegation is not supported by any witness statement or evidence. As such, the Tribunal is not persuaded to accept this submission. A copy of the opinion was provided to the Claimant by Dr. Silindane’s secretary. There is no contemporaneous evidence to suggest that this was the result of a mistake. Further, there was no reason for the Claimant to suspect that it had been provided by mistake, particularly when a copy had earlier been faxed to him.
21. Article 9(3)(d) of the IBA Rules of Evidence, relied on by the Respondent, states that in considering issues of privilege, a tribunal may take into account any possible waiver of privilege by earlier disclosure or affirmative use of the document. In the absence of any evidence that the Claimant acted illegally in obtaining this copy or contemporaneous evidence that it had been provided to him by mistake, the disclosure of this document to the Claimant as far back as June 19, 2008 by government officials amounts to waiver of the counsel-client privilege by the Respondent. The Tribunal, therefore, is not inclined to accept the Respondent’s request to not consider this document.

22. At the same time, the Tribunal upholds the Respondent's objection in respect of all other communication between Dr. Silindane and government officials and between the Attorney General's office and government officials for the purpose of providing legal advice. All of these are protected by counsel-client privilege. Such communications are not required to be disclosed by the Respondent unless it waives privilege.
23. This protection is not limited to communications made exclusively for the purpose of providing legal advice. It includes the collection of information and materials for providing the advice as well as the advice.
24. The privilege would not protect other communications, such as the minutes of meetings where Dr. Silindane or a lawyer from the Attorney General's office participated. It also does not protect other communications either with them or routed through them.

General Objection 3: Emopesca, Sulpesca, and ROC are separate legal entities and the Respondent cannot compel them to produce any documents

25. The Respondent argued that Emopesca, Sulpesca and ROC are independent legal entities. They are not party to this arbitration. The Respondent cannot, therefore, compel them to produce any documents. Even if these companies were wholly or partially owned by the government and even if the government appointed their officers, the Respondent has no authority to interfere in their daily affairs. The Respondent pointed out that while Emopesca was initially wholly owned by the government, it was converted into a public limited company. The government now owns only 80% of its shareholding. The government does not own Sulpesca, but Emopesca is a shareholder. The government has no interest in ROC at all.
26. According to the Respondent, parties in international arbitration are only required to produce those documents, which are in their possession, custody or control. Since Emopesca, Sulpesca and ROC are separate legal entities, under Mozambican law, the Respondent has no authority to obtain documents that may be in their possession.

27. The Claimant submitted that Emopesca was initially wholly owned by the Respondent. The Respondent presently holds 80% of its shareholding. In accordance with Article 5 of its Articles of Association approved by Decree 41/77. The activities of Emopesca are subordinated to the interests of the State. All actions taken by Emopesca are overseen and approved by the government. At present, the remaining 20% of Emopesca's shareholding is held by Fundo de Fomesto Pesquero, which is a public body that operates under the supervision and control of the Ministry of Fisheries. This body, like Emopesca itself, is obliged to follow the directions of the Ministry of Fisheries.
28. The Claimant argued that both Emopesca and Sulpesca are subject to the Commercial Code of Mozambique. Article 122 of this Code gives shareholders the right to seek information relating to the management of the company and any specific corporate operation. As such, even in its capacity as a shareholder, the Respondent has access to all documents, including financial statements, quotas on fishing allocations, details of exports etc. relating to both companies.
29. According to the Claimant, both Emopesca and Sulpesca were organs of the Respondent. Under Article 5 of Chapter II of the Articles on State Responsibility adopted by the International Law Commission, their actions are actions of the State. Alternatively, under Article 8 of Chapter II of the Articles on State Responsibility, they acted on the instructions and under the control of the Respondent. They did not carry on their business as entities distinct from the Respondent. As such, the Claimant argued that the Respondent should produce documents that are in the possession of these companies.
30. The Tribunal has examined the Parties' pleadings relating to this objection. It is an admitted fact that Emopesca was wholly owned by the Respondent and that even now the Respondent owns 80% of its shareholding. The remaining 20% shareholding is owned by another public body which is controlled by the Respondent. Similarly, it is an admitted fact that Emopesca is a partner and majority shareholder in Sulpesca. Emopesca owned 99% of the shareholding of Sulpesca at the time it entered into an agreement to sell 40% of its shareholding to Natal Ocean Trawling.

31. The Respondent has repeatedly emphasized the separate legal status of these companies. The Tribunal, however, is not presently required to decide whether these companies are organs of the State or whether their actions are actions of the State. The issue before the Tribunal is whether the documents in the possession of these companies can be produced by the Respondent in view of the control that it exercises over them.
32. While the Respondent may not exercise day to day control over these companies, there is no doubt that ultimate control of these companies (as a major shareholder and through its authority to appoint officers) rests with the Respondent. In accordance with the Commercial Code of Mozambique, the Respondent, as a large shareholder, has access to the documents in possession of these companies. The Tribunal is, therefore, of the view that the Respondent has control over the documents in the possession of these companies and is in a position to produce them. The Respondent's objection in relation to Emopesca and Sulpesca is, therefore, rejected. The Respondent is directed to produce documents in the possession of Emopesca and Sulpesca.
33. The Claimant, however, has failed to show that the Respondent has any interest or connection with ROC. While certain officials of the Respondent may have been involved with ROC, the Claimant has been unable to show the extent of this involvement or that such involvement was in their official capacity. The Tribunal is, therefore, of the view that the Claimant has not been able to establish that the Respondent has control over documents in the possession of ROC. The Respondent's objection with regard to ROC is, therefore, upheld. The Respondent is accordingly not required to produce any documents in the possession of ROC.

General Objection 4: The Respondent is not required to produce documents relating to the damages stage of the proceedings at present

34. It is difficult to evaluate the merits of this objection in isolation. This objection can only be addressed in relation to specific document requests. The Tribunal will, therefore, address

this objection separately with regard to each document request where this objection has been raised.

Request for Documents No.1

All relevant correspondence, minutes, approvals, directives and other documentation, including the application for the renewal of the fishing project, which passed between Emopesca, Sulpesca, Natal Ocean Trawling, Spradbrows, the Claimant, the Minister of Fishing, the Minister of Planning and Finance, the Investment Promotion Centre, Silindan, Pateguana, Panguana and Poitevin. (such to include correspondence which passed between all representatives acting for and on behalf of the said parties), hereinafter referred to as the “said parties”, as such documentation is relevant to the approval of the fishing project and the conclusion of the oral agreement concluded on 24 December 1996.

35. The Respondent has objected to producing certain documents because they are either covered by counsel-client privilege or are in the possession of Emopesca and Sulpesca. These objections have already been addressed by the Tribunal. Subject to counsel-client privilege, the Respondent is directed to produce all such documents either in its possession, custody or control or that of Emopesca and Sulpesca.

Request for Documents No.2

A copy of the notarial deed concluded by the parties evidencing the conclusion of the agreement of the 8 of May 1997.

36. The Respondent has objected to the production of this document on the ground that it is not in possession, custody or control of any responsive document. Subject to counsel-client privilege, the Respondent is directed to produce any responsive documents either in its possession, custody or control or that of Emopesca and Sulpesca.

37. The Claimant contended that the Respondent is required to describe the efforts it had made to obtain responsive documents. The Respondent is required to conduct a reasonable search

for responsive documents. The Respondent has confirmed that it has done so. This in view of the Tribunal is sufficient. It is not inclined to direct the Respondent to describe its efforts in any greater detail.

Request for Documents No.3

The correspondence, minutes, approvals, directives and other documentation, involving the said parties, evidencing the approval of the fishing project and the apportionment of the production value sold, by the Minister of Planning and Finance on the 10 March 1997.

38. Subject to counsel-client privilege, the Respondent is directed to produce any responsive documents in the possession, custody or control of Emopesca and Sulpesca. The Respondent has already fulfilled its obligation with regard to documents in its possession by confirming that it has conducted a reasonable search for responsive documents.

Request for Documents No.4

All minutes of meetings held between Sulpesca and Emoposca in relation to the prawn fishing venture, or ventures, extending over the period from 24 December 1996 to 7 January 2008, as relevant to the Claimant, Natal Ocean Trawling, Spadbrows, and/or ROC Lda (“ROC”).

39. Subject to counsel-client privilege, the Respondent is directed to produce any responsive documents in the possession, custody or control of Emopesca and Sulpesca. The Respondent has already fulfilled its obligation with regard to documents in its possession by confirming that it has conducted a reasonable search for responsive documents.

Request for Documents No. 5

All minutes of meetings held between:

5.1 Sulpesca and Natal Ocean Trawling or Spadbrows, or both Natal Ocean Trawling and Spadbrows;

5.2 *Emopesca and Natal Ocean Trawling, or Spadbrows, or both Natal Ocean Trawling and Spadbrows;*

5.3 *Sulpesca, Emopesca and either Natal Ocean Trawling or Spadbrows, or both Natal Ocean Trawling and Spadbrows;*

5.4 *All minutes of meetings of the boards of directors of Emopesca and Sulpesca;*

relevant to the fishing project over the period extending from 2nd January 1995 to 31 October 2004.

40. Subject to counsel-client privilege, the Respondent is directed to produce any responsive documents in the possession, custody or control of Emopesca and Sulpesca. The Respondent has already fulfilled its obligation with regard to documents in its possession by confirming that it has conducted a reasonable search for responsive documents.

Request for Documents No. 6

All correspondence, minutes, approvals, directives and other documentation, involving the said parties, Masinga and ROC, relevant to the transfer of the Claimant's forty percent (40%) shareholding, his twenty percent (20%) option in Sulpesca and the transfer of the remaining forty percent (40%) owned by Emopesca to ROC, including all minutes of meetings and agreements or notarial deeds evidencing ownership of the transfer of those shares, the purchase consideration, proof of payment for the said shares.

41. Subject to counsel-client privilege, the Respondent is directed to produce any responsive documents in the possession, custody or control of Emopesca and Sulpesca. The Respondent has already fulfilled its obligation with regard to documents in its possession by confirming that it has conducted a reasonable search for responsive documents.

Request for Documents No.7

All correspondence, documentation, minutes, approvals, directives and other documentation, relating to the exercise by Natal Ocean Trawling of its option to purchase the additional twenty percent (20%) of Emopesca's shares in Sulpesca.

42. Subject to counsel-client privilege, the Respondent is directed to produce any responsive documents in the possession, custody or control of Emopesca and Sulpesca. The Respondent has already fulfilled its obligation with regard to documents in its possession by confirming that it has conducted a reasonable search for responsive documents.

Request for Documents No.8

All correspondence which passed between the Minister of Fisheries, or other ministerial parties pertaining to the payment of the costs incurred in the litigation, as also the minutes of the meeting held on the 23 October 2007.

43. Subject to counsel-client privilege, the Respondent is directed to produce any responsive documents in the possession, custody or control of Emopesca and Sulpesca. The Respondent has already fulfilled its obligation with regard to documents in its possession by confirming that it has conducted a reasonable search for responsive documents.

Request for Documents No. 9

All correspondence and documentation which passed between the President of Mozambique, the Minister of Fishing, the Minister of Planning and Finances and the Attorney General pertaining to the appropriation of the Claimant's shares and fishing vessels.

44. Subject to counsel-client privilege, the Respondent is directed to produce any responsive documents in the possession, custody or control of Emopesca and Sulpesca. The Respondent has already fulfilled its obligation with regard to documents in its possession by confirming that it has conducted a reasonable search for responsive documents.

Request for Documents No. 10

The minimum price for export of prawns and all by-catch prescribed by the Ministry of Fishing over the period extending from 1996 to date.

45. The Respondent has objected to this request on the ground that it relates to documentation regarding damages. It argued that the Claimant's contention that these documents will help identify the parties involved in the appropriation and transfer (particularly since the date of appropriation) is incorrect. The Tribunal fails to see how the minimum price for export of prawns and all by catch will help disclose anyone's identity. These documents may be relevant to the issue of damages, but the Claimant has failed to show how they are relevant to the issue of jurisdiction and liability. The Tribunal accordingly upholds the Respondent's objection. The Respondent is not required to produce any responsive documents at this stage.

Request for Documents No. 11

All documents evidencing the export of fish and prawns by Sulpesca from 1996 to date and ROC from 31 October 2004 to date.

46. The Respondent has objected to this request on the same grounds on which it objected to the Request for Documents No. 10. The Claimant contends that these documents will help identify the parties involved in the appropriation and transfer. The Tribunal fails to see how documents relating to the export of fish and prawns will help identify such parties. These documents may be relevant to the issue of damages, but the Claimant has failed to show how they are relevant to the issue of jurisdiction and liability. The Tribunal upholds the Respondent's objection. The Respondent is not required to produce any responsive documents at this stage.

Request for Documents No. 12

The bank statements and financials of Emopesca, Sulpesca and ROC extending from December 1996 to date.

47. The Respondent has objected to this request on the same grounds on which it objected to the Requests for Documents No. 10 and 11. The Claimant contends that these documents will help identify the parties to whom monies were transferred and are relevant to the allegations of corruption and fraud it has levelled against the Respondent. The Tribunal is of the view that these documents will show to whom the money was being transferred and may help the Claimant establish corruption or fraud. The Respondent is, therefore, directed to produce responsive documents for Emopesca and Sulpesca, but not ROC.

Request for Documents No. 13

A copy of a letter addressed by the Claimant to Emopesca E.E. dated the 18.10.2001, together with all the receipts for the expenses of Oded Besserglik that were submitted with the letter to Emopesca and to the Minister of Fishing.

48. The Respondent has not objected to this request and has stated that it will produce responsive documents which are in its possession, custody or control. The Respondent is, therefore, directed to produce the responsive documents which are in its possession, custody or control or that of Emopesca and Sulpesca.

Request for Documents No. 14

All the letters and documents referred to in the Report by the Advisory Committee to the Minister – Report number 02/AMP-SSS/2008, as prepared by Silidan.

49. The Respondent has objected to this request on the ground that this report is privileged. The Tribunal has already addressed the issue of privilege in relation to this report. Subject to any counsel-client privilege, the Respondent is directed to produce responsive documents.

Request for Documents No. 15

Copies of all fishing quotas issued to Sulpesca ans/or ROC over the period extending from December 1993 to date.

50. The Respondent has objected to this request on the same grounds on which it objected to the Requests for Documents No. 10, 11 and 12. The Claimant argues that, in so far as ROC is concerned, the documentation will reveal the identities of persons involved in that company. Since the ownership of ROC is at issue in this case, the Tribunal is of the view that these documents are relevant. The Respondent is, therefore, directed to produce all responsive documents in its possession, custody or control with regard to ROC.
51. In relation to Sulpesca, however, these documents are not relevant to the jurisdiction and liability stage of the proceedings, though they may be relevant to damages. The Respondent's objection in relation to Sulpesca is upheld. It is not required to produce any responsive documents in relation to Sulpesca at this stage.

Request for Documents No. 16

A copy of the tender, or public auction notices and terms of sale documents issued for the sale of the ships, Ocean Dawn and Ocean Wave, as also the identity of the purchasers, proof of payment and proof of transfer of the flag registration of the said ships.

52. While the Respondent has objected to this request on the ground that it is ambiguous and vague, it has agreed to produce all responsive documents in its possession, custody or control. The Tribunal is of the view that the request is specific and clear. The Respondent is directed to produce all responsive documents in its possession, custody or control or that of Emopesca and Sulpesca.

Request for Documents No. 17

All correspondence, minutes, approvals, directives and other documentation, between the said parties and the litigation referred to in the following paragraphs of Claimants Memorial: paragraphs 34, 36, 38, 40, 43, 46, 47, 51, 52 and 53.

53. While the Respondent has objected to this request on the ground that it is ambiguous and vague, it has agreed to produce all responsive documents in its possession, custody or control. The Tribunal is of the view that this request is not happily worded but, when read in the context of the paragraphs of the Claimant's Memorial referred to above, it is sufficiently clear. Subject to counsel-client privilege, the Respondent is directed to produce all responsive documents in its possession, custody or control or that of Emopesca and Sulpesca.

Costs of this Motion

54. Both Parties have claimed costs of this Motion. The Tribunal not being inclined to rule on this presently, all issues as to costs are reserved.

[signed]

On behalf of the Tribunal
Makhdoom Ali Khan
President of the Tribunal
Date: June 28, 2016