ICSID CASE NO. ARB/23/17

ICSID ARBITRATION

JUAN CARLOS ARGUELLO AND ERNESTO ARGUELLO

Claimants,

v.

THE REPUBLIC OF HONDURAS

Respondent.

CLAIMANTS' STATEMENT OF CLAIM

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14 May 2025

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I.
INTRODUCTION

1. This dispute has its origins in a multi-million dollar social housing project called "Los Castaños de Choloma" (the "**Housing Project**" or "**Project**") that is owned and was developed by Claimants, Mr. Juan Carlos Arguello and Mr. Ernesto Arguello (the "**Arguellos**," or "**Claimants**"), in the Republic of Honduras (the "**State**," "**Honduras**," or "**Respondent**") (together with the Arguellos, the "**Parties**").

2. The Arguellos are brothers who, driven by a desire to do better and make a difference, sought to break the cycle of poverty that prevents millions of low-income individuals in Latin America, including those in Honduras, from owning their own homes. Too many of these individuals live in makeshift dwellings as they struggle to find decent and affordable housing, not only because of limited financial resources, but also because local banks and financial institutions are reluctant to extend mortgages to this segment of the population.

3. Honduras has one of the most pervasive housing crises in Latin America, a crisis that has been exacerbated by a significant increase in its urban population, with more than 60% of households living in poverty. In an attempt to address these challenges, the government of Honduras began to create, between 2002-2007, various social housing programs whose goal was to provide government-funded subsidies and preferential mortgages to low-income families to help them gain access to decent housing, while seeking investors interested in participating in this type of project.

4. Claimants became interested in investing in the housing sector in Honduras in light of these social housing programs.[1] Their focus in Honduras as the ideal location for their future Housing Project was also no coincidence. The Arguellos spent their childhood in Honduras and, in fact, grew up there.

5. Capitalizing on their previous experience in construction, architecture, real estate, finance, and operations, and in reliance of the State's social housing programs, the Arguellos partnered to create a "not-only-for-profit" enterprise that would initially focus in the housing sector in Honduras and, later, in other Central American nations.

6. The award-winning business model Claimants developed not only offered a high level of affordability as it was vertically integrated, but it was also unprecedented as it would allow residents to (i) move into a gated, secure community with many amenities (such as potable water and paved roads), (ii) rent their properties while building a credit history, and (iii) purchase their homes through the subsidies and long-term mortgages the State agreed to provide.

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[1] Claimants' investment includes, without limitation: (i) the acquisition of their interest in the Inter-Mac Entities and Hola Realty; (ii) the establishment of the OPIC Loan for the development and construction of the Housing Project; (iii) the rights obtained under the 2010 Memorandum of Understanding and the 2015 Cooperation Agreement; (iv) the rights obtained under the construction contracts related to the development of the Housing Project; (v) the rights, licenses and permits related to the development and construction of Phase I of the Housing Project; (vi) the rights, licenses and permits related to the development and construction of Phase II of the Project; (vii) the homes, school, community and sports centers, commercial retail centers, and other facilities that were built as part of Phase I of the Housing Project; (viii) other assets related to the Housing Project; and (ix) the acquisition of the Land (hereinafter the "**Investment**" or "**Investments**").

7. After conducting extensive due diligence, Claimants settled on the Sula Valley, the largest alluvial valley in northwest Honduras, to launch and build their Housing Project. There they purchased a plot of land through their company, Hola Realty, S.A. de C.V. ("**Hola Realty**") in order to make their vision a reality.

8. In parallel, the Arguellos sought a suitable partner to help secure the external funding that would be needed to initiate the construction of the Project. They found this partner in Clark Realty Capital, LLC ("**Clark**"), an award-winning real estate entity.

9. Claimants, in conjunction with Clark, approached the United States Government's development finance institution, the Overseas Private Investment Corporation ("**OPIC**"), so it could help finance the Project. OPIC agreed to provide support, and entered into a USD $70 million revolving facility loan agreement with Inter-Mac International, Inc., one of the special purpose vehicles created to manage the Housing Project.

10. In January 2010, a new President was elected in Honduras, Porfirio Lobo Sosa. That same year, President Lobo Sosa entered into a Memorandum of Understanding with Inter-Mac International, Inc. The Memorandum of Understanding was executed during a signing ceremony in which State officials, including President Lobo Sosa, publicly declared that the State would issue long-term mortgages and subsidies to the residents of the Housing Project as soon as its various social housing programs became operational. These assurances were crucial to Claimants' ability to replicate their vision not just in Honduras, but in other countries across the region.

11. In reliance of the State's assurances that it would provide subsidies and long-term mortgages to the residents of the Housing Project, and with the OPIC funding and construction permits in hand, Claimants poured resources, time, and money into the construction of the Project.

12. The community of "Los Castaños de Choloma" was split into two phases: Phase I and Phase II. Claimants successfully completed Phase I of the Housing Project: a vibrant, modern, gated community that included brand new concrete homes (equipped with a laundry area, windows, kitchen, potable water, sewage system, electricity, dormitories, and bathrooms), sports complexes, community centers, and commercial retail spaces.

13. Notwithstanding the above, the lack of affordable housing remained a significant challenge during the Government of President Lobo Sosa. Consequently, in 2014, the newly elected government of President Juan Orlando Hernández declared social housing a national priority and launched a series of reforms aimed at overhauling the existing social housing sector to attract foreign and domestic investors and increase support for the construction industry in Honduras.

14. One of these reforms was the creation of the "*Comisión Nacional de Vivienda y Asentamiento Humanos*" ("**CONVIVIENDA**"). In early 2015, CONVIVIENDA entered into a Cooperation Agreement with Claimants' representatives through which the State confirmed, once again, that it would provide financing to the residents of the Housing Project. The

Honduran State began to fulfil its commitments of providing subsidies to the Project's residents during 2015.

15. That same year, Clark's representatives informed Claimants that they wished to exit the Project. As a result, Claimants became the directors, sole shareholders and ultimate beneficial owners of the Inter-Mac entities, and became the sole sponsors of the OPIC loan and Housing Project.

16. During the second half of 2016, the State abruptly stopped issuing subsidies to the residents of the Housing Project. Notwithstanding, the Honduran Government continued to provide assurances that it would honor its commitments made to Claimants. For instance, in February 2017, at a meeting held at the Presidential House, the then-Honduran Secretary of State personally confirmed to Claimants that the Honduran Government was committed to honoring the 2010 Memorandum of Understanding and providing subsidies and long-term mortgages to the residents of "Los Castaños de Choloma."

17. Shortly thereafter, the State unanimously approved the inclusion of Phase II of the Project as part of Honduras' social housing programs, promising to provide Claimants with subsidies to fund the construction of Phase II. This action again evidenced the State's continued support of the Project.

18. Although the State eventually resumed the payment of subsidies to some of the Project's residents, Honduras failed to comply with two of its key commitments: (i) the State failed to issue the subsidies it promised to provide to fund Phase II of the Project; and (ii) the State's banking authority, the "*Banco Hondureño para la Producción y Vivienda*" ("**BANHPROVI**"), failed to provide the required certifications to the intermediate financial institutions that qualified to issue long-term mortgages to residents of social housing programs, such as residents of the Project.

19. Claimants, however, remained confident that Honduras would eventually comply with its promises in light of the amendments the State approved and implemented to its social housing programs in 2021 and 2022. These amendments not only reduced mortgage interest rates from 9.7% to 4%, but also included the purchase of both "new" and "used" homes within the scope of Honduras' social housing programs. Claimants were thrilled to learn about these amendments because this meant that residents of the Project would finally receive the long-awaited mortgages promised by the State.

20. Regrettably, Honduras again reneged on its commitments to Claimants. The State's opprobrious tactics reached their pinnacle on 4 October 2022 when BANHPROVI purposefully excluded, with immediate effect, the residents of "Los Castaños de Choloma" from the scope of the State's social housing financing. Importantly, BANHPROVI's resolution was issued three weeks ***after*** Claimants served their Notice of Intent related to this dispute, all of which evidences the retaliatory nature and malicious intent of BANHPROVI's actions.

21. In parallel, in early 2021 the Municipality of Choloma where the Project is located authorized the establishment of an organization called "*Patronato Pro-Mejoramiento de*

Castaños de Choloma" ("**Patronato**"). What was supposed to be a neighborhood association turned out to be a violent organization led by Mr. Milton Benítez, known as the "*Perro Amarillo*" due to his controversial radio and TV show. Mr. Benítez is the current Advisor to the Minister of Strategy and Communications in the Honduran Government.

22. The Patronato launched a widespread campaign of harassment against the Arguellos and their companies. For starters, the Patronato initiated a campaign of "No Pay," urging the residents of the Project to stop paying their rents to Claimants. It also incurred in vandalism, threats, intimidation, and violence against the Project and its residents, and issued multiple discriminatory and defamatory public statements against Claimants labeling them as "criminals." Needless to say, these media campaigns were false and injurious to the Arguellos' reputation in Honduras and beyond, and compromised Claimants' standing in the local community.

23. The conduct of the governmentally accredited Patronato extended beyond acts of vandalism, insults, and threats. It also involved the further expropriation of Claimants' Investment, which took place when multiple residents and other individuals usurped individual homes within the Housing Project and denied Claimants and their employees access to the Project.

24. Claimants sought assistance from the Honduran police, filed criminal complaints against the Patronato members before the special prosecutor's office for organized crime in Honduras, and initiated more than one hundred eviction actions against these unlawful "residents." Regrettably, the State police and the Honduran courts have failed to take action to prevent the Patronato's illegal activities and, more than two and a half years after the filing of the eviction and criminal actions, Honduran authorities have yet to take action to address these complaints. Accordingly, to date the Patronato continues to operate in the Housing Project with absolute impunity and no accountability, and the Project is in a state of complete disarray.

25. The State's unreasonable and arbitrary failure to issue the promised subsidies and long-term mortgages, as well as its failure to address the Patronato's illegal activities, led to Claimants' loss of their Investment. It also led to OPIC's withdrawal from the Housing Project and Claimants' loss of their opportunity to build Phase II of the Project as well as similar housing projects throughout Honduras and the region. To state the obvious, as a result of the State's illegal, unjust, arbitrary, and discriminatory actions, Claimants have been deprived of their Investment.

26. Claimants committed considerable resources, time, and money to their Investment with the reasonable expectation that the State would not arbitrarily and wrongfully prevent Claimants' return on capital. Although the Honduran Government was a key supporter of the Housing Project since its inception, promoting the Project in joint promotional videos and referring to the Project as a "model" to replicate in other areas of Honduras, in the end, the State's representations proved to be nothing more than empty promises, and its actions and omissions led to the loss of Claimants' Investment.

27. Through the Investment Claimants hoped to establish a significant footprint in the Republic of Honduras via a unique social housing model that would significantly improve the well-being of members of the Honduran community. Instead, Claimants faced a hostile government that wanted nothing to do with its agreed-upon commitments, and that obstructed and prohibited Claimants from enjoying and benefitting from their Investment.

28. In light of the above, Claimants now seek redress through this arbitration in an effort to obtain an award that confirms Honduras' violations of the Central America-Dominican Republic-United States Free Trade Agreement, signed by Honduras on 5 August 2004 and entered into force, with respect to Honduras, on 1 April 2006 (the "**Treaty**" or "**CAFTA-DR**"), and international law. The time has finally come for the State to pay for its arbitrary and wrongful actions.

II.
THE PARTIES

A. Claimants

29. Claimants, Mr. Juan Carlos Arguello and Mr. Ernesto Arguello, are brothers who are United States nationals of legal age and award-winning foreign investors in Honduras.

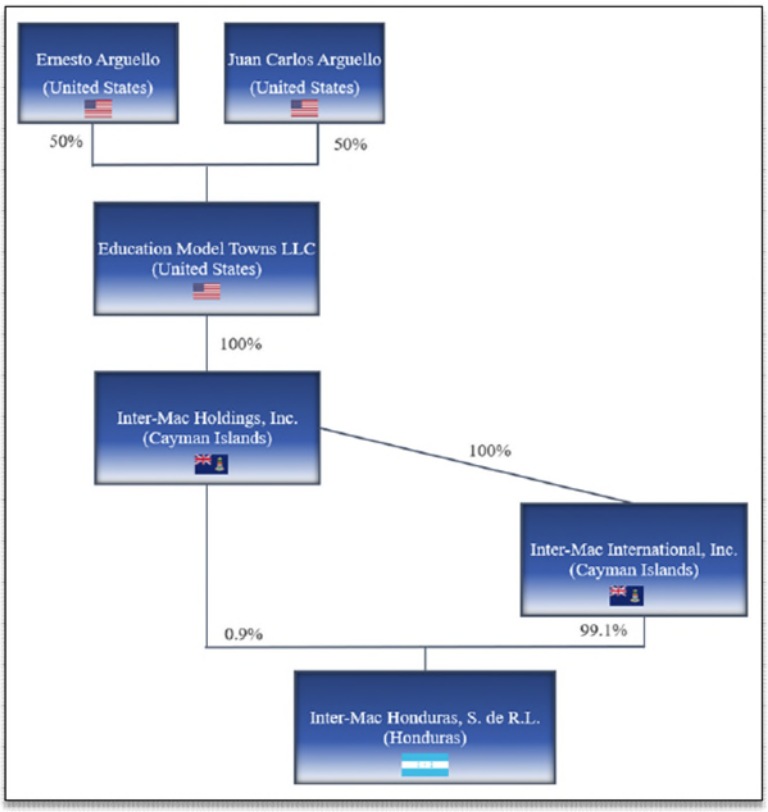
Proofs:

a. **C-1** (Various dates) (Copies of Claimants' United States Passports) (evidencing that Claimants are nationals of the United States).

b. **C-7** (5 April 2023) (Special Power of Attorney granted by Juan Carlos Arguello and Ernesto Arguello to Hogan Lovells US LLP).

c. *See* Statement of Claim, Section III.

30. Claimants are the sole shareholders, owners, and ultimate beneficiaries of (i) Education Model Towns, LLC (a Delaware limited liability company); (ii) Inter-Mac International, Inc. (a Cayman Islands entity); (iii) Inter-Mac Holdings, Inc. (a Cayman Islands company); and (iv) Inter-Mac Honduras, S. de R.L. (a Honduran company) (collectively, the "**Inter-Mac Entities**" or "**Inter-Mac**"):



Proofs:

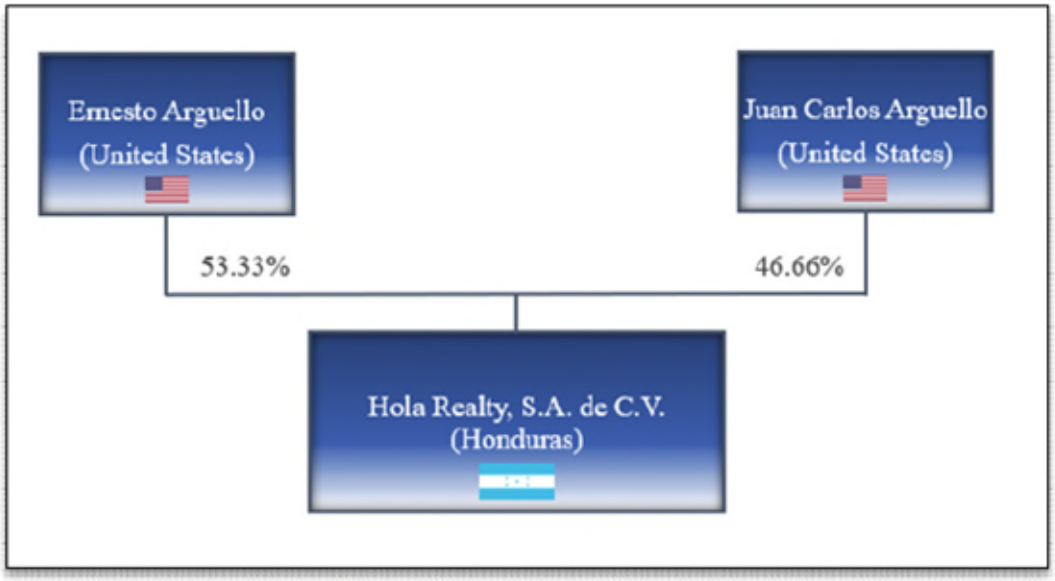
a. **C-2** (19 April 2016) (Certificate of Formation of Education Model Towns, LLC) (evidencing that Claimants are the sole shareholders, owners, and ultimate beneficiaries of Inter-Mac Entities).

b. **C-3** (14 February 2023) (Shareholders' Registry of Inter-Mac International, Inc.) (evidencing that the company's shares were transferred to Inter-Mac Holdings).

c. **C-4** (14 February 2023) (Shareholders' Registry of Inter-Mac Holdings, Inc.) (evidencing that the company's shares were transferred to Education Model Towns, LLC).

d. **C-5** (4 February 2008) ("Acta de Constitución" of Inter-Mac Honduras) (evidencing that its shareholders are Inter-Mac International, Inc. and Inter-Mac Holdings, Inc.).

31. Claimants are also the founders, sole shareholders, and ultimate beneficiaries of Hola Realty, S.A. de C.V. ("**Hola Realty**"), the company Claimants incorporated in Honduras to develop and build the Housing Project "Los Castaños de Choloma":



Proofs:

a. **C-6** (27 June 2007) ("Acta de Constitución" of Hola Realty) (evidencing that its shareholders are the Arguellos).

B. Respondent

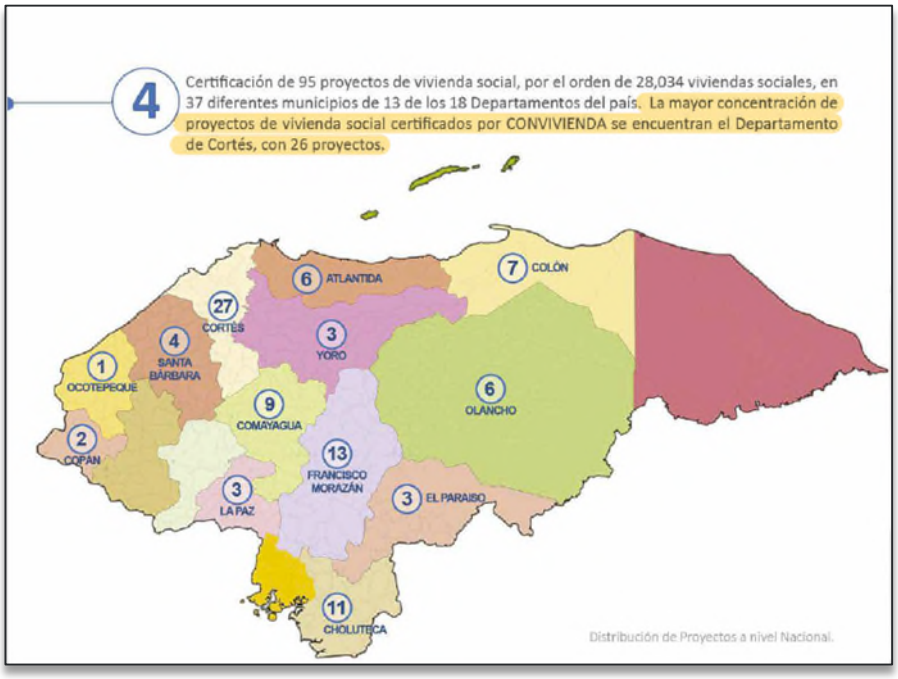
32. Respondent is the Republic of Honduras, a sovereign State located in Central America. The Republic of Honduras is currently the second-largest country in Central America

by area, with a total population of 9.5 million inhabitants and a territory covering 112,090 square kilometers.

Proofs:

a. **C-155** (9 April 2025) (last accessed on 11 April 2025) (Profile of Honduras in the "The World Factbook" by the US Central Intelligence Agency, also available at: https://www.cia.gov/the-world-factbook/countries/honduras/#geography) (describing Honduras' geography, demographics and other country data).

33. Honduras is divided into eighteen departments and 298 municipalities. The Department of Cortés, where the Housing Project was developed, has the highest number of certified social housing projects in the country:

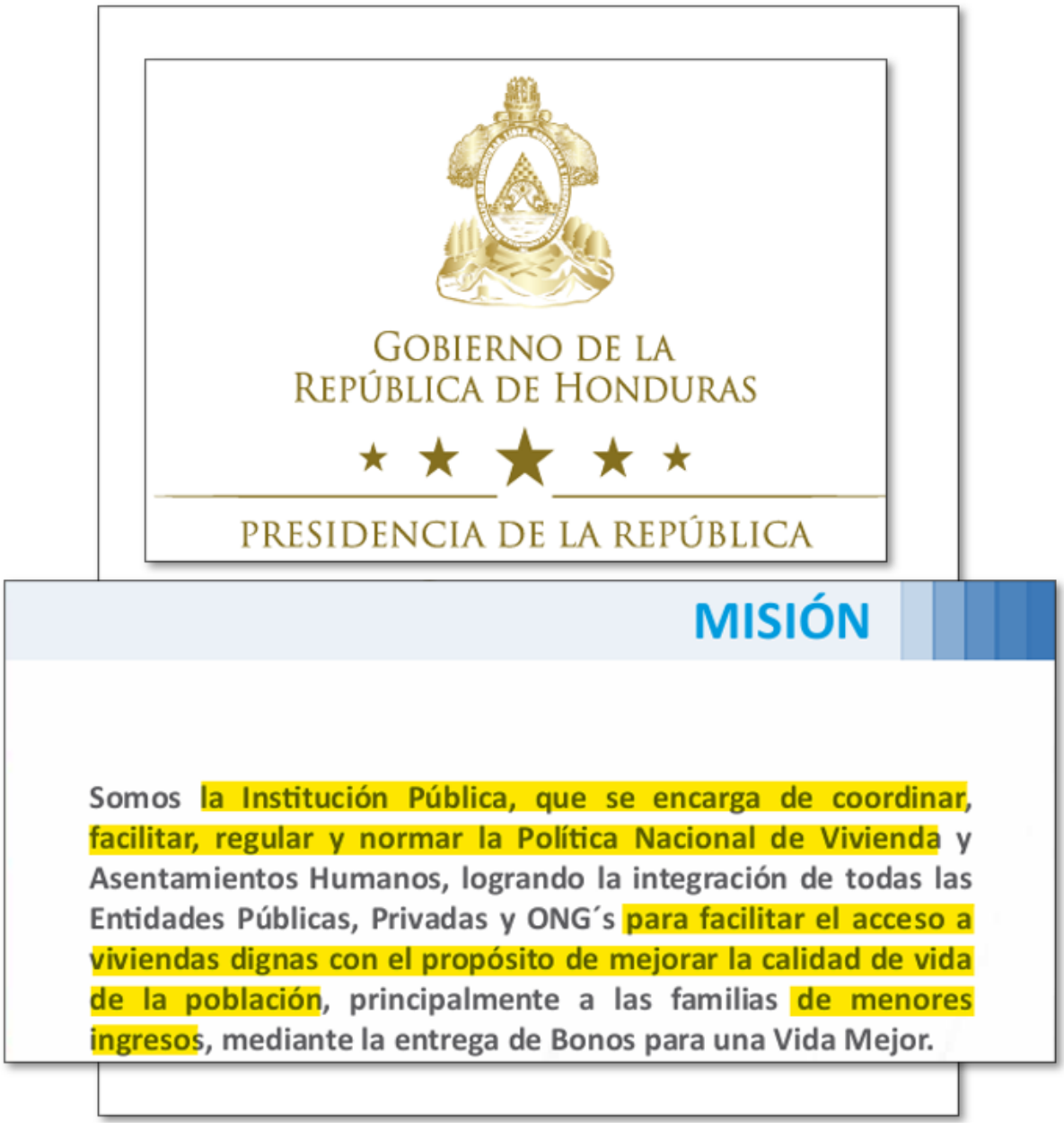


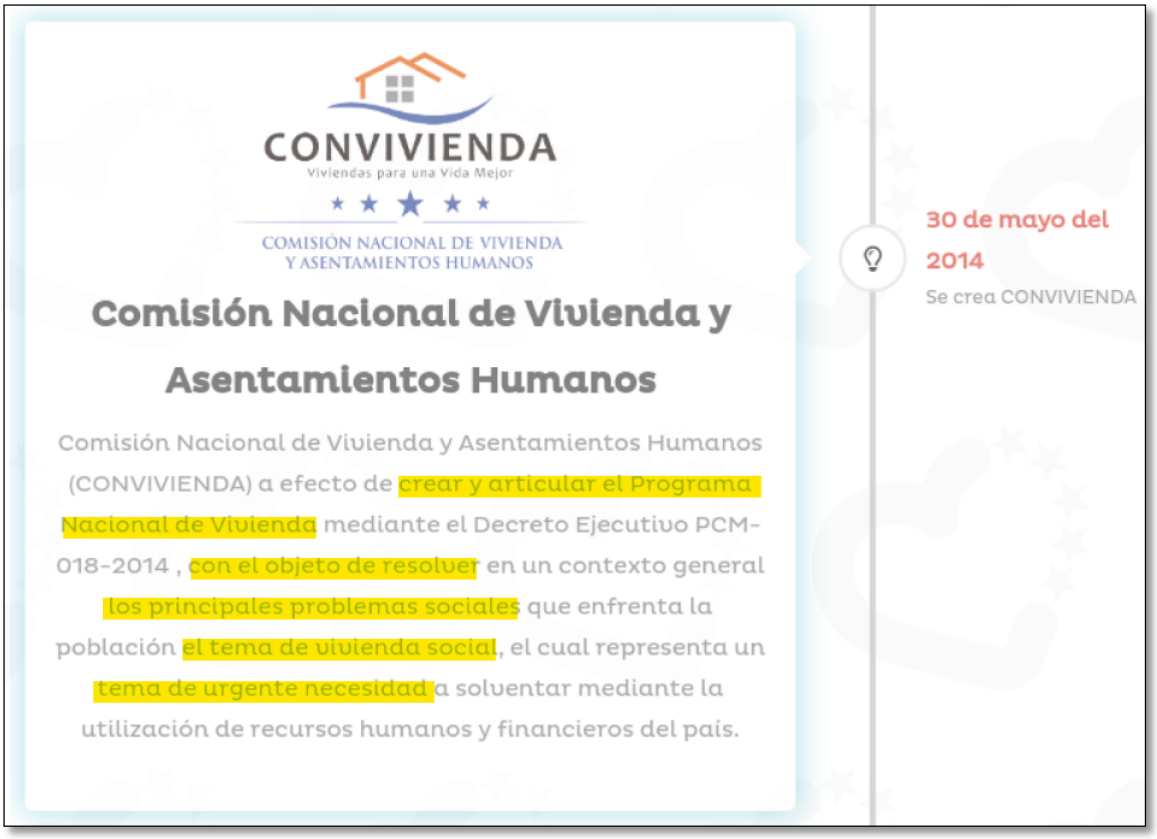
Proofs:

a. **C-32** (Undated) CONVIVIENDA's Institutional Memorandum for years 2014-2017) (evidencing that (i) the Department of Cortés, where the Housing Project was developed, has the highest number of certified social housing projects in the country, (ii) Honduras created subsidy programs for affordable housing, (iii) Honduras issued subsidies under the Social Housing Programs and (iv) President Hernández committed to significantly increasing support for the construction of housing in Honduras, p. 22).

34. There are various State entities or organizations accredited by the State involved in the measures that are at the center of this dispute. These are:

- The National Housing Commission ("Comisión Nacional de Vivienda y Asentamientos Humanos," previously defined as "**CONVIVIENDA**"), a State entity established by Executive Decree PCM-018-2014 on 30 May 2014. Its responsibilities include: (i) formulating and implementing Honduras' national policy on social housing; (ii) certifying projects eligible for social housing programs; (iii) reviewing applications for subsidies; and (iv) approving the issuance of subsidies through its administrative committee ("Comité Técnico Administrativo") to beneficiaries of social housing programs:

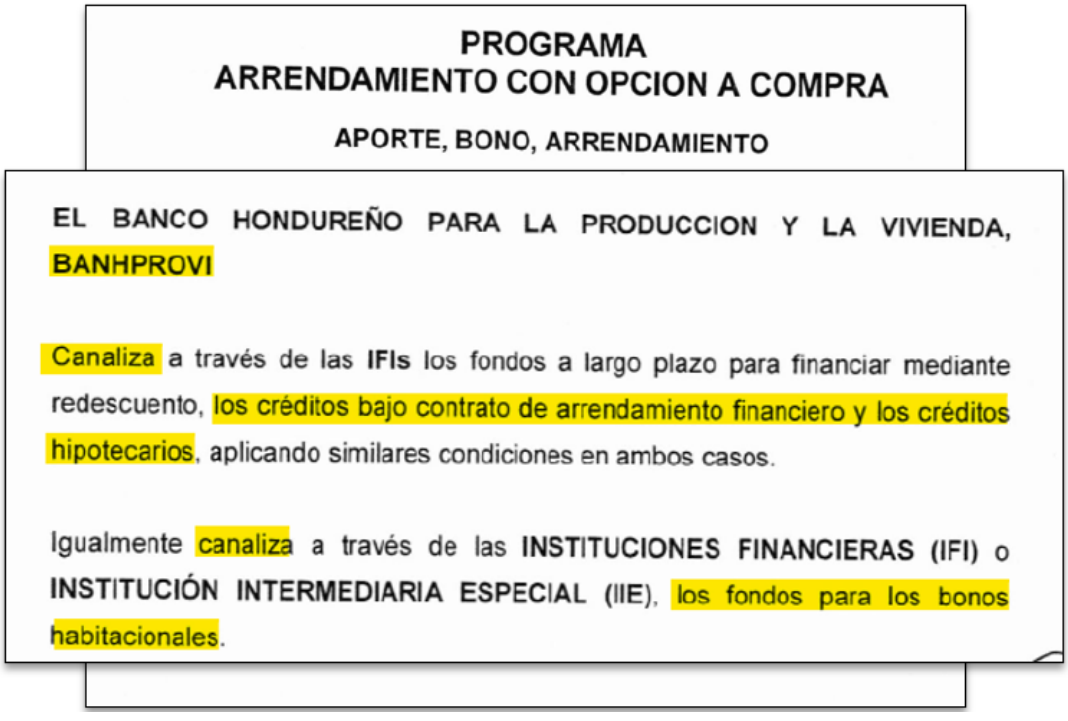




- The Honduran Central Bank, a State entity established by Legislative Decree No. 53 on 3 February 1950. Its responsibilities include: (i) formulating and conducting Honduras' monetary, credit, and foreign exchange policies; (ii) enabling foreign exchange agents to trade currencies within Honduras; (iii) managing the State's foreign exchange reserves; (iv) determining foreign exchange rates based on supply and demand; and (v) conducting monetary stabilization operations.

- The Honduran Bank for Production and Housing ("Banco Hondureño para la Producción y Vivienda," previously defined as "**BANHPROVI**"), a State entity established by Decree-Law No. 6-2005 on 26 January 2005 as a second-tier credit institution of the Honduran Central Bank. Its purpose is to promote the growth and development of Honduras' productive sectors through the provision of financing. BANHPROVI is responsible for, among other responsibilities, certifying the intermediate financial institutions ("**IFIs**") qualified to issue long-term mortgages to residents of social housing programs, as well as issuing subsidies on behalf of the Honduran State to beneficiaries and/or developers participating in CONVIVIENDA's social housing programs:





- The Honduran National Police and the Honduran courts, who failed to (i) provide protection and security to Claimants and their Investment, (ii) enforce eviction orders, and (iii) resolve multiple judicial and

criminal complaints and actions for criminal acts perpetrated against the Housing Project.

- The Patronato, a violent and radical organization that was accredited and empowered by the Municipality of Choloma in January 2021. The Patronato assumed *de facto* control over the Housing Project and engaged in a campaign of harassment against Claimants, their employees and their Investment. Despite repeated requests from the Arguellos, the State's failure to take action against the Patronato (through the Honduran National Police and the Honduran courts) has allowed it to continue to operate in the Housing Project with absolute impunity and no accountability.

Proofs:

a. **C-32** (Undated) (CONVIVIENDA's Institutional Memorandum for years 2014-2017) (evidencing that (i) the Department of Cortés, where the Housing Project was developed, has the highest number of certified social housing projects in the country, (ii) Honduras created subsidy programs for affordable housing, (iii) Honduras issued subsidies under the Social Housing Programs and (iv) President Hernández committed to significantly increasing support for the construction of housing in Honduras, pp. 9-10).

b. **C-33** (April 2016) (Audit report on PROVICCSOL issued by the Tribunal Superior de Cuentas of Honduras) (evidencing that Honduras created subsidy programs for affordable housing) (*see* p. 13, "*Comisión Nacional de Vivienda y Asentamientos Humanos (CONVIVIENDA): creada mediante Decreto PCM 024-2014 del 30 de mayo del 2014, siendo este en la actualidad el medio por el cual se entregan los bonos de subsidio otorgados a los beneficiarios del programa*.").

c. **C-34** (3 september 2015) (CONVIVIENDA's ABA Program) (evidencing that Honduras created the "Programa Vivienda en Arrendamiento con Opción a Compra" to allow low income Hondurans to purchase housing with government subsidies and loans) (*see* pp. 7-8 describing CONVIVIENDA's responsibilities).

d. **C-35** (5 August 2014) (Fideicomiso Framework Agreement between Honduras and BANHPROVI) (establishing the conditions for the management of the subsidies and long-term mortgages to be granted under CONVIVIENDA's social housing programs, concluded between the State's Secretary of Finance and BANHPROVI) (*see* Article 2, setting out the object of the contract).

e. **C-156** (Undated) (last accessed on 11 April 2025) (Official Website of "Programa de Vivienda y Asentamientos Humanos," also available at: (https://pvah.gob.hn/proviccsol-

pvah/) (describing the "Programa de Vivienda Ciudadana y Crédito Solidario (PROVICCSOL)" and the responsibilities of CONVIVIENDA).

f. **C-157** (Undated) (last accessed on 11 April 2025) (Official Website of Honduran Central Bank, also available at: https://www.bch.hn/EN/about-of-bch/who-we-are/functions) (describing the functions of the Bank).

g. **C-158** (Undated) (last accessed on 11 April 2025) (Official Website of Banco Hondureño para la Producción y Vivienda" ("BANHPROVI"), also available at: https://web.banhprovi.gob.hn/#/Mision) (describing the mission and vision of BANHPROVI).

h. **C-23** (11 January 2021) (Accreditation of the "Patronato Pro-Mejoramiento de la comunidad" "Los Castaños de Choloma" adopted by the Municipality of Choloma) (evidencing the composition of the Patronato and that the Patronato was empowered by Honduran State representatives "*para realizar todo tipo de labor que traiga el desarrollo y bienestar*" in "Los Castaños de Choloma").

i. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 77-95).

j. **C-191** (First Declaration of Claudio Antonio Discua, at ¶¶ 51, 53).

III.
STATEMENT OF FACTS

A. Honduras Enacted and Developed a Legal and Regulatory Framework Aimed at Incentivizing Investments in the Social Housing Sector

1. Honduras' Initial Efforts to Create and Develop Social Housing Programs

35. The housing crisis in Honduras has been one of the most pervasive crises in the country. This crisis has been exacerbated by the significant increase in the urban population of Honduras, which grew by almost 47% between 2001 and 2013, and the lack of commensurate investment in urban housing, resulting in approximatively 40% of the poorest segment of the Honduran population living in substandard conditions. In fact, according to CONVIVIENDA more than 60% of households in Honduras live in poverty, with more than 40% experiencing extreme poverty.

Proofs:

a. **C-36** (April 2016) ("Honduras National Report – Habitat III," presented at the Third United Nations Conference on Housing and Sustainable Urban Development) (evidencing that Honduras has been facing one of the most pervasive housing crisis in the country, p. 1).

b. **C-32** (Undated) (CONVIVIENDA's Institutional Memorandum for years 2014-2017) (evidencing that (i) the Department of Cortés, where the Housing Project was developed, has the highest number of certified social housing projects in the country, (ii) Honduras created subsidy programs for affordable housing, (iii) Honduras issued subsidies under the Social Housing Programs and (iv) President Hernández committed to significantly increasing support for the construction of housing in Honduras) (*see* p. 30 "*Existen en las áreas urbanas del país problemas en sus asentamientos humanos principalmente en aquellos dirigidos a la población más pobre, estos se encuentran ubicados en tierras no aptas para ser urbanizadas, susceptibles a ser afectadas por eventos naturales y no articuladas con redes de transporte, de servicios y de las zonas generadores de empleo*.").

36. In an attempt to address this challenge, Honduras created in 2002 the "Programa de Vivienda Digna" through Decree-Law 348-2002. This was the first social housing program in Honduras to provide government-funded subsidies and preferential mortgages designed to help low-income families gain access to decent housing:

BANHPROVI cuenta con un Programa de Vivienda Digna, que se creó en el año 2002, mediante Decreto Legislativo 348-2002, el cual establece en su primer considerando que *"la Constitución de la República en su Artículo 178 reconoce a los hondureños el derecho de una vivienda digna, para lo cual el Estado formulará y propiciará programas habitacionales".*

Este Programa está conformado por un crédito que se otorga a una tasa de interés del 9% al prestatario (usuario final) y 5% al intermediario, y va acompañado de un subsidio en el cual se le otorga Lps.41,600.00 al prestatario, a través de la Secretaría de Finanzas y el Banco Central de Honduras mediante un fideicomiso, cuenta con un monto máximo de 66 salarios mínimos, que corresponde al precio de venta de la vivienda, en el cual el prestatario debe pagar el 5% de la prima, restándole el subsidio de Lps.41,600.00 y pagando el resto del precio de venta.

Proofs:

a. C-37 (11 June 2012) (Communication of Honduras' "Secretaria de Estado en Los Despachos de Justicia y Derechos Humanos" to the United Nations) (evidencing that in 2002, the State created the "Programa de Vivienda Digna" to address the housing crisis in Honduras) (*see* p. 5 of the PDF, describing the program's functioning).

37. A few years later, in 2006, Honduras created another social housing program, the "Programa de Vivienda Ciudadana y Crédito Solidario" ("**PROVICCSOL**"), through Executive Decree PCM-39-2006. PROVICCSOL provided for the issuance of government-funded subsidies and preferential mortgages, but targeted the lowest income population:

Poder Ejecutivo

DECRETO EJECUTIVO NÚMERO PCM-016-2010

EL PRESIDENTE CONSTITUCIONAL DE LA REPÚBLICA, EN CONSEJO DE MINISTROS

CONSIDERANDO: Que mediante Decreto Ejecutivo No. PCM 39-2006 de fecha 20 de octubre del 2006 y publicada en el Diario Oficial La Gaceta en fecha 24 de octubre del mismo año, se creó el Programa de Vivienda Ciudadana y Crédito Solidario, en adelante PROVICCSOL, con el objetivo de proveer de una vivienda digna y crédito solidario, en el marco de la economía social, a la población de menores recursos, mediante acciones solidarias.

CONSIDERANDO: Que PROVICCSOL funciona adscrito a la Presidencia de la República y cumple responsabilidades en la gestión de recursos y apoyo a la definición de políticas nacionales de vivienda; monitoreo y seguimiento de proyectos de construcción y mejoramiento habitacional, establecimiento de fuentes de cooperación con otras instituciones y programas nacionales.

Proofs:

a. **C-33** (April 2016) (Audit report on PROVICCSOL issued by the Tribunal Superior de Cuentas of Honduras) (evidencing that Honduras created subsidy programs for affordable housing) (*see* p. 9, "*El PROVICCSOL es el encargado de propiciar y gestionar el financiamiento con modalidades de crédito preferenciales y subsidios, para el desarrollo de proyectos de vivienda solidaria. También entre sus obligaciones están, calificar en coordinación con las administradoras de fondos, a los agentes productores o desarrolladores de vivienda y de servicios habitacionales*.").

b. **C-38** (14 May 2010) (Executive Decree PCM-016-2010 amending Decree PCM 39-2006 with a view to improve PROVICCSOL's efficiency) (evidencing that in 2010, the State created the "Programa de Vivienda Ciudadana y Crédito Solidario" to address the housing crisis in Honduras).

c. **C-159** (Undated) (last accessed on 11 April 2025) (Official Website of "Programa de Vivienda y Asentamientos Humanos", also available at: https://pvah.gob.hn/proviccsol/) (describing the mission and vision of Programa de Vivienda Ciudadana y Crédito Solidario (PROVICCSOL)).

38. PROVICCSOL was partly funded through a USD $30 million loan adopted by the Inter-American Development Bank in October 2006. This initiative was known as the "Programa de Vivienda de Interés Social."

Proofs:

a. **C-39** (Undated) (last accessed on 11 April 2025) (Excerpt from the English version of the Inter-American Development Bank webpage on the "Programa de Vivienda de Interés Social," also available at: https://www.iadb.org/en/project/HO-L1007) (evidencing that the "Programa de Vivienda de Interés Social" was partly funded through a USD $30 million loan granted by the Inter-American Development Bank).

39. In January 2007, the Honduran Government publicly announced the launch of a new social housing program designed to construct 200,000 homes in Honduras. To support this initiative, the Government allocated a budget of L 200 million (approximately, USD $7.7 million) to that program.

Proofs:

a. **C-40** (28 January 2007) (Article from La Prensa entitled "El Gobierno promete construir 200 mil casas," also available at: https://www.laprensa.hn/honduras/el-gobierno-promete-construir-200-mil-casas-NFLP641158) (evidencing that the Honduran Government publicly announced the launch of a new social housing program designed to construct 200,000

homes in Honduras and allocated a budget of L 200 million to support the program).

40. In its desire to modernize PROVICCSOL and improve its efficiency, in 2010 and 2013 Honduras issued Executive Decrees PCM-016-2010 and PCM-010-2013. Among other changes, through the decrees the State established that PROVICCSOL's social housing program would focus on families and workers earning less than two minimum wages or those with low, precarious, or informal incomes. PROVICCSOL was specifically tasked with approving policies and regulations for the implementation of mortgages and subsidies, while BANHPROVI was responsible for certifying the entities managing funds under PROVICCSOL's social housing program and administering those funds through a trust fund known as a "fideicomiso."

Proofs:

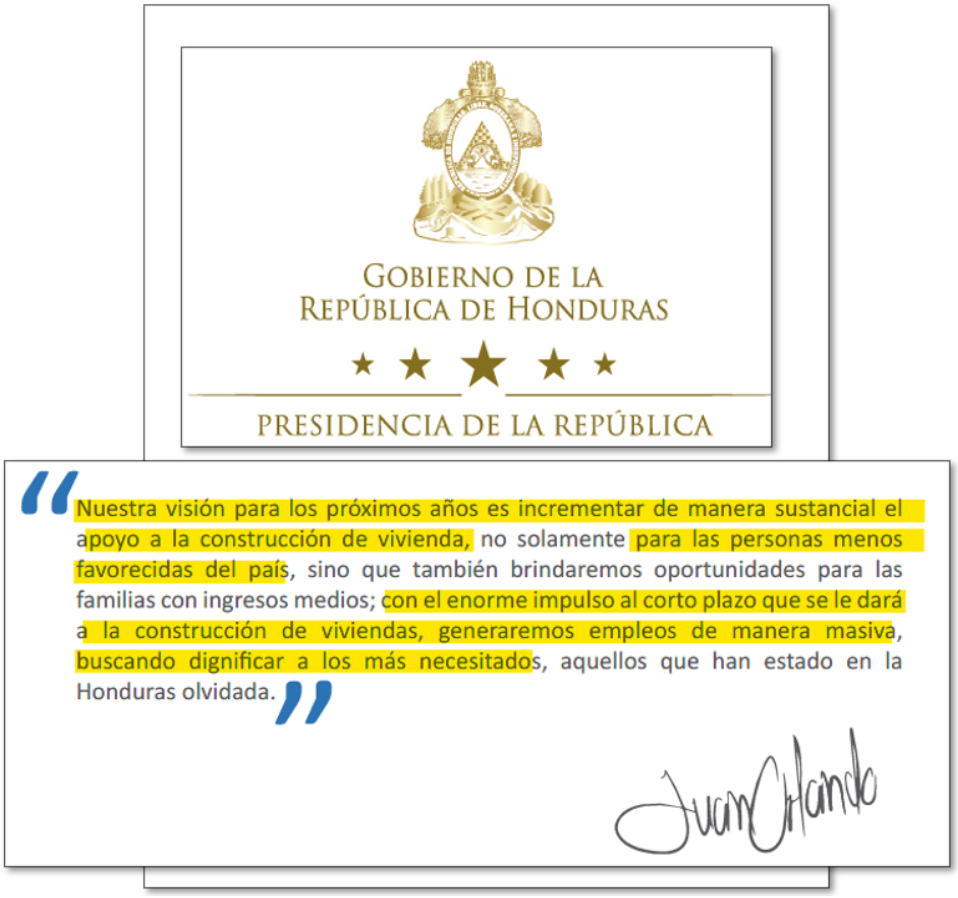
a. **C-33** (April 2016) (Audit report on PROVICCSOL issued by the Tribunal Superior de Cuentas of Honduras) (evidencing that Honduras created subsidy programs for affordable housing) (*see* p. 10, "***Se creó un Fideicomiso*** *por 66 millones pudiéndose incrementar según la demanda de proyectos y la disponibilidad de fondos a favor de PROVICCSOL.* ***Este es administrado por BANHPROVI*** *e intermediado por las Cooperativas de Ahorro y Crédito calificadas por BANHPROVI por sus siglas es el Banco Hondureño para la Producción y la Vivienda responsable de promover a través de los servicios financieros que brinde, el crecimiento y desarrollo socioeconómico de todos los hondureños, mediante el financiamiento inclusivo para la producción y la vivienda, con énfasis en el sector social de la economía, así como la inversión en obras y proyectos de infraestructura rentables, que promuevan la competitividad nacional y el empleo digno*.") (emphasis added).

b. **C-38** (14 May 2010) (Executive Decree PCM-016-2010 amending Decree PCM 39-2006 with a view to improve PROVICCSOL's efficiency) (evidencing that in 2010, the State created the "Programa de Vivienda Ciudadana y Crédito Solidario" to address the housing crisis in Honduras).

c. **C-41** (3 April 2013) (Executive Decree PCM-010-2013) (evidencing that Honduras issued rules and regulations aimed at improving PROVICCSOL's efficiency) (*see* Article 1, amending Article 6 of Decree PCM 39-2006: "*Es entendido que los recursos financieros del Programa serán canalizados a través de las cooperativas de Ahorro y Crédito, Empresas del Sector Social de la Economía, Organismos No Gubernamentales (ONGs) o entidades del sistema financiero nacional, que operen en legal y debida forma y,* ***que a su vez sean debidamente calificadas por el Banco Hondureño para la Producción y la Vivienda (BANHPROVI)****, aplicando en todo caso las mismas condiciones de crédito ya establecidas*.") (emphasis added).

2. Honduras Modernizes its Social Housing Programs to Attract Further Investments

41. Despite these initial Government efforts, the lack of affordable housing remained a significant challenge in Honduras. In 2014, the newly elected government of President Juan Orlando Hernández ("**President Hernández**") declared social housing a ***national priority*** and launched a series of reforms aimed at overhauling the existing social housing sector to attract additional investments (both domestic and foreign) and further improve its efficiency. As President Hernández declared, his administration's ambition was to significantly increase support for the construction of housing in Honduras:



Proofs:

a. **C-32** (Undated) (CONVIVIENDA's Institutional Memorandum for years 2014-2017) (evidencing that (i) the Department of Cortés, where the Housing Project was developed, has the highest number of certified social housing projects in the country, (ii) Honduras created subsidy programs for affordable housing, (iii) Honduras issued subsidies under the Social Housing Programs and (iv) President Hernández committed to significantly increasing support for the construction of housing in Honduras, p.5).

42. Notably, Honduras' modernized regime was built upon four essential pillars designed to address the housing crisis in the country: (i) incentivizing the construction sector through the issuance of incentives to housing developers; (ii) managing the funding required for the issuance of permanent subsides; (iii) securing optimal conditions for the issuance of mortgages by Honduran banks; and (iv) establishing a framework for social housing policies:

> Nuestra meta ha sido propiciar las condiciones que permitan el desarrollo ordenado de viviendas a nivel nacional, incentivando el sector construcción, proporcionando estímulos a los desarrolladores de vivienda como la creación de programas como el Apoyo Financiero al Desarrollador, gestionar financiamiento dirigido al otorgamiento permanente de bonos habitacionales, gestionar las mejores condiciones en la banca para los créditos de las familias y adoptar políticas habitacionales que conllevan a un ordenamiento integral del sector.

Proofs:

a. **C-32** (Undated) (CONVIVIENDA's Institutional Memorandum for years 2014-2017) (evidencing that (i) the Department of Cortés, where the Housing Project was developed, has the highest number of certified social housing projects in the country, (ii) Honduras created subsidy programs for affordable housing, (iii) Honduras issued subsidies under the Social Housing Programs and (iv) President Hernández committed to significantly increasing support for the construction of housing in Honduras, p. 7).

43. The first step in the implementation of Honduras' modernized regime was the creation of CONVIVIENDA in May 2014. CONVIVIENDA was established to "creat[e] and articulat[e] the National Housing Program." It brought together various pre-existing government agencies and housing programs, including PROVICCSOL, to enhance efficiency in addressing Honduras' housing crisis.

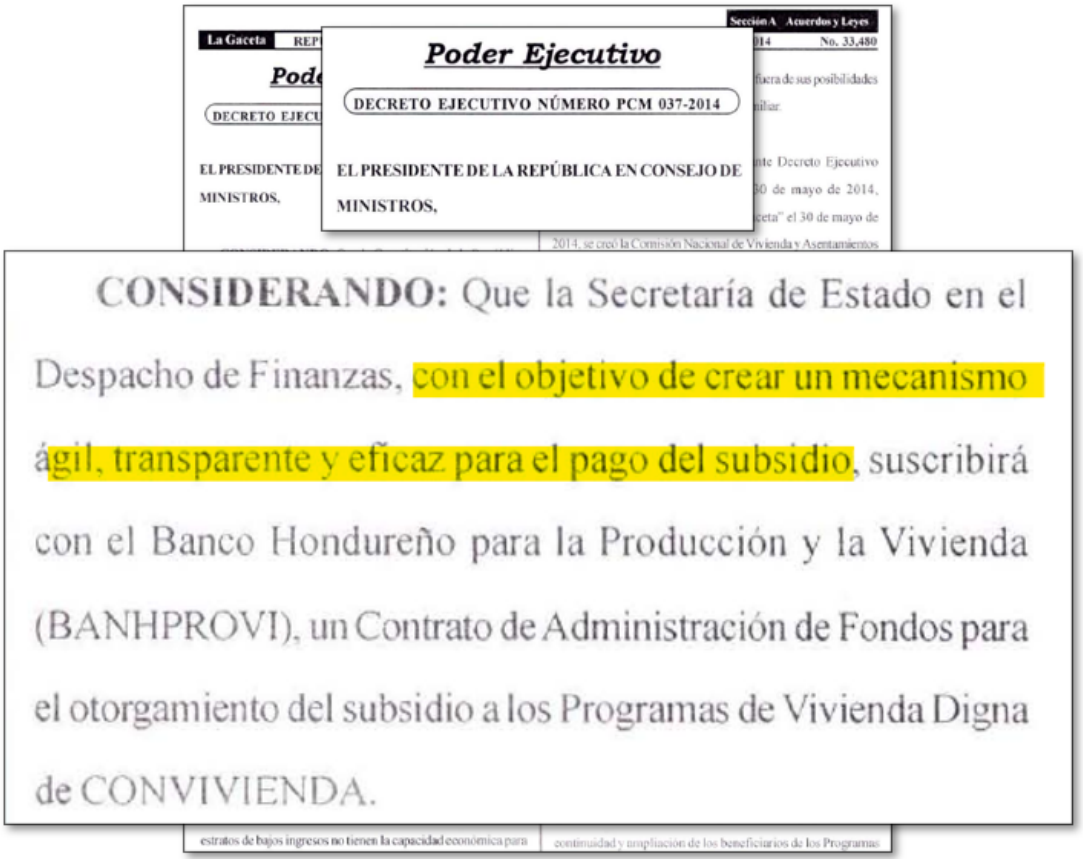
Proofs:

a. **C-32** (Undated) (CONVIVIENDA's Institutional Memorandum for years 2014-2017) (evidencing that (i) the Department of Cortés, where the Housing Project was developed, has the highest number of certified social housing projects in the country, (ii) Honduras created subsidy programs for affordable housing, (iii) Honduras issued subsidies under the Social Housing Programs and (iv) President Hernández committed to significantly increasing support for the construction of housing in Honduras, p. 22) (*see* item 6, referring to the different entities and housing programs that were consolidated upon CONVIVIENDA's creation).

b. **C-36** (April 2016) ("Honduras National Report – Habitat III," presented at the Third United Nations Conference on Housing and Sustainable Urban Development) (evidencing that Honduras has been facing one of the most pervasive housing crisis in the country, p. 1 47 the document).

c. **C-160** (Undated) (last accessed on 11 April 2025) (Official Website of "Programa de Vivienda y Asentamientos Humanos" – CONVIVIENDA, also available at: https://pvah.gob.hn/convivienda-pvah/) (describing the history and objective of CONVIVIENDA).

44. Within two months of CONVIVIENDA's creation, more specifically on 16 July 2014, Honduras enacted Executive Decree No. 037-2014 ("**Decree 037-2014**") through which the Honduran government recognized that previous social housing programs had not met expectations for providing decent housing to the lowest-income segments of the population, highlighting that the housing crisis was an "**urgent issue to address**." (emphasis added). Decree 037-2014 also approved the execution by the Honduran Finance Secretary of a "Contrato de Administración de Fondos para el otorgamiento del subsidio a los Programas de Vivienda Digna de CONVIVIENDA" ("**Fideicomiso Framework Agreement**") which was meant to create a flexible, **transparent**, and efficient mechanism for the payment of subsidies under the State's social housing programs:



Proofs:

a. **C-42** (16 July 2014) (Executive Decree PCM-037-2014 approving the conclusion of a contract of "fideicomiso" between the Honduran State and BANHPROVI) (evidencing that the Honduran government recognized that previous social housing programs had not met expectations; highlighting that the housing crisis was an "urgent issue to address"; and approving the "Contrato de Administración de Fondos para el otorgamiento del subsidio a los Programas de Vivienda Digna de CONVIVIENDA") (*see* Article 1: "*Autorizar la Secretaria del Estado en el Despacho de Finanzas, para que nombre y en representación del Gobierno de la República de Honduras, suscriba con el Banco Hondureño para la Producción y Vivienda (BANHPROVI) un "Contrato de Administración de Fondos para el Otorgamiento del Subsidio a los Programas de Vivienda para una Vida Mejor de CONVIVIENDA*").

45. Ten days later, on 26 July 2014, Honduras issued Executive Decree 043-2014 ("**Decree 043-2014**") in which it recognized the urgent need to simplify the procedures and administrative processes for social housing projects and declared them to be of "**national necessity and priority**" so that those programs could benefit from the accelerated investment process for large investments established in Articles 40 and 41 of Honduras' 2011 Law on the Promotion and Protection of Investments ("**Investment Law**") (emphasis added).

Proofs:

a. **C-43** (26 July 2014) (Executive Decree PCM-043-2014) (evidencing that the Honduran Government declared social housing projects to be of "necesidad y prioridad nacional", Fifth Whereas and Article 1).

b. **CL-5** (15 July 2011) (Law on the Promotion and Protection of Investments) (*see* Articles 40 and 41, setting out the accelerated investment process for large investments above USD $50 million).

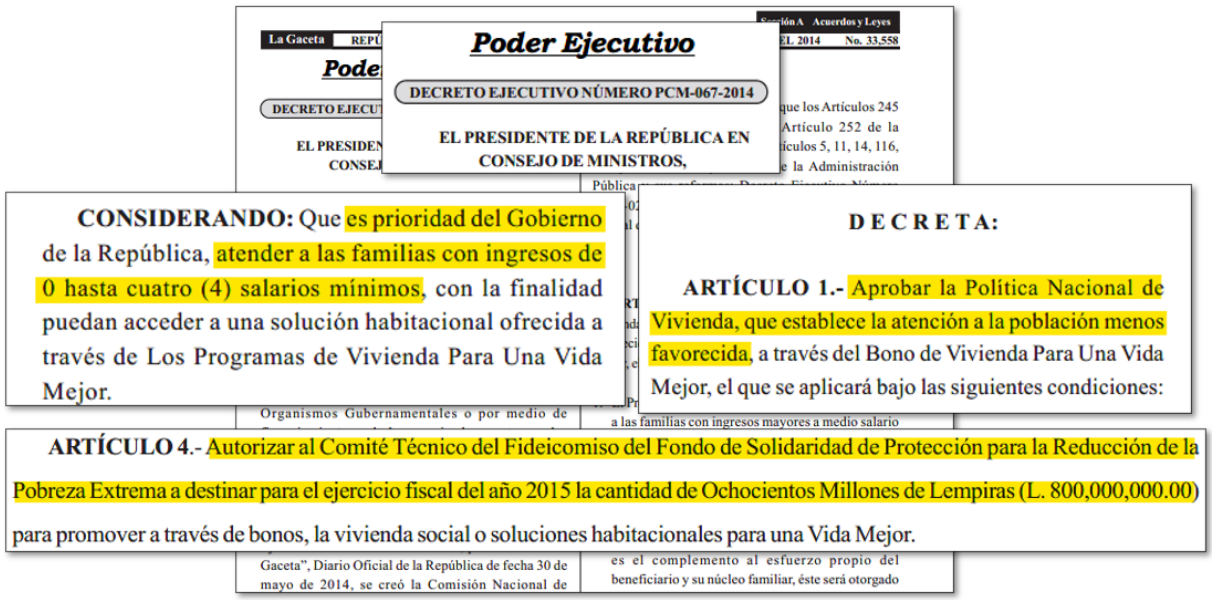
46. In furtherance of Decree 037-2014, on 5 August 2014, the Finance Secretary of Honduras and BANHPROVI signed the Fideicomiso Framework Agreement, which authorized BANHPROVI to manage the funds required for issuing subsidies and long-term mortgages to beneficiaries of social housing programs in a fiduciary capacity. The "fideicomiso" was initially established with a fund of L 100 million (approximately USD $4.7 million) and was to be supplemented with additional allocations from the Honduran government.

Proofs:

a. **C-35** (5 August 2014) (Fideicomiso Framework Agreement between Honduras and BANHPROVI) (establishing the conditions for the management of the subsidies and long-term mortgages to be granted under CONVIVIENDA's social housing programs, concluded between the State's Secretary of Finance and BANHPROVI) (*see* Third Clause: "*El Patrimonio del Fideicomiso lo constituye el aporte que*

> *realizará la Secretaría de Estado en el Despacho de Finanzas, el cual será hasta por un monto de CIEN MILLONES DE LEMPIRAS EXACTOS (L 100,000,000.00), provenientes del "Fideicomiso para la Administración del Fondo de Solidaridad y Protección Social para la Reducción de la Pobreza Extrema" administrado en Banco Central de Honduras (BCH); Asimismo, este fideicomiso se podrá incrementar con* ***1. Aportes que haga en el futuro el Estado de Honduras a través de fondos nacionales****. […]*") (emphasis added).

47. The second major step towards the implementation of Honduras' modernized housing regime was the adoption, on 17 October 2014, of Decree 067-2014, which (i) approved the National Housing Policy; (ii) declared that it was a priority of the Honduran Government to provide housing to families with incomes ranging from zero to four times the minimum wage under the umbrella of the "Programas Vivienda para Una Vida Mejor" ("**Vivienda para una Vida Mejor**"); and (iii) approved the allocation of L 800 million (approx. USD $37.6 million) to promote social housing ("**Decree 067-2014**"):


La Gaceta

Poder Ejecutivo

DECRETO EJECUTIVO NÚMERO PCM-067-2014

EL PRESIDENTE DE LA REPÚBLICA EN CONSEJO DE MINISTROS,

CONSIDERANDO: Que es prioridad del Gobierno de la República, atender a las familias con ingresos de 0 hasta cuatro (4) salarios mínimos, con la finalidad puedan acceder a una solución habitacional ofrecida a través de Los Programas de Vivienda Para Una Vida Mejor.

D E C R E T A:

ARTÍCULO 1.- Aprobar la Política Nacional de Vivienda, que establece la atención a la población menos favorecida, a través del Bono de Vivienda Para Una Vida Mejor, el que se aplicará bajo las siguientes condiciones:

ARTÍCULO 4.- Autorizar al Comité Técnico del Fideicomiso del Fondo de Solidaridad de Protección para la Reducción de la Pobreza Extrema a destinar para el ejercicio fiscal del año 2015 la cantidad de Ochocientos Millones de Lempiras (L. 800,000,000.00) para promover a través de bonos, la vivienda social o soluciones habitacionales para una Vida Mejor.

Proofs:

a. **C-44** (17 October 2014) (Executive Decree PCM-067-2014) (evidencing that the Honduran Government approved the National Housing Policy and the PVM Program, Fourth Whereas, Articles 1, 3, and 4.)

48. On 5 December 2014, the Honduran Government empowered CONVIVIENDA to incorporate additional social housing programs under the umbrella of "Vivienda para Una Vida Mejor" to tackle the urgent housing crisis affecting the country. This led to the adoption of a total of *nine* subprograms ("**Social Housing Programs**"), *four* of which applied to Claimants' Housing Project:

- **<u>"Programa Bono Para una Vida Mejor" ("BVM Program")</u>**: established on 10 October 2014 through Decree 067-2014, this program was designed to assist the lowest-income segment of the Honduran population, namely families with incomes ranging <u>from zero to half</u> minimum wages, through the issuance of government subsidies:





VI. DESCRIPCION DEL PROGRAMA

El Programa de Bono de Vivienda para una Vida Mejor BVM, nace como respuesta del Gobierno de la Republica a la realidad de miles de hogares que viven en situación de extrema pobreza (ingresos de 0 a ½ salario mínimo) y dada esa condición, no logran acceder a un crédito de vivienda por los mecanismos tradicionales que ofrece el mercado.

El esquema BVM, es el resultado del otorgamiento de recursos por parte del Estado y como complemento, el esfuerzo propio del postulante y su núcleo familiar aportando la mano de obra no calificada (requisito de carácter de obligatorio cumplimiento). El Bono BVM será registrado electrónicamente por el Sistema de Gestión de Bonos SIGEB al haber cumplido con los requisitos establecidos en este Manual, ROP y otros que CONVIVIENDA apruebe.

- **<u>"Programa Aporte, Bono y Crédito" ("ABC Program")</u>**: established on 10 October 2014 through Decree 067-2014, this program was designed to assist families with incomes ranging <u>from half to four</u> minimum wages. Under this program, families were required to make a down payment based on their financial capacity to acquire a property through the "Aporte" component. This down payment would be supplemented by a government subsidy ("Bono") and a mortgage ("Crédito") provided by IFIs.

- **<u>"Programa Bono Arrendamiento con opción a compra" ("ABA Program")</u>**: established in 2015 as a permanent program, the ABA Program was designed to assist residents who had incomes

ranging from half to four minimum wages and who had concluded lease-purchase agreements. At the start of their tenancy, residents received subsidies from the Honduran State that reduced their monthly rent payments. Once they demonstrated creditworthiness, residents became eligible for long-term mortgages denominated in lempiras, approved by BANHPROVI and issued by IFIs. This process was meant to enable them to exercise their purchase option and acquire the properties they had been renting.



El Programa Vivienda en Arrendamiento con Opción a Compra: Aporte, Bono, Arrendamiento (ABA) será un programa permanente que implementará la **COMISION NACIONAL DE VIVIENDA Y ASENTAMIENTOS HUMANOS, CONVIVIENDA,** y el mismo estará orientado para el arrendamiento de viviendas

2.- ABA CON CREDITO HIPOTECARIO que promoverá la ejecución de desarrollos de vivienda social bajo la modalidad de arrendamiento con opción a compra, en donde la familia beneficiaria podrá optar a un crédito hipotecario al cumplir un periodo de tiempo acordado.

- **<u>"Programa Temporal de Apoyo Financiero al Desarrollador" ("AFD Program")</u>**: established on 26 May 2015 through Executive Decree 019-2015, this program was designed to incentivize investment in the social housing sector by providing <u>developers</u> certified by CONVIVIENDA with an upfront subsidy of L 90,000 per house constructed (approx. USD $4,000 at the time) to assist with their construction costs. Intended as a temporary initiative applicable to the first 10,000 houses certified by CONVIVIENDA, the duration of the AFD Program has been extended three times—first to 31 December 2018, then to 30 November 2021, and finally to November 2025—through Executive Decrees 088-2018 and 82-2021, as well as Law-Decree 82-2021.



PRESIDENCIA DE LA REPUBLICA

CONVIVIENDA
Viviendas para una Vida Mejor

PROGRAMA TEMPORAL DE APOYO FINANCIERO AL DESARROLLADOR PRIVADO

PARA
LA CONSTRUCCIÓN DE LAS PRIMERAS 10,000 VIVIENDAS EN PROYECTOS CERTIFICADOS POR CONVIVIENDA

INTRODUCCIÓN

El **Programa Temporal de Apoyo Financiero al Desarrollador (AFD)** surge con el fin de aportar un capital semilla para promover la construcción de un importante inventario de viviendas que permitan aumentar la oferta de soluciones habitacionales de interés social, y a la vez dinamizar el sector construcción de vivienda social que se encuentra en un largo período de recesión.

NOVIEMBRE 2015

Proofs:

a. **C-32** (Undated) (CONVIVIENDA's Institutional Memorandum for years 2014-2017) (evidencing that (i) the Department of Cortés, where the Housing Project was developed, has the highest number of certified social housing projects in the country, (ii) Honduras created subsidy programs for affordable housing, (iii) Honduras issued subsidies under the Social Housing Programs and (iv) President Hernández committed to significantly increasing support for the construction of housing in Honduras) (*see* p. 21, item 2 describing the eight Social Housing Programs

created under the umbrella of the PVM Program and item 3 providing the outcome of the AFD Program for the period 2014-2017, and pp. 40-48 describing the nine Social Housing Programs).

b. **C-34** (3 september 2015) (CONVIVIENDA's ABA Program) (evidencing that Honduras created the "Programa Vivienda en Arrendamiento con Opción a Compra" to allow low income Hondurans to purchase housing with government subsidies and loans) (*see* pp. 2 and 8 of the document setting out BANHPROVI's responsibility in issuing subsidies and long-term mortgages to the beneficiaries of the ABA Program, and p. 10-14 of the document setting out the key features of the ABA Program).

c. **C-45** (5 December 2014) (Executive Decree PCM-081-2014) (demonstrating that the State empowered CONVIVIENDA to incorporate other social housing programs into the PVM Program) (*see* Article 1: "*Facultar a la Comisión Nacional de Vivienda y Asentamientos Humanos (CONVIVIENDA), para que incorpore a la Política Nacional de Vivienda, aprobada mediante Decreto Ejecutivo […] PCM-067-2014 otros Programas […] que permitan a [CONVIVIENDA] dar cumplimiento con su objecto constitutivo de resolver en un contexto general los principales problemas sociales que enfrenta la población en el tema de vivienda social, mismo que representa un tema de urgente necesidad a solventar mediante la utilización de recursos humanos y financieros del país*.")

d. **C-46** (November 2021) (CONVIVIENDA's operational regulation for the BVM Program) (setting out the object and key features of the BVM Program, p. 8).

e. **C-47** (2 November 2015) (CONVIVIENDA's operational regulation for the AFD Program) (evidencing that the AFT Program was designed to incentivize investment in the social housing sector, p. 2 of the document).

f. **C-48** (31 December 2018) (Executive Decree PCM-088-2018) (evidencing that the Honduran government approved the extension of the duration of the AFD Program to 31 December 2018 for programs authorized before 31 December 2017, Fourth and Fifth Whereas and Article 1).

g. **C-49** (29 January 2021) (Executive Decree PCM-133-2020) (evidencing that the Honduran government approved the extension of the duration of the AFD Program to 31 December 2021 for programs authorized before 31 December 2017, Article 1).

h. **C-50** (22 October 2021) (Law-Decree No. 82-2021) (evidencing that the Honduran Government approved the extension of the duration of the AFD Program for four additional years until November 2025, Article 2).

i. **C-178** (25 November 2016) (YouTube video from Noticiero Notifides titled "COMAYAGUA Presidente Hernández se refirió a la fusión de BANADESA y BANHPROVI", also available at https://www.youtube.com/watch?v=9bHDjrrtJSg) (explaining the objective of the BANHPROVI-BANADESA joint venture).

j. **C-179** (9 September 2016) (Press Article from La Prensa titled "Banadesa será el primer piso de Banhprovi", also available at: https://www.laprensa.hn/economia/banadesa-sera-el-primer-piso-de-banhprovi-CDLP998390) (explaining the objective of the BANHPROVI-BANADESA joint venture).

k. **C-180** (14 November 2016) (Press Article from La Prensa titled "Ejecutivo se hará cargo de la alianza Banadesa-Banhprovi", also available at: https://www.laprensa.hn/honduras/ejecutivo-se-hara-cargo-de-la-alianza-banadesa-banhprovi-OVLP1017944) (explaining the objective of the BANHPROVI-BANADESA joint venture).

49. According to CONVIVIENDA's institutional memorandum for the years 2014-2017, by the end of 2017, Honduras had issued a total amount of 17,028 subsidies totaling L 1,514 million (approx. USD $65 million) and delivered 12,219 houses to Honduran families under the Social Housing Programs.

Proofs:

a. **C-32** (Undated) (CONVIVIENDA's Institutional Memorandum for years 2014-2017) (evidencing that (i) the Department of Cortés, where the Housing Project was developed, has the highest number of certified social housing projects in the country, (ii) Honduras created subsidy programs for affordable housing, (iii) Honduras issued subsidies under the Social Housing Programs and (iv) President Hernández committed to significantly increasing support for the construction of housing in Honduras) (*see* p. 57, providing a table with the total amount of subsidies paid under the Social Housing Programs, p. 59, providing a map with the total number of houses delivered under the Social Housing Programs, and p. 61, providing a table with the amounts paid by the State under each of the Social Housing Programs).

B. Claimants Designed the Housing Project in Reliance on Honduras' Legal and Regulatory Framework

1. Claimants' Vision: a "not-only-for-profit" Housing Project

50. Against the backdrop of Honduras' investor-friendly legal framework for social housing, Claimants decided to establish and develop their Housing Project in Honduras.

Proofs:

a. *See infra*.

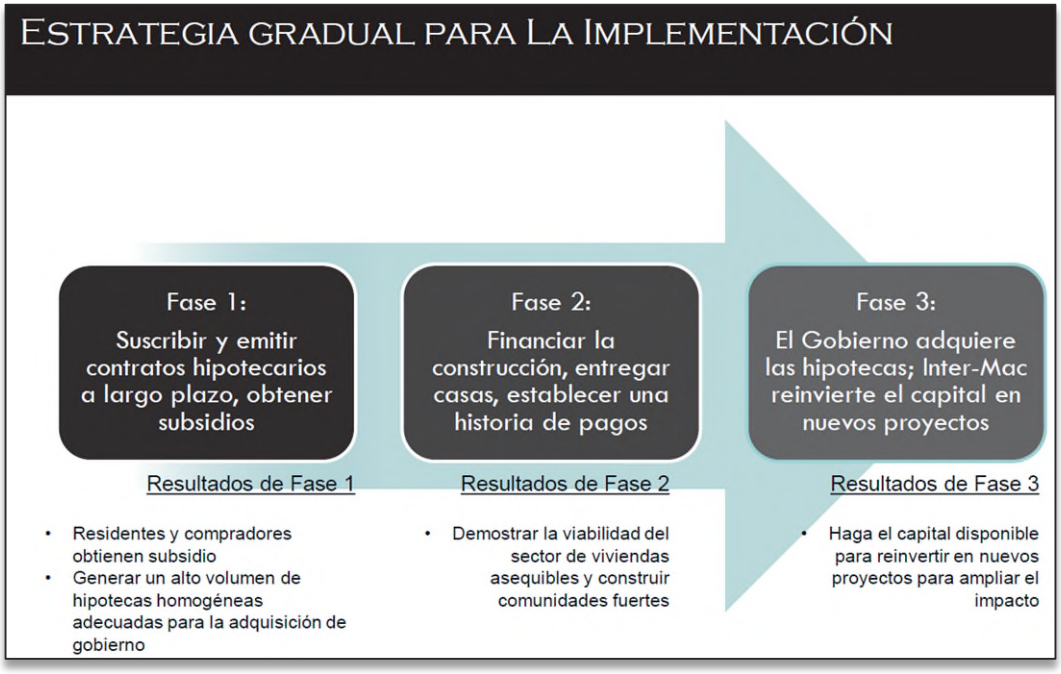
51. While growing up in Honduras, Claimants took part in their parents' charitable initiatives across the State. During this time, Claimants observed that many workers and their families, who migrated from rural areas to work in industrial parks adjacent to large cities, struggled to afford housing near their workplaces due to their limited financial resources and the lack of affordable housing. This situation was exacerbated by a reluctance from local banks and financial institutions to extend mortgages to this segment of the population, forcing them to live in substandard makeshift accommodations that lacked essential services such as running water, electricity, and sanitary plumbing.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 11-13).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶ 10).

52. Leveraging their collective experience in construction, real estate, finance, and operations, Claimants developed a "not-only-for-profit" business model designed to break the poverty cycle by providing affordable ownership of quality homes to the low-income segment of the population in Central American States. Claimants' business model was designed to operate as follows: Claimants would build affordable houses using funds from loans provided by an external funder. Once the houses were built, Claimants would enter into tenancy agreements with purchase options with low-income families ("**Lease-Purchase Contracts**"). Upon conclusion of these contracts, the property prices would be locked, and residents would receive subsidies from the relevant government that would reduce their monthly rent payments. After a few months of timely rent payments, residents could demonstrate their creditworthiness and be issued mortgages by the relevant government, enabling them to exercise their purchase options and buy the home they had been renting at its move-in date market value. Claimants would then use the proceeds from these sales to repay their loan and finance additional social housing projects throughout other countries of the DR-CAFTA region:



Proofs:

a. **C-51** (5 November 2014) (Email from Mr. Tom Livelli (Inter-Mac) to Hola Realty and F. Aguilera attaching a PowerPoint presentation prepared by Inter-Mac and shared with the Honduran Secretary of State) (evidencing (i) the different stages of Claimants' business model and (ii) the conclusion and content of the 2010 Memorandum of Understanding) (*see* slides 8, 27-33, evidencing the different stages of Claimants' business model).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 11-16).

c. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 26-27).

53. Claimants' business model was novel and unprecedented at the time. Some of its key features included the following:

(i) for the same price they were previously paying for smaller, substandard accommodations, residents would be moving into a gated community that provided security, privacy, and many amenities such as paved roads, potable water, sewage, electricity, trash removal services, a school, playgrounds, sports and other social programs, and entrepreneurship programs;

(ii) residents would be renting their property while building a credit history and would have the option to purchase their property at any point in the future at their move-in date market value. Therefore, all appreciation in

the value of their property over the years would turn into their equity upon exercising their purchase option; and

(iii) residents would be able to buy their homes using the subsidies and long-term mortgages made available to them under the government's social housing programs.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 14-16).

2. Claimants Designed an Affordable and Cost-Effective Social Housing Project

54. After finalizing their business model, Claimants shifted their focus to designing their social housing project. Ernesto Arguello ("**Ernesto**") applied his expertise in civil and architectural engineering to conceptualize the housing design, while Juan Carlos Arguello ("**Juan Carlos**") leveraged his prior experience in the social housing division of Conhsa-Payhsa, S.A. ("**Conhsa**"), a Honduran company co-owned by his father that specializes in the design, manufacture, transportation, and installation of precast concrete structures, to focus on the construction and budgeting aspects of the Project.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 11, 24).

b. **C-161** (Undated) (last accessed on 11 April 2025) (Official Website of Conhsa-Payhsa, S.A. – Products and Services, also available at: https://www.conhsapayhsa.com/new/) (describing the kinds of products and services the company offers).

55. Juan Carlos' prior experience helped him recognize that achieving the necessary level of affordability required addressing the high cost traditionally involved in the construction of affordable housing. This included tackling the lack of local production and supply of materials, which forced construction companies to import key components for their housing structures from multiple suppliers, ultimately driving up costs. Juan Carlos tackled this by improving the efficiency of Cohnsa's concrete products and driving most construction in-house.

Proofs:

a. **C-162** (Undated) (last accessed on 11 April 2025) (Official Website of Conhsa-Payhsa, S.A. – About, also available at: https://www.conhsapayhsa.com/new/?page_id=74958 (describing the company's services and its geographic reach).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 14-15).

56. The Arguellos assessed the viability of their social housing project by reverse-engineering the costs they could feasibly incur if they were to carry out their social housing project in Honduras. This process involved (i) analyzing potential demand targeting low-income individuals who were emigrating from rural areas to cities; (ii) evaluating their potential housing

expenditure by examining current rent payments for substandard accommodations; and (iii) calculating the number of houses that could be constructed on that basis.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶ 13).

57. After gaining a clear understanding of the costs associated with an economically-viable social housing project, Claimants opted for a construction technique known as dry-stack post-tension concrete masonry. This method was already used in commercial buildings, warehouses, and residential projects where durability and strength are critical. The combination of dry-stack concrete masonry and post-tensioning provided several advantages over traditional construction methods, including increased strength and durability, faster construction times, and cost-effectiveness as it eliminated the need for costly and extensive skilled labor.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 17).

3. Claimants' Due Diligence Led Them to Launch Their Social Housing Project in Honduras

58. Once the Arguellos had determined the costs structure and the construction model for their project, Claimants surveyed various countries in the DR-CAFTA region. In the course of Claimants' due diligence, Honduras, particularly the Sula Valley—the largest alluvial valley in the northwest region of the country—emerged as the most favorable location to launch their social housing project. This decision was based on several compelling factors:

- Among Central American countries, Honduras faced a particularly acute housing crisis and was one of the poorest nations in the region at that time.

- Having grown up in Honduras, the Arguellos wanted to make a positive social change in the State and assist the poorest segment of the Honduran population.

- Since 2002, Honduras had been actively developing social housing programs designed to stimulate investment in the housing sector, including initiatives such as the "Programa de Vivienda Digna" and PROVICCSOL. The subsidy and long-term mortgage components of these programs offered by Honduras were crucial to Claimants' ability to eventually replicate their business model in Honduras and other countries within the DR-CAFTA region.

- Honduras was then experiencing a significant growth in its urban population, including in the Sula Valley where Honduras' most important cities such as San Pedro Sula, Choloma, and El Progreso are

located. At the time of Claimants' due diligence, the Sula Valley had a population growth of approximately 6% per year.

- Gildan, the largest manufacturer and employer in Honduras, had a sewing factory (known as "maquila") in Choloma, Cortés, which attracted thousands of workers from rural areas.

- The housing crisis in Honduras, coupled with the Government's commitment to incentivize investment in this sector, made Choloma a particularly well-suited location to start Claimants' Housing Project.

- Claimants could leverage local partnerships and relationships that they had established in Honduras, including through Juan Carlos's time working at Conhsa's social housing subsidiary ("**Honduras Homes**"). With Honduras Homes, Juan Carlos had already successfully developed a smaller social housing project of 800 homes where the State had duly issued the required subsidies and long-term mortgages to their residents, which strengthened his trust in the Honduran Government.

- While exploring potential opportunities, Juan Carlos learned that Honduras Homes had decided to sell a parcel of land situated in Cortés, Choloma—the most significant industrial zone at the time. This was the perfect location to develop their Housing Project.

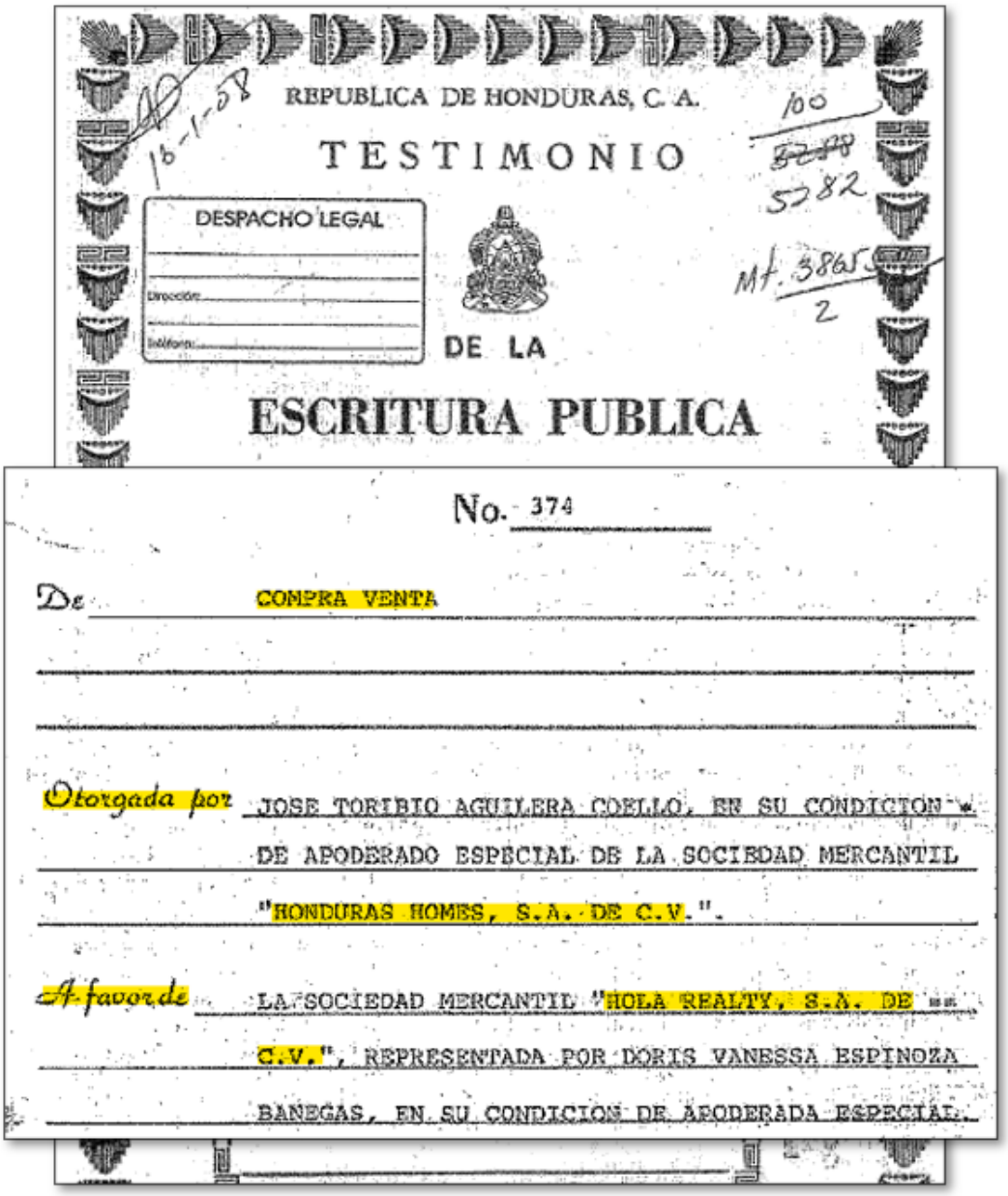
Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 19-20).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 18-21).

c. **C-154** (28 October 2004) (Certificate of Incorporation of Honduras Homes) (evidencing that Juan Carlos Arguello incorporated Honduras Homes, p. 2 of the document).

59. In light of the above, in June 2007 Claimants incorporated Hola Realty. Six months later, on 27 December 2007, the Arguellos purchased the land in Choloma from Honduras Homes in order to begin the development of their Housing Project:



REPUBLICA DE HONDURAS, C. A.

TESTIMONIO

DESPACHO LEGAL

DE LA

ESCRITURA PUBLICA

No. 374

De COMPRA VENTA

Otorgada por JOSE TORIBIO AGUILERA COELLO, EN SU CONDICION DE APODERADO ESPECIAL DE LA SOCIEDAD MERCANTIL "HONDURAS HOMES, S.A. DE C.V.".

A favor de LA SOCIEDAD MERCANTIL "HOLA REALTY, S.A. DE C.V.", REPRESENTADA POR DORIS VANESSA ESPINOZA BANEGAS, EN SU CONDICION DE APODERADA ESPECIAL.

Proofs:

a. **C-6** (27 June 2007) ("Acta de Constitución" of Hola Realty) (evidencing that its shareholders are the Arguellos).

b. **C-52** (27 December 2007) (Purchase agreement of the land in Choloma between Honduras Homes and Hola Realty) (evidencing that Claimants' Investment included purchasing the land where the Housing Project would be located).

c. **C-53** (14 January 2008) (Contract for the Construction and Purchase of Finished Residential Units concluded between Inter-Mac Certifications Inc, Inter-Mac Honduras, Inter-Mac International Inc., and Hola Realty) (evidencing that Hola

Realty, the "Builder", is the owner of the land where the Housing Project would be built and setting out the origin of the funds for payment of the housing units of the Housing Project) (*see* Article 2.1: "*La **CONSTRUCTORA** es dueña de las propiedades donde se harán los desarrollos habitacionales.*").

4. Claimants Partnered with Clark and Secured Funding Through the OPIC Loan

60. While Claimants had purchased land in Choloma and found a builder through Hola Realty, they needed to secure external funding to initiate construction and bring their plans to fruition. To this end, Claimants sought a suitable partner to help secure the funding necessary to initiate their Housing Project in Honduras. They found this partner in Clark Realty Capital, LLC (previously defined as "**Clark**"), the real estate division of one of the oldest and largest privately held general building contractors in the United States, Clark Construction Group.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 22-23).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 22-24).

61. At that time, their eldest brother, Xavier Arguello Arellano, was employed there as a Development Executive and had been tasked with the responsibility of identifying suitable business ventures for potential funding. Xavier Arguello Arellano presented the Housing Project to the board of Clark, which they decided to support. Clark established two special purpose vehicles—Inter-Mac International and Inter-Mac Holdings—which in turn established a subsidiary in Honduras, Inter-Mac Honduras, to manage the Housing Project in collaboration with Hola Realty.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 22-23).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 22-24).

c. **C-3** (14 February 2023) (Shareholders' Registry of Inter-Mac International, Inc.) (evidencing that the company's shares were transferred to Inter-Mac Holdings).

d. **C-4** (14 February 2023) (Shareholders' Registry of Inter-Mac Holdings, Inc.) (evidencing that the company's shares were transferred to Education Model Towns, LLC).

e. **C-5** (4 February 2008) ("Acta de Constitución" of Inter-Mac Honduras) (evidencing that its shareholders are Inter-Mac International, Inc. and Inter-Mac Holdings, Inc.).

f. **C-8** (24 September 2008) (Press release titled "Inter-Mac Receives First Funding for Housing and Mortgage

Development in Central America") (indicating that Inter-Mac was to develop the Housing Project with "its local builder partner, HOLA Realty").

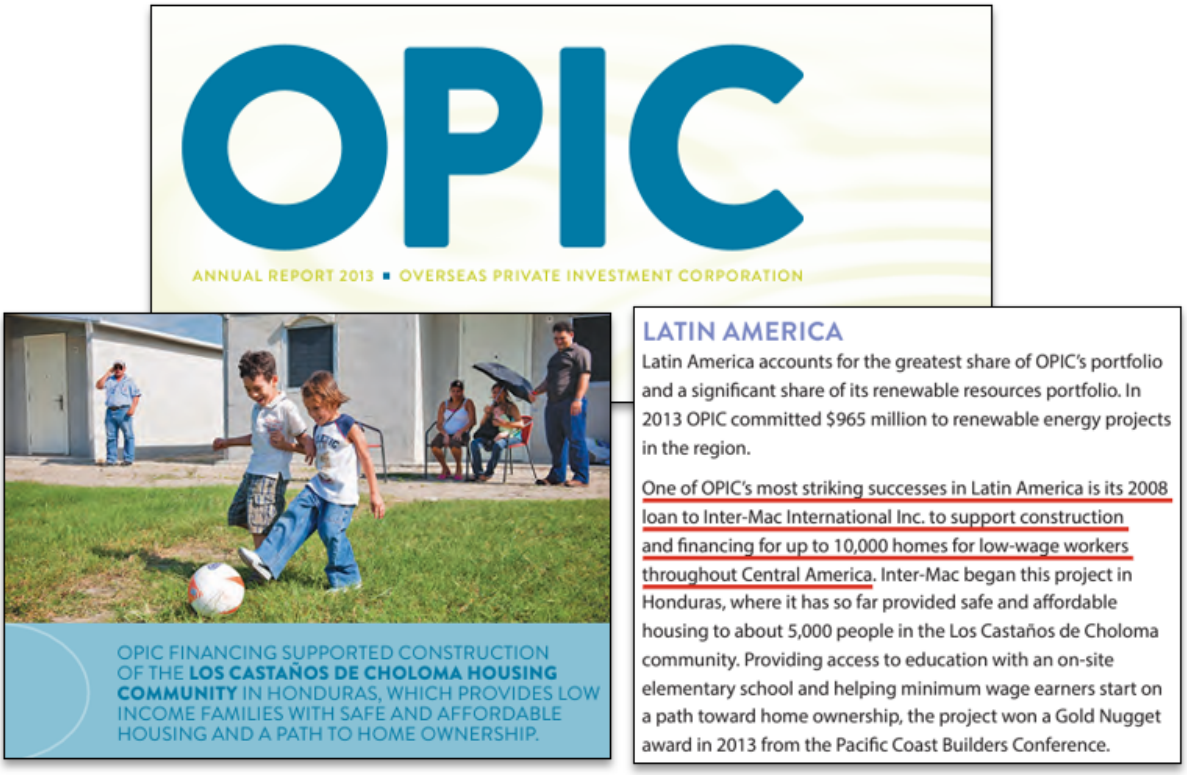
62. Following Claimants' partnership with Clark, Claimants dedicated significant efforts to securing external financing. As part of these efforts, Claimants approached the United States Government's development finance institution, OPIC, now known as the United States International Development Finance Corporation ("**DFC**"). OPIC was viewed by the Arguellos as an ideal choice for financing the Housing Project. Indeed, OPIC's stated mission—providing financial support through loans and guarantees to U.S. businesses looking to invest in emerging markets—aligned perfectly with the Housing Project.

Proofs:

a. **C-163** (Undated) (last accessed on 11 April 2025) (Official Website of OIG Oversight: Overseas Private Investment Corporation Overview, also available at: https://oig.usaid.gov/OPIC) (describing the mission of the institution) ("By providing financial products, such as loans and guaranties, political risk insurance, and support for investment funds, OPIC helps U.S. businesses gain footholds in emerging markets, catalyzing revenues, jobs and growth opportunities both at home and abroad.").

b. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 25-29).

63. OPIC was very enthusiastic about the Housing Project and committed to providing support. On 10 December 2007, OPIC and Inter-Mac International entered into a USD $70 million revolving facility loan agreement ("**OPIC Loan**"). Nine months later, on 23 September 2008, OPIC, Inter-Mac International, and Inter-Mac Honduras entered into the Honduran program supplement to the OPIC Loan, which set out the parties' respective obligations in relation to the execution of Claimants' Project in Honduras ("**Program Supplement**"). With the OPIC Loan and Program Supplement, OPIC pledged to assist Hola Realty and the Inter-Mac Entities in the construction and financing of up to 10,000 homes for low-income workers throughout the DR-CAFTA region ("**Global Project**"):



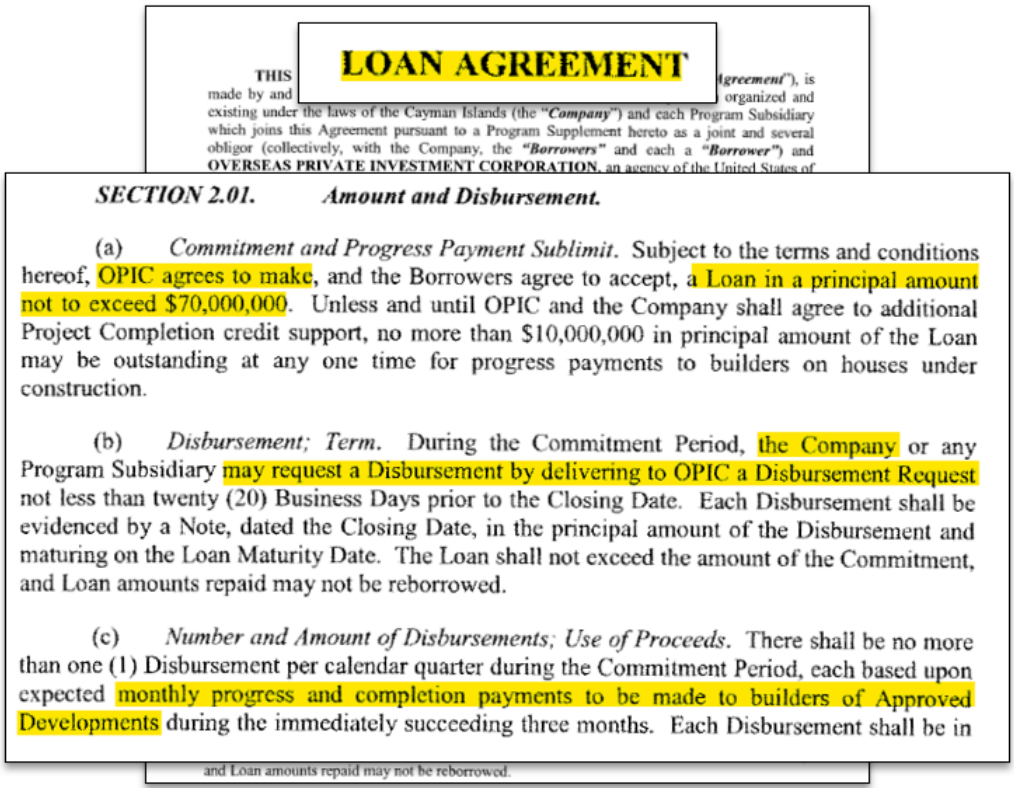
Proofs:

a. **C-8** (24 September 2008) (Press release titled "Inter-Mac Receives First Funding for Housing and Mortgage Development in Central America) (indicating that Inter-Mac received the first disbursement under the OPIC Loan on 23 September 2008 meant to fund the construction of the first 770 houses of the Housing Project).

b. **C-54** (2013) (OPIC's annual report for 2013) (evidencing that OPIC described the loan to Inter-Mac International Inc. as "one of OPIC's most striking successes in Latin America […] to support construction and financing for up to 10,000 homes for low-wage workers throughout Central America," pp. 7, 11).

c. **C-55** (23 September 2008) (Program Supplement No. 1 (Honduras) to the OPIC Loan) (setting out OPIC, Inter-Mac International and Inter-Mac's obligations in relation to the portion of the Project to be executed in Honduras).

64. Under the terms of the OPIC Loan, Inter-Mac had the capacity to draw disbursements of up to USD $10 million; however, it was obligated to repay any existing debts before being eligible for further disbursements from the total USD $70 million revolving OPIC Loan:



LOAN AGREEMENT

THIS ... Agreement"), is made by and ... organized and existing under the laws of the Cayman Islands (the "Company") and each Program Subsidiary which joins this Agreement pursuant to a Program Supplement hereto as a joint and several obligor (collectively, with the Company, the "Borrowers" and each a "Borrower") and OVERSEAS PRIVATE INVESTMENT CORPORATION, an agency of the United States of

SECTION 2.01. Amount and Disbursement.

(a) *Commitment and Progress Payment Sublimit*. Subject to the terms and conditions hereof, OPIC agrees to make, and the Borrowers agree to accept, a Loan in a principal amount not to exceed $70,000,000. Unless and until OPIC and the Company shall agree to additional Project Completion credit support, no more than $10,000,000 in principal amount of the Loan may be outstanding at any one time for progress payments to builders on houses under construction.

(b) *Disbursement; Term*. During the Commitment Period, the Company or any Program Subsidiary may request a Disbursement by delivering to OPIC a Disbursement Request not less than twenty (20) Business Days prior to the Closing Date. Each Disbursement shall be evidenced by a Note, dated the Closing Date, in the principal amount of the Disbursement and maturing on the Loan Maturity Date. The Loan shall not exceed the amount of the Commitment, and Loan amounts repaid may not be reborrowed.

(c) *Number and Amount of Disbursements; Use of Proceeds*. There shall be no more than one (1) Disbursement per calendar quarter during the Commitment Period, each based upon expected monthly progress and completion payments to be made to builders of Approved Developments during the immediately succeeding three months. Each Disbursement shall be in

and Loan amounts repaid may not be reborrowed.

Proofs:

a. **C-56** (10 December 2007) (Loan Agreements between Inter-Mac International and Inter-Mac's program subsidiaries and OPIC) (setting out the terms of the loan agreement including (i) disbursement rules under the OPIC Loan and (ii) Hola Realty's best efforts obligation to obtain refinancing of payments made under the OPIC Loan as soon as possible).

65. Additionally, Inter-Mac was authorized to make advance payments to Hola Realty in increments of up to USD $2.3 million to fund its construction works. However, this financing was intended to be temporary in nature. Indeed, in the OPIC Loan, Hola Realty had agreed to use its best efforts to secure refinancing for any payments received under the OPIC Loan as soon as possible ***on the understanding that*** the Honduran Government would uphold its commitment to support the Housing Project by issuing subsidies and long-term mortgages to its residents.

Proofs:

a. **C-56** (10 December 2007) (Loan Agreements between Inter-Mac International and Inter-Mac's program subsidiaries and OPIC) (setting out the terms of the loan agreement including (i) disbursement rules under the OPIC Loan and (ii) Hola Realty's best efforts obligation to obtain refinancing of payments made under the OPIC Loan as soon as possible, Article 7.09(d)(i)(L)).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 31-32).

66. Upon repayment of the OPIC Loan, Inter-Mac and Hola Realty would be eligible to access additional extensions from the OPIC Loan to complete the remaining parts of the Housing Project and to expand Claimants' social housing business model to other countries of the DR-CAFTA region.

Proofs:

a. **C-56** (10 December 2007) (Loan Agreements between Inter-Mac International and Inter-Mac's program subsidiaries and OPIC) (setting out the terms of the loan agreement including (i) disbursement rules under the OPIC Loan and (ii) Hola Realty's best efforts obligation to obtain refinancing of payments made under the OPIC Loan as soon as possible) (*see* Article 5.11, setting out the condition precedents applicable to the disbursement of funding for new developments to be built within the OPIC Loan).

C. Claimants Built and Developed the Housing Project Relying on Honduras' Representations and Assurances

67. Following the conclusion of the OPIC Loan, on 14 January 2008, the Arguellos, through Hola Realty, entered into a construction agreement with the Inter-Mac Entities pursuant to which they committed to build 3,000 homes in "Los Castaños de Choloma," distributed across six housing developments, each comprising approximately 500 units. On the same day, this agreement was assigned from Inter-Mac International to Inter-Mac Honduras in a contractual document amending and restating the original construction agreement ("**Construction Agreement**"). Under the Construction Agreement, [redacted] to be built in "Los Castaños de Choloma." This amount was to be funded from two distinct channels: (i) disbursements made by Inter-Mac to Hola Realty under the OPIC Loan and (ii) subsidies paid by the Honduran Government to the residents of the Housing Project:



Proofs:

a. **C-53** (14 January 2008) (Contract for the Construction and Purchase of Finished Residential Units concluded between Inter-Mac Certifications Inc, Inter-Mac Honduras, Inter-Mac International Inc., and Hola Realty) (evidencing that Hola Realty, the "Builder", is the owner of the land where the Housing Project would be built and setting out the origin of the funds for payment of the housing units of the Housing Project, Article 5.2.1).

b. **C-57** (14 January 2008) (Amended and Restated Contract for the Construction and Purchase of Finished Residential Units) (indicating that (i) the Construction Contract was assigned from Inter-Mac International to Inter-Mac and restated in its entirety on the same day and (ii) the funding for the units would originate from two sources: OPIC Loan disbursements and subsidies by the Honduran Government, Articles 1.4 and Article 5.2.1).

68. In the following months, Honduras Homes—the original owner of the Choloma land—secured the necessary construction permits and environmental approvals to develop the Housing Project. As part of this process, Honduras Homes received: (i) on 30 June 2008, a

certificate from CONVIVIENDA's predecessor, the "Dirección General de Vivienda y Urbanismo" ("**DGVU**"), confirming that "Los Castaños de Choloma" met all requirements under Honduras' "Programa Vivienda de Interés Social" (described above); (ii) on 7 August 2008, an environmental permit from the Secretary of Natural Resources and Environment; and (iii) on 2 July 2008, 3 September 2008, and 19 September 2008, the relevant construction and urbanization permits from the Municipality of Choloma.

Proofs:

a. *See* Claimants' Statement of Claim at paragraph 38.

b. **C-59** (30 June 2008) (Certificate from the "Dirección General de Vivienda y Urbanismo") (confirming that "Los Castaños de Choloma" met all the requirements of Honduras' "Programa Vivienda de Interés Social").

c. **C-60** (7 August 2008) (Environmental permit No. 084-2008 issued by the Honduran Secretary of Natural Resources and Environment valid for a duration of two years from its issuance) (demonstrating that Honduras Homes, the original owner of the Choloma land, secured the necessary environmental approvals to develop the Housing Project).

d. **C-61** (2 July 2008) (Certification from the Municipality of Choloma providing the pre-approval of the Housing Project) (demonstrating that Honduras Homes, the original owner of the Choloma land, secured the necessary construction permits to develop the Housing Project).

e. **C-62** (19 September 2008) (Certification from the Municipality of Choloma providing the final approval of the Housing Project) (demonstrating that Honduras Homes, the original owner of the Choloma land, secured the necessary construction permits to develop the Housing Project).

69. Shortly thereafter, on 22 September 2008, Honduras Homes transferred all the permits and environmental approvals it had obtained for "Los Castaños de Choloma" to Hola Realty:



REPUBLICA DE HONDURAS, C. A.

TESTIMONIO

ESCRITURA PUBLICA

No. 81

Otorgada por CESAR FERNANDO NUÑEZ DUARTE, EN SU CONDICION DE GERENTE GENERAL DE LA SOCIEDAD "HONDURAS HOMES, S.A. DE C.V."

A favor de LA SOCIEDAD "HOLA REALTY, S.A. DE C.V."

Otorgada por CESAR FERNANDO NUÑEZ DUARTE, EN SU CONDICION DE

del instituto de la propiedad inmueble y mercantil de San Pedro Sula, Cortes. , por éste acto CEDE Y TRASPASA, todos y cada uno de los derechos y obligaciones correspondientes a la Licencia Ambiental, Permisos Urbanísticos y de Construcción, debidamente otorgados y referidos en la cláusula precedente, dentro del precio de venta debidamente enterado en la escritura Pública de Compraventa a la que se hace alusión en la presente cláusula, para que en lo sucesivo se tenga a la sociedad mercantil denominada HOLA REALTY S.A. DE C. V., como la legítima y única titular de los derechos y obligaciones emanadas de las autorizaciones antes referidas, debiéndose efectuar las notificaciones de ley para los efectos legales pertinentes.

Proofs:

a. **C-63** (22 September 2008) (Public Deed No. 81) (evidencing that Honduras Homes transferred all the permits it had obtained to develop a housing project in "Castaños de Choloma" to Hola Realty).

b. **C-64** (6 September 2016) (Licencia Ambiental de Operación No. SLAS-0000179-2016 issued by the Honduran Secretary of Natural Resources and Environment (MI AMBIENTE) to Hola Realty) (evidencing that Hola Realty obtained environmental permits to develop the Housing Project).

c. **C-65** (17 November 2016) (Licencia Ambiental de Funcionamiento No. 093-2016 issued by the Honduran Secretary of Natural Resources and Environment (MI AMBIENTE)) (renewing Inter-Mac's environmental permit until November 2021).

d. **C-66** (14 September 2015) (Executive Agreement No. 008-2015) (evidencing that the Secretary of Natural Resources and Environment was satisfied that Hola Realty complied with all

applicable technical and legal requirements of Honduran law to develop the Housing Project when issuing the Licencia Ambiental de Funcionamiento to Hola Realty) (*see* p. 38 of the document, Point 29: "*Licencia Ambiental de Funcionamiento: Es el permiso extendido por MIAMBIENTE* ***por el cual se hace constar que el proponente ha cumplido en forma satisfactoria todos los pasos y requisitos exigidos por la Ley para continuar con la ejecución del proyecto obra o actividad.***") (emphasis added).

e. **C-190** (First Declaration of Ernesto Arguello, at ¶33).

70. After securing the necessary permits and approvals, and based on the assurances that the State would provide subsidies and long-term mortgages to the residents of the Project as soon as its subsidies and financing programs were operational, Claimants started building the first 500 houses of the first phase of the Housing Project in "Los Castaños de Choloma," which consisted of a total of 1,864 residential units ("**Phase I**"). Claimants intended to build an additional 2,000 (later reduced to 1,836) residential units during the second phase of the Housing Project ("**Phase II**"), but never completed Phase II as will be further explained below.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 30-33, 37).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶ 34).

c. *See* Claimants' Statement of Claim, Section III.

71. In order to achieve their business model's efficiency and affordability, Claimants set up a vertically integrated structure for the design, logistics, manufacturing, and construction of the Project. As a result of the Project's unprecedented high level of affordability and amenities, Claimants had a long waiting list of residents wishing to move to "Los Castaños de Choloma" even before construction works started.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 35-37).

72. Key parts of Claimants' construction efforts included (i) putting together the Project's team, which was comprised of managers, architects, engineers, operation officers, accountants, legal advisors, as well as employees specializing in marketing, acquisitions, and permitting; (ii) acquiring site development equipment (e.g., bulldozers, excavators, backhoes, graders, dump trucks, cranes, loaders, tractors), and developing the required infrastructure (e.g., paved roads, potable water tanks, water grids, sewer grids and drainage systems, water treatment plants, and electrical grids); (iii) setting up on-site industrial manufacturing facilities (e.g., concrete batching plant, ready-mixed concrete trucks, concrete pavers and masonry unit plants, roofing machines); (iv) creating their own supply chain to eliminate costly mark-up; and (v) setting up their industrial warehousing to store the products from their supply chain (e.g., windows, doors, steel coils, toilets, sinks, water and sewer pipes, electrical wiring,

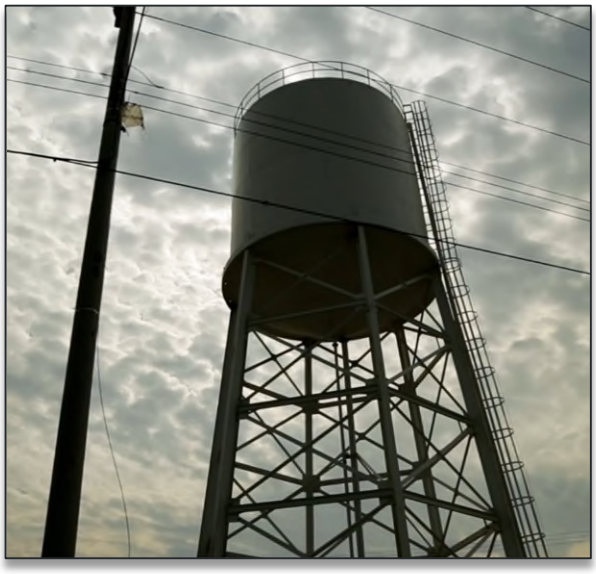
electrical outlets, lights, switches, faucets, showers). Below are some photographs of these construction efforts:











Proofs:

a. **C-19** (Undated) (Video showing the housing project "Residencial Los Castaños de Choloma") (evidencing (i) construction works of Phase I of the Housing Project, (ii) the gated-community's homes and amenities, and (iii) the State's first bilingual school).

b. **C-58** (Undated) (Multiple photographs of the Housing Project) (showing (i) construction works of Phase I of the Housing Project and (ii) the homes and amenities of the Housing Project).

73. The first gated community built by Hola Realty in "Los Castaños de Choloma" opened its doors to low-income workers and their families in June 2010. The vibrant community designed by the Arguellos consisted of new, concrete homes, with two to four dormitories and one to two bathrooms. Each home was equipped with a full functioning kitchen, running water, a sewage system, and electricity. Claimants also built a school, sports facilities, community centers, and commercial retail centers within the gated community. Additionally, as Claimants had envisioned, "Los Castaños de Choloma" provided essential resources to its residents, such as paved roads, clean water, electricity, and safety through a police station and private security throughout the Project. Below are some photographs of the Housing Project:













Proofs:

a. **C-10** (Undated) (Multiple photographs of Phase I of the Housing Project) (evidencing (i) the advances of Phase I of the Housing Project, (ii) the multiple awards and accolades received by the Housing Project, and (iii) the acts of vandalism carried out on the premises of the Project).

b. **C-19** (Undated) (Video showing the housing project "Residencial Los Castaños de Choloma") (evidencing (i) construction works of Phase I of the Housing Project, (ii) the gated-community's homes and amenities, and (iii) the State's first bilingual school).

c. **C-58** (Undated) (Multiple photographs of the Housing Project) (showing (i) construction works of Phase I of the Housing Project and (ii) the homes and amenities of the Housing Project).

d. **C-67** (22 September 2017) (Email from F. Aguilera to Inter-Mac and Hola Realty representatives attaching a PowerPoint Presentation of the Housing Project prepared by Inter-Mac and Hola Realty and shared with the Secretary of State in early 2015) (providing details about the different types of homes and features of the Housing Project).

e. **C-68** (Undated) (Joint Promotional Video from Inter-Mac and

the Government of Honduras, also available at: https://www.youtube.com/watch?v=MmkyHv3DO20) (describing the project and evidencing that (i) the first gated community built by Hola Realty in "Los Castaños de Choloma" opened its doors to low-income workers and their families in June 2010 and (ii) the Housing Project's success was based on the Government's support of low-income families, at 2:00).

74. The Arguellos' construction efforts did not stop at creating homes and amenities within the Project, they also (i) initiated, developed, and conducted the required marketing plan for the Project; (ii) conducted the leasing of residential units of the Project; (iii) maintained the Project; and (iv) created community development programs, such as an entrepreneurship program prioritizing women to become business owners, women-empowerment programs, the first public bilingual school in the State, health programs with a subsidized clinic with an on-site physician and a pharmacy, and a soccer academy with FIFA certified coaches which served as a vehicle for development and peace, keeping children away from gangs and drugs, giving them a sense of belonging, and teaching them values through sport (e.g., timeliness, fair play, team-work, respect for others).

Proofs:

a. **C-19** (Undated) (Video showing the housing project "Residencial Los Castaños de Choloma") (evidencing (i) construction works of Phase I of the Housing Project, (ii) the gated-community's homes and amenities, and (iii) the State's first bilingual school).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶ 41).

75. The Honduran Government was a key supporter of the Housing Project since its inception, promoting it alongside Inter-Mac as an initiative that offered its residents the opportunity to benefit from government assistance. As can be seen from a joint promotional video published by Inter-Mac together with the Honduran Government (then acting under the coalition "Gobierno de Unidad Nacional"), residents moved to "Los Castaños de Choloma" ***on the understanding*** that the Honduran Government was supporting them, and would continue to support them, by providing them with the opportunity to own their homes:



Proofs:

a. **C-68** (Undated) (Joint Promotional Video from Inter-Mac and the Government of Honduras, also available at: https://www.youtube.com/watch?v=MmkyHv3DO20) (describing the project and evidencing that (i) the first gated community built by Hola Realty in "Los Castaños de Choloma" opened its doors to low-income workers and their families in June 2010 and (ii) the Housing Project's success was based on the Government's support of low-income families) (*see* 4:10: "***Es excelente verdad que el gobierno nos apoye*** *porque es una ayuda para cada familia,*" and 4:38: "**Inter-Mac and the Government of Honduras are making very important and real strides** for hardworking Hondurans to have a brighter future and new opportunities, opportunities that begin at home.") (emphasis added).

76. As further evidence of the State's support, on 4 August 2010, the Honduran Government entered into a memorandum of understanding with Inter-Mac, in which the State agreed to facilitate the investment of an amount equivalent to USD $100 million towards Inter-Mac's Investment in the Housing Project ("**2010 Memorandum of Understanding**"):





Proofs:

a. **C-11** (4 August 2010) (Press Release on the execution of the 2010 Memorandum of Understanding between Inter-Mac and Honduras) (evidencing that Honduras committed to facilitate an investment of USD $100 million for the construction of low-income housing in Honduras).

b. **C-51** (5 November 2014) (Email from Mr. Tom Livelli (Inter-Mac) to Hola Realty and F. Aguilera attaching a PowerPoint presentation prepared by Inter-Mac and shared with the Honduran Secretary of State) (evidencing (i) the different stages of Claimants' business model and (ii) the conclusion and content of the 2010 Memorandum of Understanding) (*see* slides 25-26, evidencing the conclusion and content of the 2010 Memorandum of Understanding).

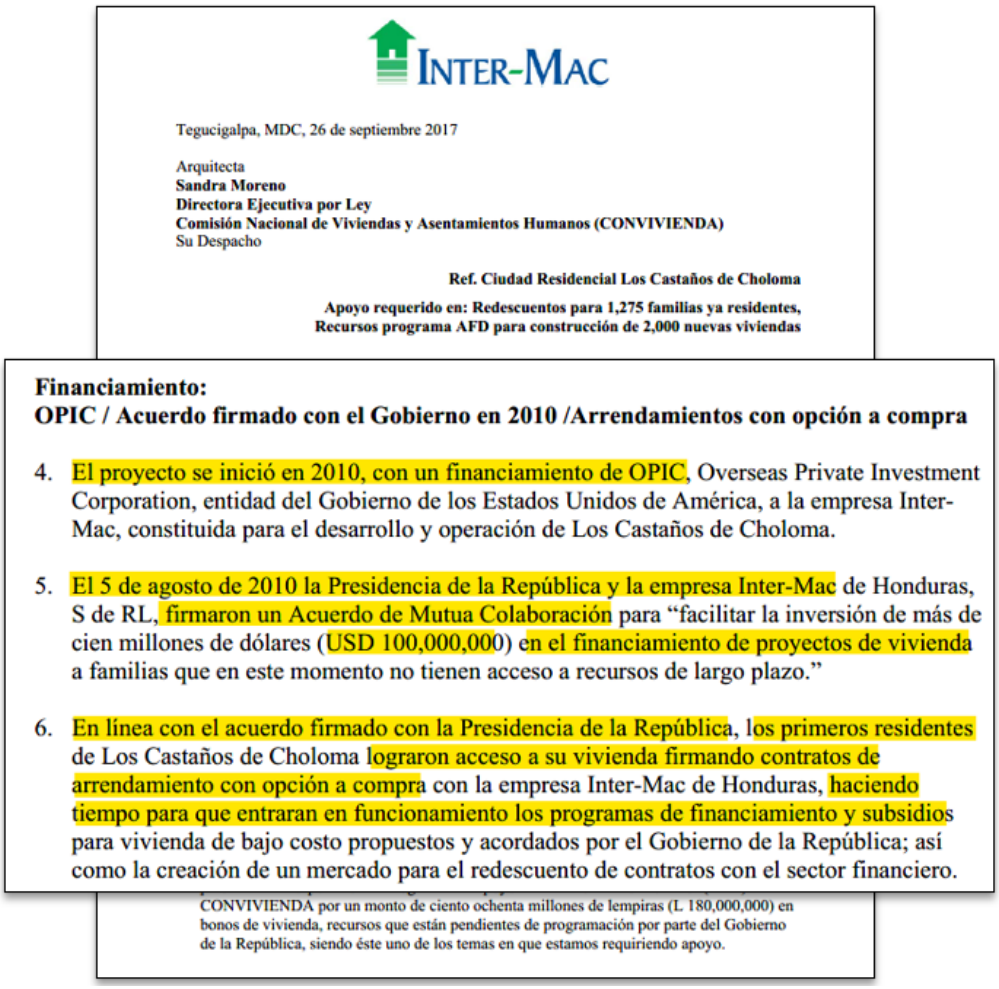
c. **C-69** (24 July 2010) (News article from "La Prensa" entitled "Empresa estadounidense construye casas baratas," also available at: https://www.laprensa.hn/honduras/empresa-estadounidense-construye-casas-baratas-ERLP494101) (reporting on the 2010 Memorandum of Understanding between Inter-Mac and the Honduran Government for the financing of the Housing Project).

d. **C-70** (26 September 2017) (Letter from Inter-Mac (E. Arguello) to CONVIVIENDA's Executive Director (Ms. Sandra Moreno)) (evidencing that (i) the 2010 Memorandum of Understanding was concluded on 5 August 2010, (ii) the Government committed to issuing subsidies and long-term mortgages in support of the Housing Project, and (iii) Inter-

Mac held a meeting with CONVIVIENDA on 20 September 2017, outlining support needed from CONVIVIENDA, p. 2).

e. **C-71** (4 August 2010) (Joint formal invitation by the Honduran Government and Inter-Mac to the official signing ceremony of the 2010 Memorandum of Understanding).

77. Juan Carlos personally attended the 2010 Memorandum of Understanding signing ceremony. During the ceremony, State officials, including President Porfirio Lobo Sosa, publicly declared that the Honduran Government would issue subsidies and long-term mortgages to the residents of "Los Castaños de Choloma" as soon as its social housing programs became operational. As also documented in a letter from Inter-Mac to CONVIVIENDA, the agreement between Inter-Mac and the Honduran Government was as follows: Inter-Mac would enable residents to secure their first homes by entering into Lease-Purchase Contracts. Subsequently, the Honduran Government would provide subsidies to these residents, and after a few months, issue them long-term mortgages denominated in lempira, allowing the residents to exercise their purchase options:



INTER-MAC

Tegucigalpa, MDC, 26 de septiembre 2017

Arquitecta
Sandra Moreno
Directora Ejecutiva por Ley
Comisión Nacional de Viviendas y Asentamientos Humanos (CONVIVIENDA)
Su Despacho

Ref. Ciudad Residencial Los Castaños de Choloma

Apoyo requerido en: Redescuentos para 1,275 familias ya residentes, Recursos programa AFD para construcción de 2,000 nuevas viviendas

Financiamiento:
OPIC / Acuerdo firmado con el Gobierno en 2010 /Arrendamientos con opción a compra

4. El proyecto se inició en 2010, con un financiamiento de OPIC, Overseas Private Investment Corporation, entidad del Gobierno de los Estados Unidos de América, a la empresa Inter-Mac, constituida para el desarrollo y operación de Los Castaños de Choloma.

5. El 5 de agosto de 2010 la Presidencia de la República y la empresa Inter-Mac de Honduras, S de RL, firmaron un Acuerdo de Mutua Colaboración para "facilitar la inversión de más de cien millones de dólares (USD 100,000,000) en el financiamiento de proyectos de vivienda a familias que en este momento no tienen acceso a recursos de largo plazo."

6. En línea con el acuerdo firmado con la Presidencia de la República, los primeros residentes de Los Castaños de Choloma lograron acceso a su vivienda firmando contratos de arrendamiento con opción a compra con la empresa Inter-Mac de Honduras, haciendo tiempo para que entraran en funcionamiento los programas de financiamiento y subsidios para vivienda de bajo costo propuestos y acordados por el Gobierno de la República; así como la creación de un mercado para el redescuento de contratos con el sector financiero.

CONVIVIENDA por un monto de ciento ochenta millones de lempiras (L 180,000,000) en bonos de vivienda, recursos que están pendientes de programación por parte del Gobierno de la República, siendo éste uno de los temas en que estamos requiriendo apoyo.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 36).

b. **C-70** (26 September 2017) (Letter from Inter-Mac (E. Arguello) to CONVIVIENDA's Executive Director (Ms. Sandra Moreno)) (evidencing that (i) the 2010 Memorandum of Understanding was concluded on 5 August 2010, (ii) the Government committed to issuing subsidies and long-term mortgages in support of the Housing Project, and (iii) Inter-Mac held a meeting with CONVIVIENDA on 20 September 2017, outlining support needed from CONVIVIENDA).

78. The Arguellos relied on Honduras' representations and assurances. As a result, Claimants made significant progress on the Housing Project, completing Phase I (constructing 1,864 residential units) and entering into Lease-Purchase Contracts with families moving to "Los Castaños de Choloma." While most families typically owned a single unit, larger families in need of additional bedrooms chose to combine multiple units. Consequently, Phase I resulted in a total of 1,275 homes.

Proofs:

a. **C-80** (Various dates) (Composite of some Lease-Purchase Agreements between residents of "Los Castaños de Choloma" with Inter-Mac (evidencing that Inter-Mac executed various lease-purchase agreements that would allow the residents of the Project to purchase the homes with the financial assistance provided by the State).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 34-37).

79. Claimants relied on other representations and assurances made by the Honduran State. For example, as part of the Honduran President's implementation of a modern and investor-friendly social housing regime, on 5 August 2014, the Finance Secretary of Honduras—representing the Honduran State—and BANHPROVI entered into a management agreement titled "Contrato de Administración de Fondos para el Otorgamiento del Subsidio a los Programas de Convivienda Para una Vida Mejor" ("**2014 Management Agreement**"). This agreement established a "fideicomiso" to be managed by BANHPROVI, through which the Honduran State would issue subsidies and long-term mortgages under the Social Housing Programs.

Proofs:

a. **C-35** (5 August 2014) (Fideicomiso Framework Agreement between Honduras and BANHPROVI) (establishing the conditions for the management of the subsidies and long-term mortgages to be granted under CONVIVIENDA's social housing programs, concluded between the State's Secretary of Finance and BANHPROVI) (*see* Article 2, defining the purpose of the fideicomiso).

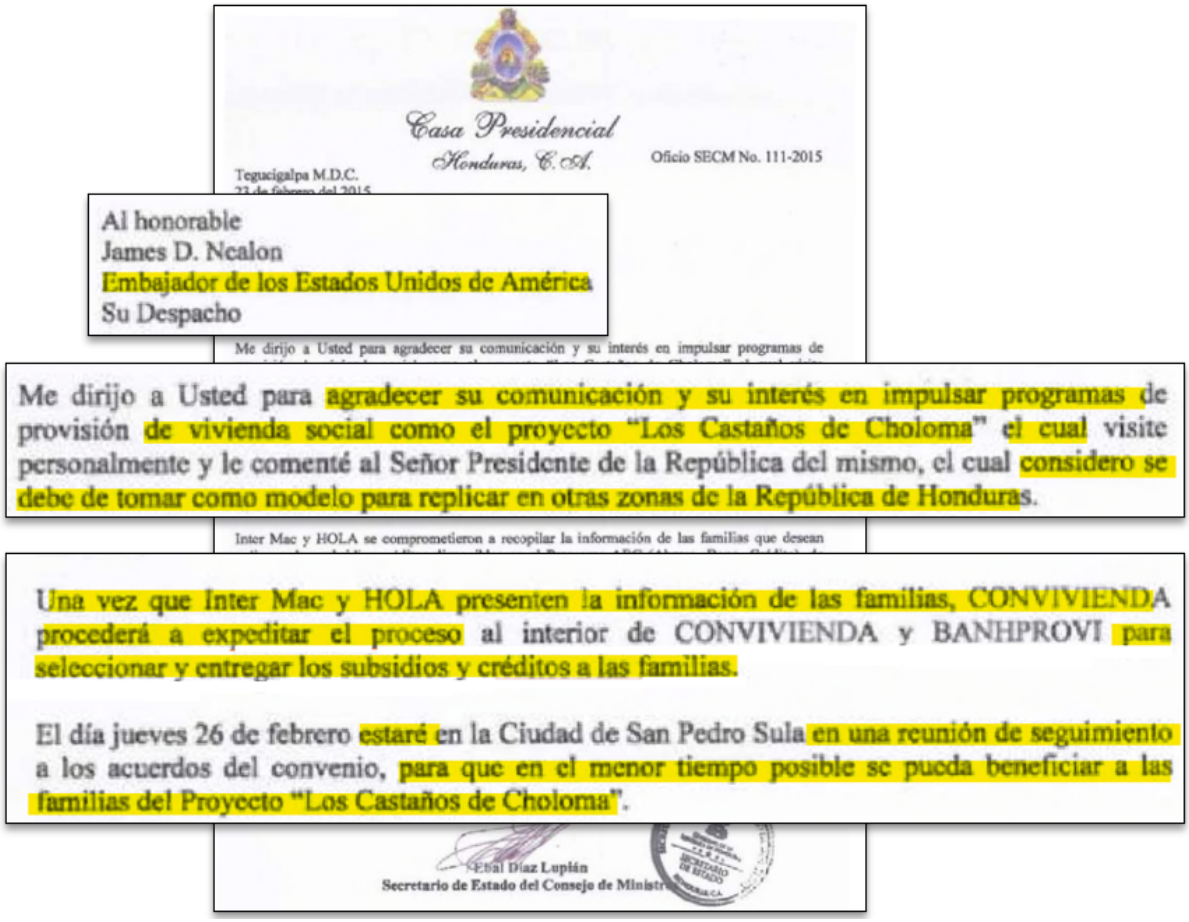
80. Six months later, on 23 January 2015, CONVIVIENDA, Inter-Mac and Hola Realty entered into a cooperation agreement ("Convenio de Concertación y Cooperación para la Masificación de Proyectos de Vivienda Social") ("**2015 Cooperation Agreement**"). In the 2015

Cooperation Agreement, CONVIVIENDA, Inter-Mac, and Hola Realty committed to working collaboratively to promote and strengthen the Housing Project, with CONVIVIENDA agreeing to provide financing to eligible residents of the Housing Project.

Proofs:

a. **C-13** (23 January 2015) (Convenio de Concertación y Cooperación para la Masificación de Proyectos de Vivienda Social between CONVIVIENDA, Inter-Mac and Hola Realty) (evidencing CONVIVIENDA's agreement to provide the necessary subsidies to residents of the Housing Project, Article 4).

81. Shortly thereafter, the Honduran Secretary of State, Mr. Ebal Díaz Lupian, wrote a letter to the Ambassador of the United States to Honduras, describing the Housing Project as a "model to replicate in other areas of Honduras" and acknowledging the 2015 Cooperation Agreement. In that same letter, the Secretary assured that CONVIVIENDA would expedite the process of selecting and issuing "subsidies and mortgages" to families under the ABC Program:



Casa Presidencial
Honduras, C. A.

Oficio SECM No. 111-2015

Tegucigalpa M.D.C.

Al honorable
James D. Nealon
Embajador de los Estados Unidos de América
Su Despacho

Me dirijo a Usted para agradecer su comunicación y su interés en impulsar programas de provisión de vivienda social como el proyecto "Los Castaños de Choloma" el cual visite personalmente y le comenté al Señor Presidente de la República del mismo, el cual considero se debe de tomar como modelo para replicar en otras zonas de la República de Honduras.

Inter Mac y HOLA se comprometieron a recopilar la información de las familias que desean

Una vez que Inter Mac y HOLA presenten la información de las familias, CONVIVIENDA procederá a expeditar el proceso al interior de CONVIVIENDA y BANHPROVI para seleccionar y entregar los subsidios y créditos a las familias.

El día jueves 26 de febrero estaré en la Ciudad de San Pedro Sula en una reunión de seguimiento a los acuerdos del convenio, para que en el menor tiempo posible se pueda beneficiar a las familias del Proyecto "Los Castaños de Choloma".

Ebal Díaz Lupián
Secretario de Estado del Consejo de Ministr

Proofs:

a. **C-14** (2 February 2015) (Communication from the United

States Ambassador in Honduras to the Honduran Secretary of State) (evidencing that the United States Ambassador in Honduras initiated communications with the State to confirm that the State intended to honor its obligations to issue the agreed upon payments and long-term mortgages for the Project).

b. **C-15** (23 February 2015) (Communication SECM No. 111-2015 from the Honduran Secretary of State to the United States Ambassador in Honduras) (evidencing that Honduras provided assurances to the United States that it would honor its commitments related to the Project).

82. After receiving a copy of this letter, Inter-Mac and Hola Realty successfully compiled the requested information for the first 450 residents of "Los Castaños de Choloma" who were applying for subsidies under the ABC Program. This information was delivered to CONVIVIENDA.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 43).

b. **C-75** (6 April 2015) (Email from S. Galdamez (Inter-Mac) to Clark and Hola Realty employees) (confirming that the following day, on 7 April 2015, all files regarding the 450 residents applying for subsidies would be delivered to the office of CONVIVIENDA).

83. Around the same time, on 13 March 2015, CONVIVIENDA issued a certification to Inter-Mac in which it confirmed that Inter-Mac had been registered as an "Institución Intermediaria Especial" ("**IIE**") as Inter-Mac had complied with all the requirements of CONVIVIENDA's operational regulation and could therefore start executing all the physical works relevant for the ABC Program. A few months later, in May and August 2015, CONVIVIENDA certified the Housing Project as a "PROYECTO DE VIVIENDA SOCIAL" and accredited Inter-Mac to act as a "desarrollador-promotor" under the State's Social Housing Programs. These certifications meant that Inter-Mac and the Project were eligible to receive subsidies on behalf of the residents.

Proofs:

a. **C-72** (13 March 2015) (Communication from CONVIVIENDA to Inter-Mac reference REGISTRO-CNVAH-033-2015) (evidencing that Inter-Mac had been certified as a "IIE" (Institución Intermediaria Especial)).

b. **C-73** (11 May 2015) (Communication from CONVIVIENDA to Inter-Mac reference 010-2015) (evidencing that the Housing Project was certified as a social housing project).

c. **C-74** (31 August 2015) (Communication from CONVIVIENDA to Inter-Mac reference REGISTRO-CNVAH-095-2015) (evidencing that Inter-Mac had been

certified as a "desarrollador/promotor").

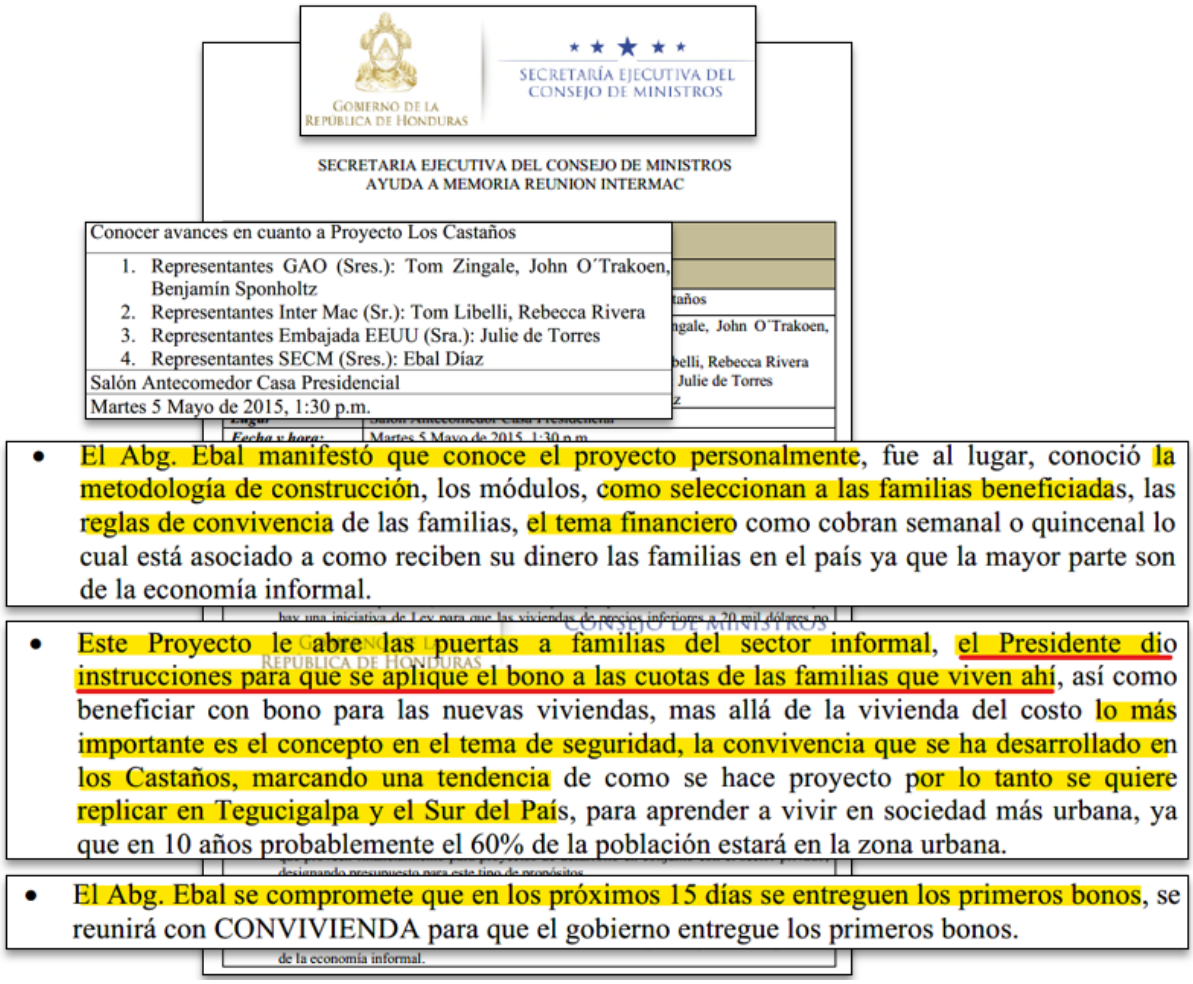
d. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 45).

84. About two months later, on 5 May 2015, representatives of Inter-Mac, the US Government Accountability Office (referred to as "**GOA**"), and the US embassy met with the Secretary of State for Honduras, at the Presidential House, to discuss the status of the Housing Project. During that meeting, Inter-Mac's representative at the time, Mr. Tom Livelli ("**Mr. Livelli**") expressed concerns about certain delays in the issuance of CONVIVIENDA's subsidies.

Proofs:

a. **C-76** (5 May 2015) (Email from Mr. Pablo Zuniga ("Secretaria Ejecutiva del Consejo de Ministros") to attendees to the meeting held in Casa Presidencial on 5 May 2015 between Honduras and Inter-Mac attaching meeting minutes prepared by the "Secretaria Ejecutiva del Consejo de Ministros") (evidencing the State's assurances to deliver subsidies to the residents of the Housing Project).

85. Claimants' concerns, however, were alleviated when Mr. Díaz confirmed that the President of Honduras had given specific instructions to provide subsidies to the residents of the Housing Project. In fact, Mr. Díaz reiterated that the Honduran Government was seeking to replicate the Housing Project in other major metropolitan areas, such as Tegucigalpa. Mr. Díaz also assured Inter-Mac that the State would pay the aforementioned subsidies to the residents of "Los Castaños de Choloma" within the next fifteen days:



GOBIERNO DE LA REPÚBLICA DE HONDURAS

SECRETARÍA EJECUTIVA DEL CONSEJO DE MINISTROS

SECRETARIA EJECUTIVA DEL CONSEJO DE MINISTROS
AYUDA A MEMORIA REUNION INTERMAC

Conocer avances en cuanto a Proyecto Los Castaños
1. Representantes GAO (Sres.): Tom Zingale, John O´Trakoen, Benjamín Sponholtz 2. Representantes Inter Mac (Sr.): Tom Libelli, Rebecca Rivera 3. Representantes Embajada EEUU (Sra.): Julie de Torres 4. Representantes SECM (Sres.): Ebal Díaz
Salón Antecomedor Casa Presidencial
Martes 5 Mayo de 2015, 1:30 p.m.

- El Abg. Ebal manifestó que conoce el proyecto personalmente, fue al lugar, conoció la metodología de construcción, los módulos, como seleccionan a las familias beneficiadas, las reglas de convivencia de las familias, el tema financiero como cobran semanal o quincenal lo cual está asociado a como reciben su dinero las familias en el país ya que la mayor parte son de la economía informal.
- Este Proyecto le abre las puertas a familias del sector informal, el Presidente dio instrucciones para que se aplique el bono a las cuotas de las familias que viven ahí, así como beneficiar con bono para las nuevas viviendas, mas allá de la vivienda del costo lo más importante es el concepto en el tema de seguridad, la convivencia que se ha desarrollado en los Castaños, marcando una tendencia de como se hace proyecto por lo tanto se quiere replicar en Tegucigalpa y el Sur del País, para aprender a vivir en sociedad más urbana, ya que en 10 años probablemente el 60% de la población estará en la zona urbana.
- El Abg. Ebal se compromete que en los próximos 15 días se entreguen los primeros bonos, se reunirá con CONVIVIENDA para que el gobierno entregue los primeros bonos.

Proofs:

a. **C-76** (5 May 2015) (Email from Mr. Pablo Zuniga ("Secretaria Ejecutiva del Consejo de Ministros") to attendees to the meeting held in Casa Presidencial on 5 May 2015 between Honduras and Inter-Mac attaching meeting minutes prepared by the "Secretaria Ejecutiva del Consejo de Ministros") (evidencing the State's assurances to deliver subsidies to the residents of the Housing Project).

86. Two days later, on 7 May 2015, representatives of Inter-Mac held another meeting with the Honduran Secretary of State, along with Mr. Sergio Amaya, the president of CONVIVIENDA. During this meeting, questions were raised regarding the eligibility of the Housing Project for the ABC Program. The Secretary of State, however, reassured Inter-Mac's representative that the Honduran Government would move the Housing Project forward:

From: **Ebal Jair Diaz Lupian** <[redacted]>
Date: 2015-05-08 1:23 GMT-04:00
Subject: Re: Reporte en Español
To: Tom Livelli <[redacted]>

Muchas gracias por sus palabras, no tenga preocupación, vamos a sacar adelante este proyecto, Carlos Pineda estará en la reunión para aclarar dudas sobre este tema.

Un saludo.

Ebal Jair Diaz Lupian
[redacted]

Proofs:

a. **C-77** (7-8 May 2015) (Email exchange between Mr. Tom Livelli on behalf of Inter-Mac and the Honduran Secretary of State) (referring to the meeting held on 7 May 2015 and evidencing Honduras' assurances towards the Housing Project).

87. Notably, Claimants' efforts to support social housing programs in Honduras also culminated in the creation of the ABA Program. The ABA Program was tailored to benefit the residents of the Project. In this respect, in July 2015, the Executive Director of CONVIVIENDA assured Inter-Mac that CONVIVIENDA would issue subsidies to ***any*** family of the Housing Project that complied with the requirements of the Program:

GOBIERNO DE LA REPÚBLICA DE HONDURAS
COMISION NACIONAL DE VIVIENDA Y ASENTAMIENTOS HUMANOS CONVIVIENDA

Tegucigalpa MDC
10 de Julio de 2015

CONVIVIENDA oficio Nº -143- 2015

Señores
INTERMAC HONDURAS
Presente

Estimados Señores:

Por este medio y en referencia a la inquietud planteada por INTERMAC sobre el otorgamiento de los bonos de vivienda a familias que apliquen para el Programa ABA (Arrendamiento con opción a Compra) que será manejado por CONVIVIENDA, tengo a bien notificarle que una vez sea aprobado dicho producto, esta institución podrá otorgar bonos de vivienda a todas aquellas familias que INTERMAC proponga, siempre y cuando cumplan con los requisitos planteados para dicho producto.

Atentamente,

ING. SIREYA DIAZ
DIRECTORA EJECUTIVA CONVIVIENDA

DIRECCION EJECUTIVA
CONVIVIENDA

Proofs:

a. **C-78** (10 July 2015) (Letter from CONVIVIENDA to Inter-Mac) (assuring Inter-Mac that CONVIVIENDA would issue subsidies to ***any*** family of the Housing Project that met the requirements of the ABA Program).

b. **C-79** (16 December 2015) (Handwritten letter from T. Livelli on behalf of Inter-Mac to the Ambassador of the United States to Honduras) (evidencing that the State created the ABA Program as a result of Inter-Mac's efforts and the Ambassador's support: "Your support was instrumental in our efforts to participate in the 'Programas de Vivienda Para Una Vida Mejor,' which ultimately led to the introduction of a new subsidy program to promote home ownership through innovative lease-purchase contracts ("El Programa Vivienda en Arrendamiento Con Opción a Compra: Aporte, Bono, Arrendamiento" or "ABA".")).

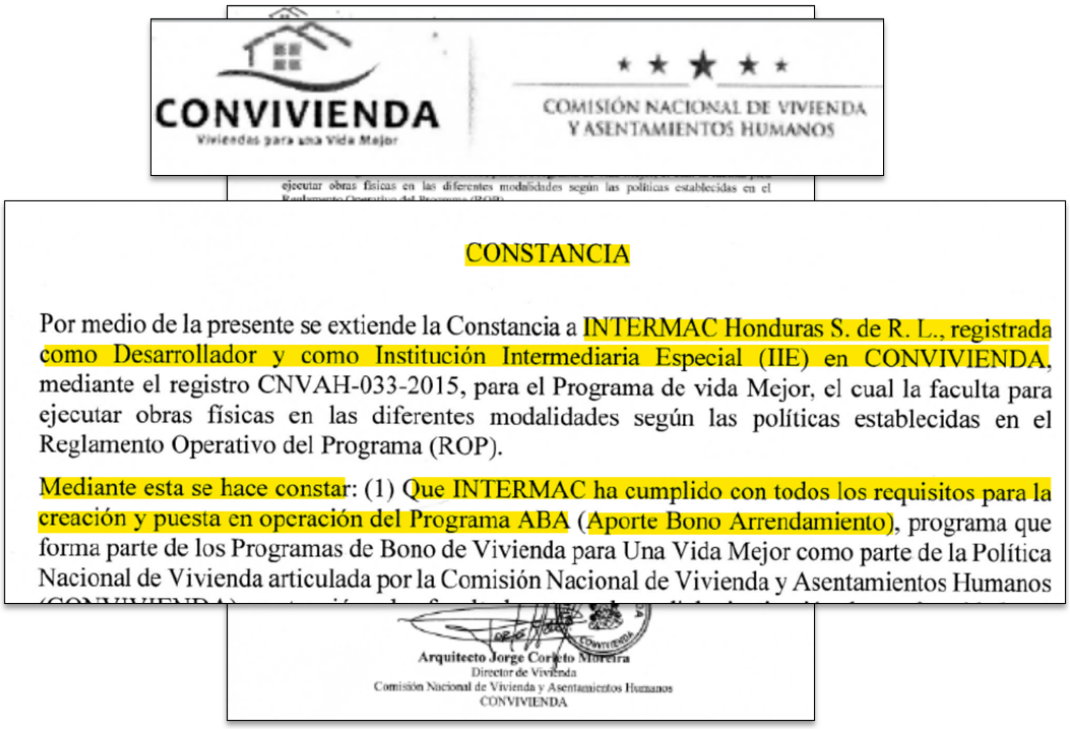
88. As CONVIVIENDA refined the details of the Social Housing Programs, it began issuing specific regulations for each of the programs. For example, on 3 September 2015, CONVIVIENDA published the **operational regulation for the ABA Program**, which confirmed that the State's objectives in providing subsidies to low-income residents were twofold: first, to enhance access to housing for low-income individuals; and second, to improve their creditworthiness by reducing the overall cost of housing. Similarly, CONVIVIENDA also published the **operational regulation for the AFD Program**. This regulation confirmed that the upfront subsidies provided to housing project developers were intended to serve as seed capital to "stimulate the construction of houses, with the subsequent benefit of creating employment and dynamizing the sector."

Proofs:

a. **C-34** (3 September 2015) (CONVIVIENDA's ABA Program) (evidencing that Honduras created the "Programa Vivienda en Arrendamiento con Opción a Compra" to allow low income Hondurans to purchase housing with government subsidies and loans).

b. **C-84** (7 January 2016) (CONVIVIENDA's operational regulation for the AFD Program) (setting out the objective of the AFD Program, p. 5).

89. In November 2015, the Housing Director at CONVIVIENDA issued a certificate confirming that Inter-Mac complied with ***all*** the requirements for the creation and implementation of the ABA Program:



CONVIVIENDA
Viviendas para una Vida Mejor

COMISIÓN NACIONAL DE VIVIENDA
Y ASENTAMIENTOS HUMANOS

ejecutar obras físicas en las diferentes modalidades según las políticas establecidas en el

CONSTANCIA

Por medio de la presente se extiende la Constancia a INTERMAC Honduras S. de R. L., registrada como Desarrollador y como Institución Intermediaria Especial (IIE) en CONVIVIENDA, mediante el registro CNVAH-033-2015, para el Programa de vida Mejor, el cual la faculta para ejecutar obras físicas en las diferentes modalidades según las políticas establecidas en el Reglamento Operativo del Programa (ROP).

Mediante esta se hace constar: (1) Que INTERMAC ha cumplido con todos los requisitos para la creación y puesta en operación del Programa ABA (Aporte Bono Arrendamiento), programa que forma parte de los Programas de Bono de Vivienda para Una Vida Mejor como parte de la Política Nacional de Vivienda articulada por la Comisión Nacional de Vivienda y Asentamientos Humanos

Arquitecto Jorge Coriolo Moreira
Director de Vivienda
Comisión Nacional de Vivienda y Asentamientos Humanos
CONVIVIENDA

Proofs:

a. **C-81** (11 November 2015) (Constancia from the Housing Director of CONVIVIENDA) (evidencing that "***INTERMAC ha cumplido con todos los requisitos para la creación y puesta en operación del Programa ABA*** *(Aporte Bono Arrendamiento), programa que forma parte de los Programas de Bono de Vivienda y Asentamientos Humanos (CONVIVIENDA) […]*") (emphasis added).

90. As a result, on 13 November 2015, BANHPROVI and Inter-Mac entered into an intermediation agreement aimed at regulating the transfer of subsidies and long-term mortgages to be awarded to Inter-Mac under the Social Housing Programs ("**2015 Intermediation Agreement**"). The Honduran State issued its first subsidies to some residents of the Project totaling L 13,815,000 (approximately USD $622,000).

Proofs:

a. **C-82** (13 November 2015) ("Contrato privado de intermediación especial para el otorgamiento de bono para los programas de vivienda para una vida mejor") (confirming the transfer of funds from BANHPROVI to Inter-Mac) (*see* Article 2: "***MATERIA Y OBJETO DEL CONTRATO****. El presente Contrato tiene como objeto controlar la asignación de los montos transferidos por* ***EL FIDUCIARIO*** *a* ***INTER-MAC HONDURAS, S. DE R.L.*** *como* ***IIE*** *autorizada para intermediar el Bono de Vivienda para una Vida Mejor*.").

b. **C-83** (15 December 2015) (Letter from T. Livelli and S.

Galdamez on behalf of Inter-Mac to Banco Ficohsa Honduras) (evidencing that residents of the Housing Project had received subsidies of an amount totaling L 13,815,000 (USD $615,784) as of 15 December 2015).

91. Honduras' favorable and investor-friendly legal and regulatory environment, coupled with (i) the different contractual agreements concluded between Inter-Mac, Hola Realty and the State; (ii) the Honduran Secretary of State's assurances that the Housing Project would move forward with support from the State; (iii) CONVIVIENDA's assurance that ***any*** eligible family of the Project would be issued subsidies under the ABA Program; and (iv) the State's issuance of the first subsidies to the residents of the Housing Project, reinforced Claimants' expectations that Honduras would fulfill its obligations to provide the agreed-upon financial assistance. This support was essential for residents to purchase their homes from Inter-Mac, enabling the Arguellos to advance further phases of their broader housing project in the CAFTA-DR region.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶ 32).

D. The Housing Project's Positive Socio-Economic Impact

92. The Housing Project had a positive socio-economic impact: it helped break the cycle of poverty by enabling low-income residents to live in modern and secure residences rather than in makeshift dwellings, providing them with an opportunity to eventually own their own homes. The Arguellos managed to achieve this goal by attaining an exceptional level of affordability, which resulted from a combination of factors, including (i) reducing inefficiencies and mark-ups in the construction industry, (ii) economies of scale, and (iii) adopting a vertically integrated model, from design to construction to servicing. When combined with government subsidies, the Project homes' low construction costs made them accessible to the lowest-income segments of the Honduran population.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 16, 36).

93. By virtue of its positive socio-economic impact, the Housing Project received many awards and accolades, including the following:

- The "MTV/IDB Agent of Change Award," granted by Music Television (MTV) and the Interamerican Development Bank in 2012 for the social and economic impact generated by the Housing Project:



- The "OPIC Impact Award" in the Access to Finance category, which was awarded to the Housing Project in 2014 for offering an innovative path to homeownership in a safe, healthy and vibrant community. This was the first time that OPIC gave an award to a housing project:



- The National Association of Home Builders' "Best in American Living Award (BALA)," a building industry's residential design award recognizing excellency in design, construction, and community

development. This was awarded to the Housing Project in 2015 for improving lives in "Los Castaños de Choloma" by providing access to affordable and dignified homes in a safe community;

- The Harvard University Award for Leadership Empowerment and Development, which was awarded to the Housing Project for creating a successful model that promotes the development of gender equality while creating social change:



Proofs:

a. **C-10** (Undated) (Multiple photographs of Phase I of the Housing Project) (evidencing (i) the advances of Phase I of the Housing Project, (ii) the multiple awards and accolades received by the Housing Project, and (iii) the acts of vandalism carried out on the premises of the Project).

b. **C-85** (11 March 2014) (OPIC press release, "OPIC Announces Inaugural Impact Award Winners") (evidencing that the Housing Project received the "OPIC Impact Award").

c. **C-86** (11 March 2014) (CBG press release, "Inter-Mac Wins OPIC Impact Award for Excellence in Development Finance") (evidencing that the Housing Project received the "OPIC Impact Award").

d. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 42-44).

94. The Housing Project was also selected and presented by the United States Government's Development Finance Institution at the United Nations expert group meeting on affordable housing and homelessness. In light of the Project's positive impact, the Arguellos have also been invited to present the Project at dozens of conferences and summits throughout the world.

Proofs:

a. **C-185** (Undated) (Multiple photographs from the conferences and summits attended by Ernesto Arguello) (evidencing that Ernesto Arguello and Juan Carlos Arguello were invited to present and speak about the success of the Housing Project at several conferences and summits).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 45-46).

E. Claimants Acquired the Inter-Mac Entities and Took Over the OPIC Loan In Reliance of Honduras' Renewed Commitments Towards the Housing Project

95. In 2015, Clark informed the Arguellos that its management had decided to exit Honduras. The rationale behind this decision was that the return on investment was not as rapid as anticipated, prompting Clark to redirect its focus towards other markets. Claimants, who had developed the vision, concept, and construction model for the Housing Project, believed in the distinctiveness of their not-only-for-profit business model and viewed this situation as a unique opportunity to continue to develop the Housing Project on their own.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 47-48).

96. At the time, Inter-Mac's finances were being affected by the State's delays in issuing the promised subsidies and mortgages to the residents of the Housing Project. Notwithstanding, the Arguellos relied on the State's assurances previously provided that the Honduran Government would fulfill its commitments, especially given that the State had in fact started paying subsidies to some of the residents of "Los Castaños de Choloma."

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 48).

b. *See* Claimants' Statement of Claim.

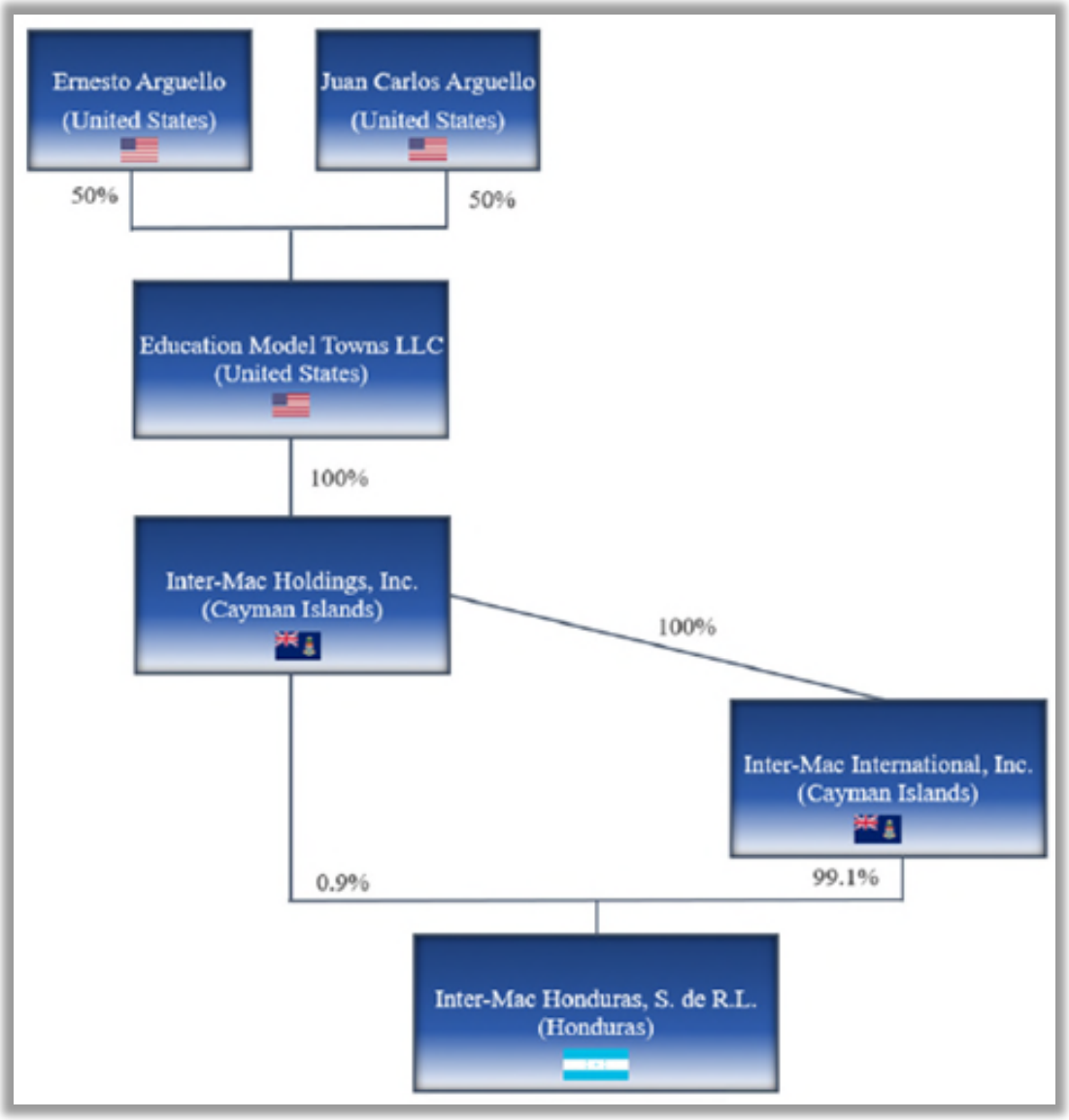
97. In this context, Claimants started discussing with OPIC the possibility of acquiring Clark's interest in the Inter-Mac Entities. On the basis of the State's assurances and after receiving confirmation that OPIC had no objections to their request, on 19 April 2016, Claimants established Education Model Towns LLC, a Delaware limited liability company focused on developing, operating, and managing affordable housing projects in Latin America.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 50).

b. **C-2** (19 April 2016) (Certificate of Formation of Education Model Towns, LLC) (evidencing that Claimants are the sole shareholders, owners, and ultimate beneficiaries of Inter-Mac Entities).

98. The following day, on 20 April 2016, Claimants acquired 100% of the shares of the Inter-Mac Entities when the shares were transferred to Education Model Towns, LLC. As a result, the Arguellos became the directors, sole shareholders, and ultimate beneficial owners of the Inter-Mac Entities:



Proofs:

a. **C-2** (19 April 2016) (Certificate of Formation of Education Model Towns, LLC) (evidencing that Claimants are the sole shareholders, owners, and ultimate beneficiaries of Inter-Mac Entities).

b. **C-87** (20 April 2016) (Written resolutions of the directors of Inter-Mac International) (evidencing that Claimants were

appointed Directors of Inter-Mac International on 20 April 2016).

99. Claimants also assumed the role of sponsors for the OPIC Loan, taking over from the previous directors of Inter-Mac.

Proofs:

a. **C-88** (3 December 2018) (Amended and Restated Loan Agreement) (defining "Shareholders" as "(a) Inter-Mac Holdings Inc., as the sole parent of the Parent Borrower, (b) Education Model Towns LLC, as the sole parent of Inter-Mac Holdings Inc., and (c) Juan Carlos Arguello and (d) Ernesto Arguello, as the sole shareholders of Education Model Towns LLC.").

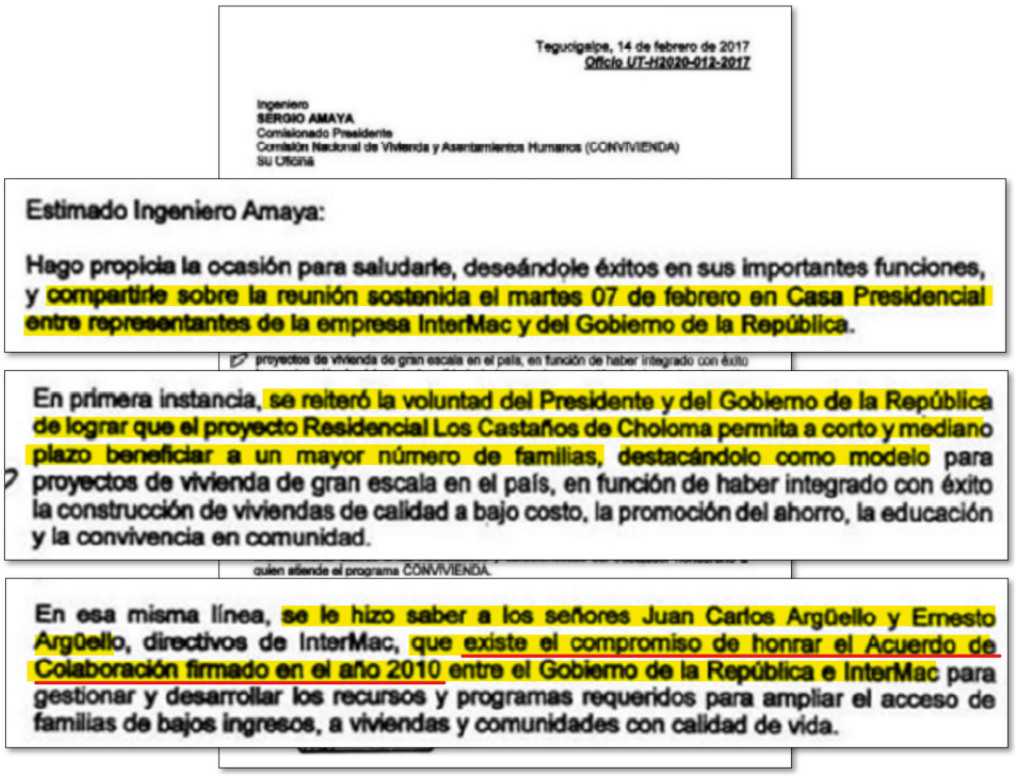
F. Honduras Continued to Assure Claimants That It Would Honor its Commitments With Respect to the Housing Project

100. During the second half of 2016, the Honduran Government abruptly stopped issuing subsidies to the residents of the Housing Project, causing Claimants to become concerned that the State would not honor its commitments. Notwithstanding, encouraged by the assurances the Arguellos continued to receive from the State, Claimants maintained their efforts and Investments in Honduras.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 51-69).

101. For example, in a meeting held at the Presidential House on 7 February 2017, the Honduran Secretary of State (Mr. Díaz) confirmed to the Arguellos that the Honduran President and the State were committed to honoring the 2010 Memorandum of Understanding concluded between the Government of Honduras and Inter-Mac:



Tegucigalpa, 14 de febrero de 2017
Oficio UT-H2020-012-2017

Ingeniero
SERGIO AMAYA
Comisionado Presidente
Comisión Nacional de Vivienda y Asentamientos Humanos (CONVIVIENDA)
Su Oficina

Estimado Ingeniero Amaya:

Hago propicia la ocasión para saludarle, deseándole éxitos en sus importantes funciones, y compartirle sobre la reunión sostenida el martes 07 de febrero en Casa Presidencial entre representantes de la empresa InterMac y del Gobierno de la República.

proyectos de vivienda de gran escala en el país, en función de haber integrado con éxito

En primera instancia, se reiteró la voluntad del Presidente y del Gobierno de la República de lograr que el proyecto Residencial Los Castaños de Choloma permita a corto y mediano plazo beneficiar a un mayor número de familias, destacándolo como modelo para proyectos de vivienda de gran escala en el país, en función de haber integrado con éxito la construcción de viviendas de calidad a bajo costo, la promoción del ahorro, la educación y la convivencia en comunidad.

quien atiende el programa CONVIVIENDA.

En esa misma línea, se le hizo saber a los señores Juan Carlos Argüello y Ernesto Argüello, directivos de InterMac, que existe el compromiso de honrar el Acuerdo de Colaboración firmado en el año 2010 entre el Gobierno de la República e InterMac para gestionar y desarrollar los recursos y programas requeridos para ampliar el acceso de familias de bajos ingresos, a viviendas y comunidades con calidad de vida.

Proofs:

a. **C-12** (14 February 2017) (Communication UT-H2020-012-2017 from the Secretary of State to the President of CONVIVIENDA) (evidencing the State acknowledged the existence of the 2010 Memorandum of Understanding and its commitment to honor its obligations under it).

102. Both Juan Carlos and Ernesto attended the meeting, chaired by the Honduran Secretary of State, Mr. Díaz:



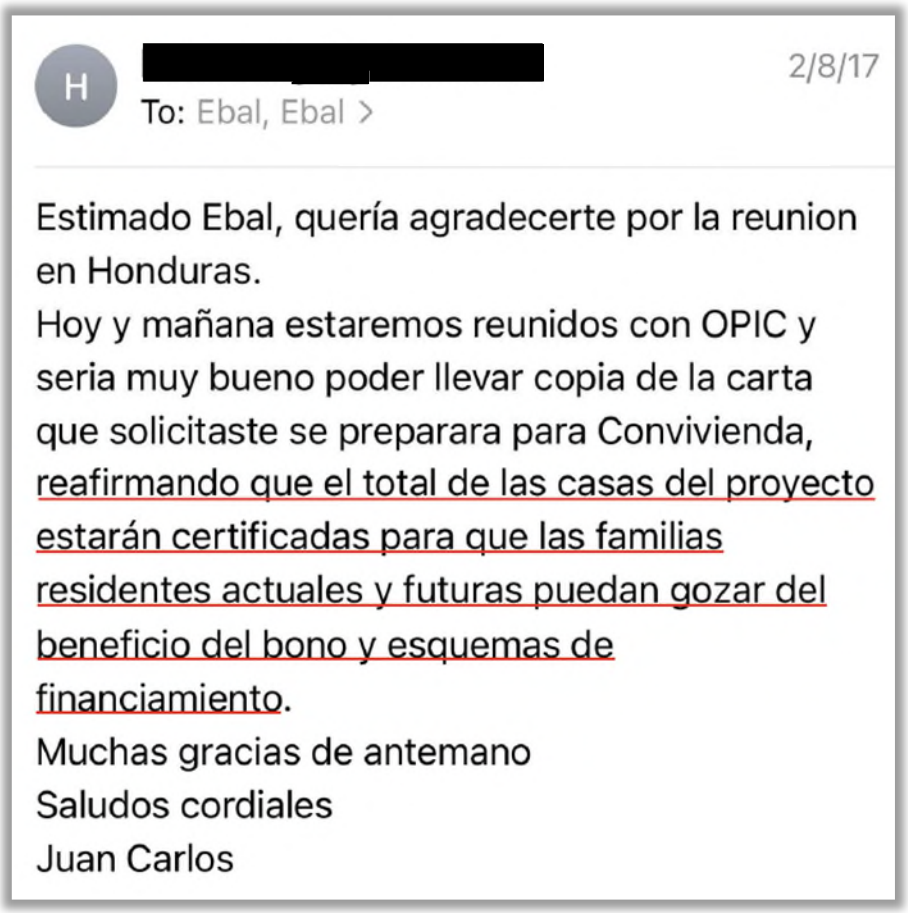


Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 55).

b. **C-89** (7 February 2017) (Photographs of the 7 February 2017 meeting in the Presidential House with representatives from CONVIVIENDA and the Honduran Government) (showing the Arguellos facing each other and sitting in opposite sides of the table).

103. The following day, Juan Carlos wrote to the Honduran Secretary of State to thank him for the meeting and to request that he issue a letter to CONVIVIENDA confirming the assurances made to Claimants at the Presidential House, namely, that CONVIVIENDA would certify ***all*** houses within the Housing Project, allowing current and future residents of the Project to benefit from subsidies and long-term financing:



H [redacted] 2/8/17

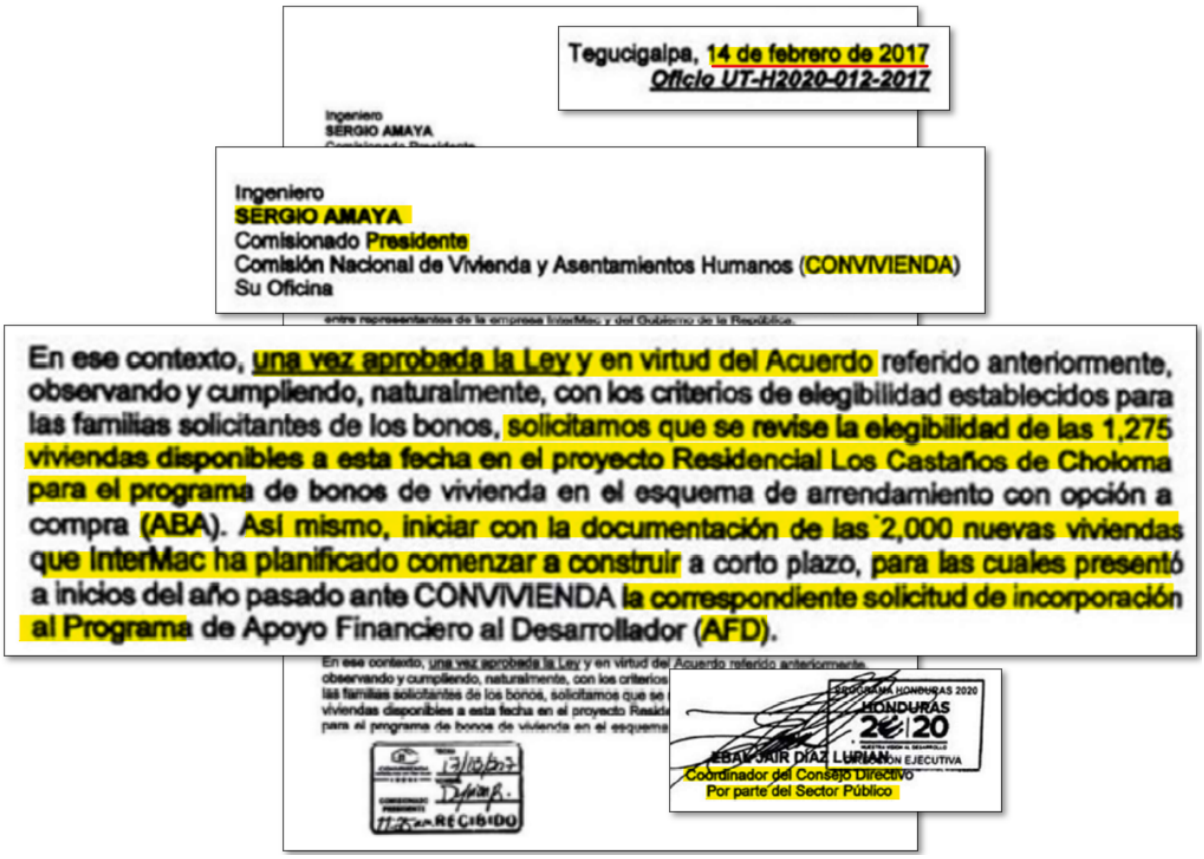
To: Ebal, Ebal >

Estimado Ebal, quería agradecerte por la reunion en Honduras.
Hoy y mañana estaremos reunidos con OPIC y seria muy bueno poder llevar copia de la carta que solicitaste se preparara para Convivienda, reafirmando que el total de las casas del proyecto estarán certificadas para que las familias residentes actuales y futuras puedan gozar del beneficio del bono y esquemas de financiamiento.
Muchas gracias de antemano
Saludos cordiales
Juan Carlos

Proofs:

a. **C-90** (Various dates) (Email exchange between Juan Carlos Arguello and the Honduran Secretary of State, Mr. Ebal Díaz) (evidencing that (i) Juan Carlos Arguello requested Mr. Díaz to issue a letter to CONVIVIENDA confirming the content of the assurances made during the 7 February 2017 meeting at the Presidential House and (ii) Mr. Díaz confirmed he would issue the letter to CONVIVIENDA).

104. The Secretary of State issued the letter to CONVIVIENDA about a week later. In this letter, the Secretary of State reiterated the assurances made to Claimants during the 7 February 2017 Presidential House meeting and requested that CONVIVIENDA (i) review the eligibility of the 1,275 homes of Phase I (i.e., corresponding to the 1,864 residential units that Claimants built during Phase I), and (ii) review the documentation for the 2,000 residential units from Phase II that Claimants had previously submitted so these could also qualify for subsidies under the AFD Program:



Tegucigalpa, 14 de febrero de 2017
Oficio UT-H2020-012-2017

Ingeniero
SERGIO AMAYA
Comisionado Presidente
Comisión Nacional de Vivienda y Asentamientos Humanos (CONVIVIENDA)
Su Oficina

En ese contexto, una vez aprobada la Ley y en virtud del Acuerdo referido anteriormente, observando y cumpliendo, naturalmente, con los criterios de elegibilidad establecidos para las familias solicitantes de los bonos, solicitamos que se revise la elegibilidad de las 1,275 viviendas disponibles a esta fecha en el proyecto Residencial Los Castaños de Choloma para el programa de bonos de vivienda en el esquema de arrendamiento con opción a compra (ABA). Así mismo, iniciar con la documentación de las 2,000 nuevas viviendas que InterMac ha planificado comenzar a construir a corto plazo, para las cuales presentó a inicios del año pasado ante CONVIVIENDA la correspondiente solicitud de incorporación al Programa de Apoyo Financiero al Desarrollador (AFD).

HONDURAS 20/20

EBAL DAVID DIAZ LUPIAN
Coordinador del Consejo Directivo
Por parte del Sector Público

RECIBIDO

Proofs:

a. **C-12** (14 February 2017) (Communication UT-H2020-012-2017 from the Secretary of State to the President of CONVIVIENDA) (evidencing the State acknowledged the existence of the 2010 Memorandum of Understanding and its commitment to honor its obligations under it).

b. **C-90** (Various dates) (Email exchange between Juan Carlos Arguello and the Honduran Secretary of State, Mr. Ebal Díaz) (evidencing that (i) Juan Carlos Arguello requested Mr. Díaz to issue a letter to CONVIVIENDA confirming the content of the assurances made during the 7 February 2017 meeting at the Presidential House and (ii) Mr. Díaz confirmed he would issue the letter to CONVIVIENDA) ("*Qué bueno que vamos avanzando! Alejandra, debemos proceder con la carta, cuando la firme mandemos copia a Juan Carlos.*").

c. *See supra* at paragraph 78.

105. The Honduran Secretary of State emphasized that this course of action was aligned with the goals and objectives pursued by the President of Honduras at the time through the housing component of the "Programa Honduras 20/20." Implemented by President Hernández, this policy aimed to significantly boost employment by facilitating substantial investments across several critical sectors, including housing. Specifically, the "Programa

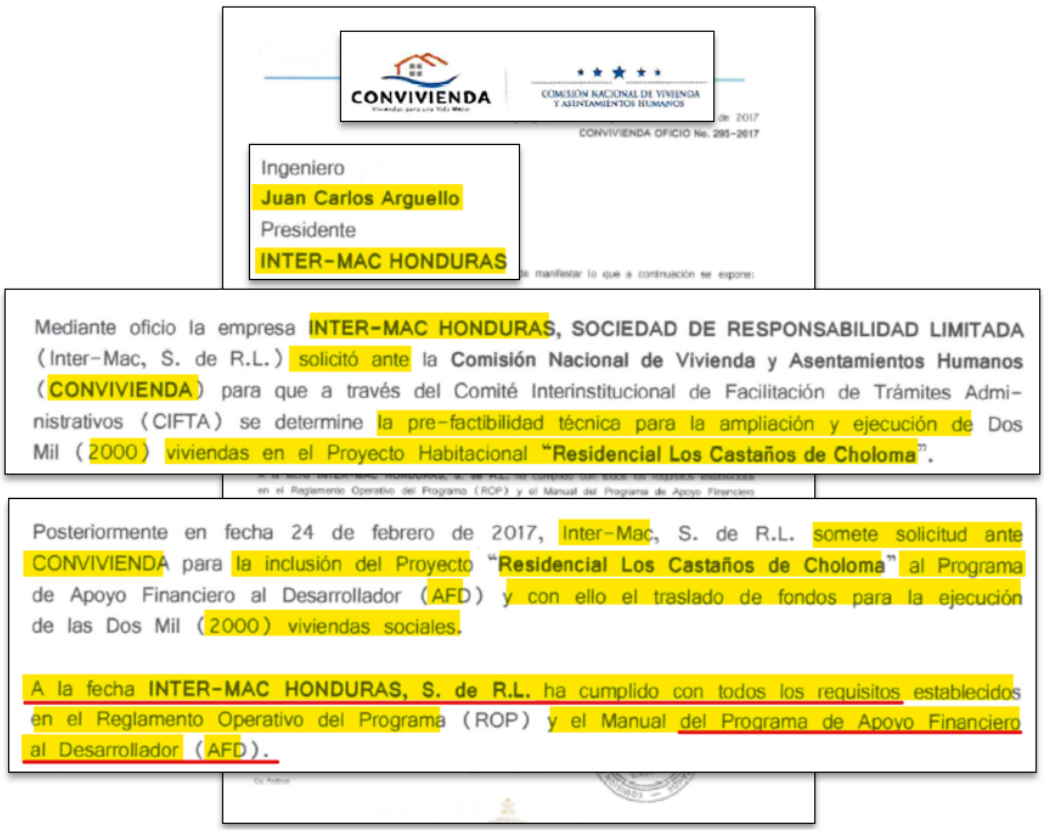
Honduras 20/20" sought to initiate a massive construction effort, targeting the development of 10,000 houses in 2018 alone to address Honduras' housing crisis.

Proofs:

a. **C-91** (2 February 2018) (Press release issued by the Honduran Government titled "Plan Honduras 20/20 es un norte para la inversión e incluyente") (confirming that the goal of the "Plan Honduras 20/20" was to create 600,000 employments in five years and that 50,000 had been created under the program in 2017).

b. **C-92** (2 January 2018) (Press article issued by Proceso Digital titled "Proyecto de Vivienda social una esperanza para el nuevo año") (confirming that the goal of the housing component of the "Plan Honduras 20/20" was to engage into a massive construction effort, targeting the development of 10,000 houses in 2018 alone to address the Honduran housing crisis).

106. As a result of the Secretary of State's letter to CONVIVIENDA, on 30 March 2017, CONVIVIENDA issued a letter to Juan Carlos, confirming that Inter-Mac "**has complied with all the requirements** established" in the AFD Program's operational regulation and manual:


CONVIVIENDA

COMISIÓN NACIONAL DE VIVIENDA Y ASENTAMIENTOS HUMANOS

CONVIVIENDA OFICIO No. 295-2017

Ingeniero
Juan Carlos Arguello
Presidente
INTER-MAC HONDURAS

Mediante oficio la empresa INTER-MAC HONDURAS, SOCIEDAD DE RESPONSABILIDAD LIMITADA (Inter-Mac, S. de R.L.) solicitó ante la Comisión Nacional de Vivienda y Asentamientos Humanos (CONVIVIENDA) para que a través del Comité Interinstitucional de Facilitación de Trámites Administrativos (CIFTA) se determine la pre-factibilidad técnica para la ampliación y ejecución de Dos Mil (2000) viviendas en el Proyecto Habitacional "Residencial Los Castaños de Choloma".

Posteriormente en fecha 24 de febrero de 2017, Inter-Mac, S. de R.L. somete solicitud ante CONVIVIENDA para la inclusión del Proyecto "Residencial Los Castaños de Choloma" al Programa de Apoyo Financiero al Desarrollador (AFD) y con ello el traslado de fondos para la ejecución de las Dos Mil (2000) viviendas sociales.

A la fecha INTER-MAC HONDURAS, S. de R.L. ha cumplido con todos los requisitos establecidos en el Reglamento Operativo del Programa (ROP) y el Manual del Programa de Apoyo Financiero al Desarrollador (AFD).

Proofs:

a. **C-16** (30 March 2017) (Communication No. 295-2017 from CONVIVIENDA to Inter-Mac) (confirming that "*A la fecha* ***INTER-MAC HONDURAS, S. de R.L. ha cumplido con todos los requisitos*** *establecidos en el reglamento Operativo del Programa (ROP) y el Manual del Programa de Apoyo Financiero al Desarrollador (AFD)*") (emphasis added).

107. Two months later, in May 2017, CONVIVIENDA certified an additional 2,000 residential units of the Housing Project, (i) ***unanimously approving*** the inclusion of Phase II of the Housing Project in the AFD Program, and (ii) promising to provide Inter-Mac with an upfront subsidy in the amount of up to L 180 million (approximately USD $7.6 million at the time):

Abogada
Suita Galdámez Alvarenga
Apoderada Legal
INTER-MAC

CONVIVIENDA

COMISIÓN NACIONAL DE VIVIENDA Y ASENTAMIENTOS HUMANOS

CONVIVIENDA-Oficio No. 471-2017

Tengo el agrado de comunicarle que en fecha 22 de mayo de 2017 se realizó una sesión extraordinaria de la Comisión Nacional de Vivienda y Asentamientos Humanos CONVIVIENDA, en la cual se emitió Resolución No. 006 aprobando la Precalificación Técnica para el programa de Apoyo Financiero al Desarrollador del proyecto que usted representa (se adjunta Resolución).

En tal sentido, una vez visto el dictamen favorable de la Dirección de Programas y Proyectos de Vivienda en cuanto al cumplimiento de los requisitos técnicos para optar al apoyo financiero, la Comisión resolvió emitir el presente Certificado de Precalificación Técnica del Programa de Apoyo Financiero al Desarrollador, para el Proyecto Residencial Castaños de Choloma II Etapa por la cantidad 2,000 viviendas y hasta la suma de **CIENTO OCHENTA MILLONES DE LEMPIRAS EXACTOS (LPS.180,000,000.00).**

Desarrollador	Proyecto	Número de Viviendas	Monto Apoyo Financiero en Lempiras
INTER-MAC	Residencial Castaños de Choloma II Etapa	2,000	180,000,000.00

de Choloma II Etapa

Proofs:

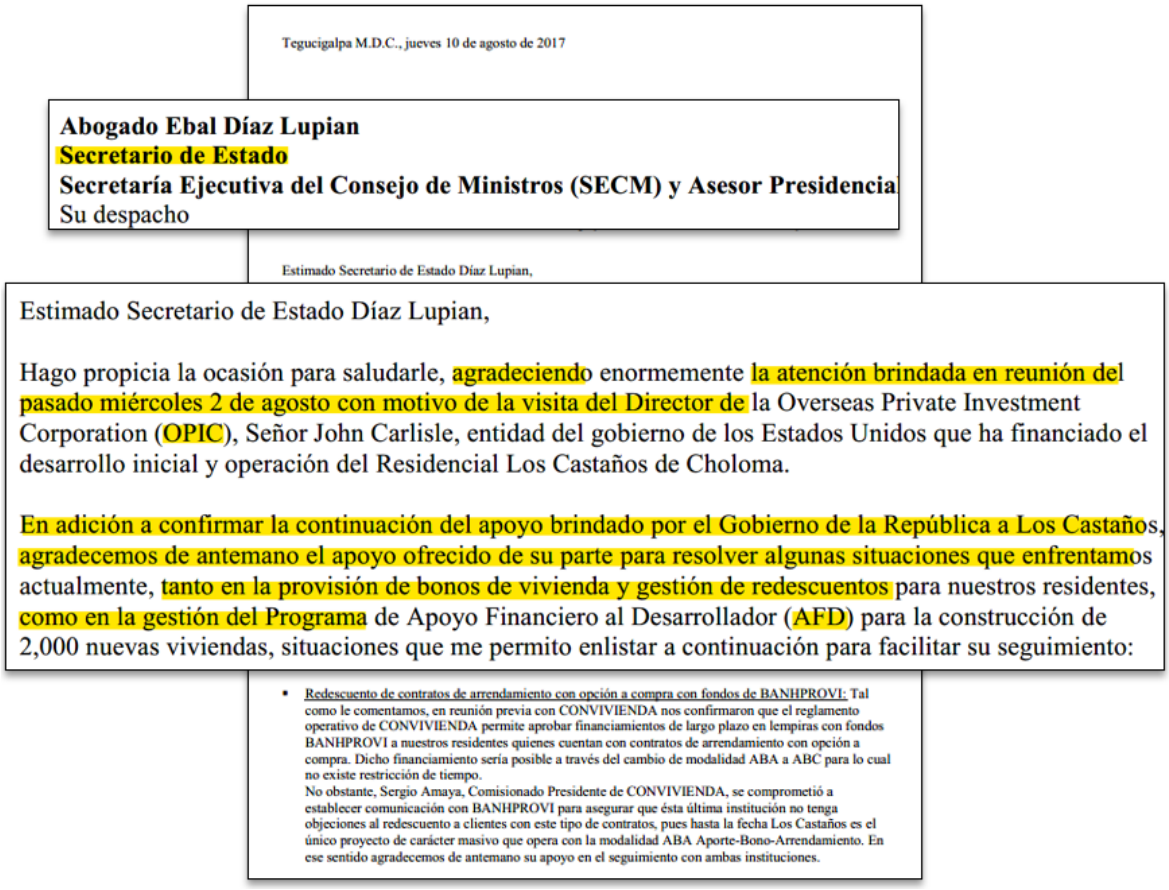
a. **C-9** (12 May 2017) ("Adición de Certificación de Viviendas" issued by CONVIVIENDA) (evidencing that

CONVIVIENDA approved the certification of 2,925 additional homes for the Housing Project).

b. **C-17** (30 May 2017) (Certification of Resolution No. 006, declaring the "prefactibilidad técnica" for the construction of Phase II of the Housing Project) (evidencing that Honduras agreed to provide Inter-Mac with an upfront subsidy in the amount of up to L 180 million (approx. USD $7.3 million) as part of the AFD Program to fund the construction of Phase II of the Housing Program).

c. **C-18** (31 May 2017) (Communication CONVIVIENDA-Oficio No. 471-2017 from CONVIVIENDA to Inter-Mac) (in which Honduras informs Inter-Mac of the issuance of the "Certificado de Precalificación Técnica" for Phase II of the Project).

108. After CONVIVIENDA certified and approved Phase II of the Project, the Honduran Secretary of State, Juan Carlos (on behalf of Inter-Mac) and Mr. John Carlisle (on behalf of OPIC) held a meeting, in August 2017, at CONVIVIENDA's offices. During this meeting, the Secretary of State reaffirmed the Honduran Government's support for the Housing Project and offered additional assistance to address outstanding issues. Various communications followed this meeting, through which Claimants requested the State abide by the assurances previously provided:



Tegucigalpa M.D.C., jueves 10 de agosto de 2017

Abogado Ebal Díaz Lupian
Secretario de Estado
Secretaría Ejecutiva del Consejo de Ministros (SECM) y Asesor Presidencia
Su despacho

Estimado Secretario de Estado Díaz Lupian,

Estimado Secretario de Estado Díaz Lupian,

Hago propicia la ocasión para saludarle, agradeciendo enormemente la atención brindada en reunión del pasado miércoles 2 de agosto con motivo de la visita del Director de la Overseas Private Investment Corporation (OPIC), Señor John Carlisle, entidad del gobierno de los Estados Unidos que ha financiado el desarrollo inicial y operación del Residencial Los Castaños de Choloma.

En adición a confirmar la continuación del apoyo brindado por el Gobierno de la República a Los Castaños, agradecemos de antemano el apoyo ofrecido de su parte para resolver algunas situaciones que enfrentamos actualmente, tanto en la provisión de bonos de vivienda y gestión de redescuentos para nuestros residentes, como en la gestión del Programa de Apoyo Financiero al Desarrollador (AFD) para la construcción de 2,000 nuevas viviendas, situaciones que me permito enlistar a continuación para facilitar su seguimiento:

- Redescuento de contratos de arrendamiento con opción a compra con fondos de BANHPROVI: Tal como le comentamos, en reunión previa con CONVIVIENDA nos confirmaron que el reglamento operativo de CONVIVIENDA permite aprobar financiamientos de largo plazo en lempiras con fondos BANHPROVI a nuestros residentes quienes cuentan con contratos de arrendamiento con opción a compra. Dicho financiamiento sería posible a través del cambio de modalidad ABA a ABC para lo cual no existe restricción de tiempo.
  No obstante, Sergio Amaya, Comisionado Presidente de CONVIVIENDA, se comprometió a establecer comunicación con BANHPROVI para asegurar que ésta última institución no tenga objeciones al redescuento a clientes con este tipo de contratos, pues hasta la fecha Los Castaños es el único proyecto de carácter masivo que opera con la modalidad ABA Aporte-Bono-Arrendamiento. En ese sentido agradecemos de antemano su apoyo en el seguimiento con ambas instituciones.

Proofs:

a. **C-93** (10 August 2017) (Letter from Juan Carlos Arguello (Inter-Mac) to the Honduran Secretary of State) (describing the meeting held between Inter-Mac, OPIC and the Secretary of State on 2 August 2017).

b. **C-94** (7 August 2017) (Letter from Juan Carlos Arguello (Inter-Mac) to Mr. Sergio Amaya (President of BANHPROVI)) (referring to the meeting of 2 August 2017 in CONVIVIENDA's offices and evidencing the State's assurances regarding BANHPROVI's ability to issue long-term mortgages to the residents of the Project).

c. **C-95** (10-11 August 2017) (Email exchange between Juan Carlos Arguello and Honduran Secretary of State, Ebal Díaz) (concerning the issuance of long-term mortgages and subsidies for the Housing Project).

d. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 62).

109. About a month later, on 20 September 2017, BANHPROVI suddenly informed the Arguellos that it would not issue long-term mortgages to residents of the Housing Project because houses within the Project would now be considered "used" (instead of "new") homes. According to BANHPROVI, its internal regulations allegedly restricted funding to "new" homes, that is, homes built within the prior year. This sudden and arbitrary change of position disregarded the State's prior assurances and representations that the Housing Project qualified for financial assistance. Accordingly, Ernesto reached out to CONVIVIENDA to explain why the homes within "Los Castaños de Choloma" were eligible to receive financing and to request the assistance of the relevant State entities to overcome this challenge.

Proofs:

a. **C-70** (26 September 2017) (Letter from Inter-Mac (E. Arguello) to CONVIVIENDA's Executive Director (Ms. Sandra Moreno)) (evidencing that (i) the 2010 Memorandum of Understanding was concluded on 5 August 2010, (ii) the Government committed to issuing subsidies and long-term mortgages in support of the Housing Project, and (iii) Inter-Mac held a meeting with CONVIVIENDA on 20 September 2017, outlining support needed from CONVIVIENDA).

110. Not much progress was made until BANHPROVI appointed a new Executive President, Ms. Mayra Falck, in July 2018. Shortly after her appointment, Juan Carlos wrote to Ms. Falck welcoming her to her new role and introducing her to the Housing Project, which he explicitly described as having been developed on the basis of the "initiatives and housing programs of the Honduran Government."

Proofs:

a. **C-96** (23 July 2018) (Email and letter from Juan Carlos Arguello (Inter-Mac) to the Executive President of BANHPROVI) (requesting a conference call to discuss

BANHPROVI's issuance of mortgages to the residents of the Housing Project under the ABC program and indicating that: "***Fundamentados en las iniciativas y programas de vivienda del Gobierno de Honduras**, hemos logrado, con el apoyo de OPIC, crear una 'comunidad integrada'*".) (emphasis added).

111. The Arguellos viewed Ms. Falck's appointment as a new opportunity to move forward. Juan Carlos communicated with Ms. Falck to request the issuance of mortgages to the residents of the Housing Project under the ABC Program. Notably, in his communication, Juan Carlos referred to the Honduran Government's recent announcement that BANHPROVI would be authorized to operate as a first-tier bank ("banco de primer piso"), enabling it to issue mortgages ***directly*** to Honduran families, without the intervention of other entities.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 63).

b. **C-96** (23 July 2018) (Email and letter from Juan Carlos Arguello (Inter-Mac) to the Executive President of BANHPROVI) (requesting a conference call to discuss BANHPROVI's issuance of mortgages to the residents of the Housing Project under the ABC program and indicating that: "***Fundamentados en las iniciativas y programas de vivienda del Gobierno de Honduras**, hemos logrado, con el apoyo de OPIC, crear una "comunidad integrada*".) (emphasis added).

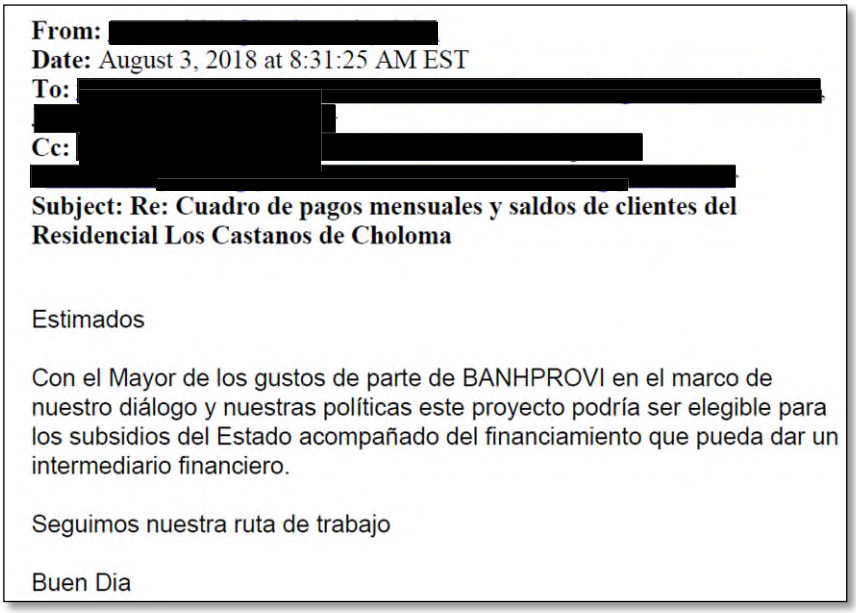
112. Ms. Falck and other representatives from BANHPROVI spoke with the Arguellos on 26 July 2018. During this conversation, Ms. Falck informed Claimants that BANHPROVI would be adopting a new financial product that would enable IFIs to issue long-term mortgages to residents of "Los Castaños de Choloma" who had been living in their homes for more than a year.

Proofs:

a. **C-97** (22 August 2018) (Email from Juan Carlos Arguello to several representatives from BANHPROVI) (referring to the conference call held on 26 July 2018 during which BANHPROVI provided a roadmap to follow and requesting confirmation of the next steps).

b. **C-98** (9 October 2018) (Letter from Juan Carlos Arguello (Inter-Mac) to Mayra Falck (BANHPROVI)) (referring to the meeting held on 26 July 2018 and attaching Claimants' letters to IFIs inquiring about their interest in issuing long-term lempira-denominated mortgages to the residents of the Housing Project).

113. A week later, Ms. Falck sent an email to Claimants confirming that the Housing Project would be eligible for State subsidies and funding through the relevant financial intermediary:



From: [redacted]
Date: August 3, 2018 at 8:31:25 AM EST
To: [redacted]
Cc: [redacted]
Subject: Re: Cuadro de pagos mensuales y saldos de clientes del Residencial Los Castanos de Choloma

Estimados

Con el Mayor de los gustos de parte de BANHPROVI en el marco de nuestro diálogo y nuestras políticas este proyecto podría ser elegible para los subsidios del Estado acompañado del financiamiento que pueda dar un intermediario financiero.

Seguimos nuestra ruta de trabajo

Buen Dia

Proofs:

a. **C-99** (3 August 2018) (Email from Ms. Falck to Juan Carlos Arguello) (confirming BANHPROVI was willing to issue mortgages to the residents of the Housing Project).

114. BANHPROVI's renewed commitment to support the Housing Project — including, in particular, residents who had been residing in their homes for more than a year (i.e. "used" homes)—was a highly welcomed development after Claimants had spent years developing the Housing Project in collaboration with different entities of the Honduran State, including the Secretary of State and the President of CONVIVIENDA.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 66).

115. Acting upon BANHPROVI's representations, the Arguellos contacted several local banks and IFIs to gauge their interest in issuing lempira-denominated long-term mortgages to the residents of the Housing Project under the framework of the Social Housing Programs.

Proofs:

a. **C-98** (9 October 2018) (Letter from Juan Carlos Arguello (Inter-Mac) to Mayra Falck (BANHPROVI)) (referring to the meeting held on 26 July 2018 and attaching Claimants' letters to IFIs inquiring about their interest in issuing long-term lempira-denominated mortgages to the residents of the Housing Project).

b. **C-100** (21 August 2018) (Email from Juan Carlos Arguello to several employees at Banco Ficohsa, Honduras' largest bank) (gauging Ficohsa's interest in issuing lempira-denominated

long-term mortgages).

116. One of these, the "Banco de Desarrollo Rural Honduras, S.A." ("**Banrural**"), confirmed its interest in issuing long-term mortgages, under the ABA Program, to the residents of "Los Castaños de Choloma" who had been living in their homes for more than a year. Banrural also requested that BANHPROVI issue specific guidelines and mechanisms to facilitate this outcome:



Ingeniero
JUAN CARLOS ARGUELLO
Presidente Ejecutivo
INTER-MAC

Tegucigalpa M, D, C, 21 de agosto de 2018

En respuesta a la carta recibida en fecha 16 de agosto del corriente, en donde se nos

Le notificamos que por ser un mercado meta para BANRURAL, confirmamos nuestro interés en poder analizar los clientes que deseen redescontar las viviendas de Residencial Los Castaños, las cuales se encuentran ocupadas actualmente y que mantienen más de un año de construcción, esto bajo el esquema del Programa de Arrendamiento con Opción a Compra, **Aporte, Bono, Arrendamiento (ABA)**, mismo que fue aprobado en junio del 2016 por el comité Técnico Administrativo CTA del Fideicomiso, "Fondos para el otorgamiento del subsidio de los programas de vivienda para una vida mejor CONVIVIENDA.

financiero por parte del BANHPROVI.

Por lo anterior expuesto y para definir los procesos y metodologías de atención a dichos clientes, requerimos para ello, se establezcan los mecanismos y lineamientos del producto financiero por parte del BANHPROVI.

SANDRA PONCE
Gerente de Análisis de Crédito

BANRURAL VIRTUAL
Call Center: 2290-1010
www.banrural.com.hn

BANRURAL
El amigo que te ayuda a crecer

Proofs:

a. **C-98** (9 October 2018) (Letter from Juan Carlos Arguello (Inter-Mac) to Mayra Falck (BANHPROVI)) (referring to the meeting held on 26 July 2018 and attaching Claimants' letters to IFIs inquiring about their interest in issuing long-term lempira-denominated mortgages to the residents of the Housing Project).

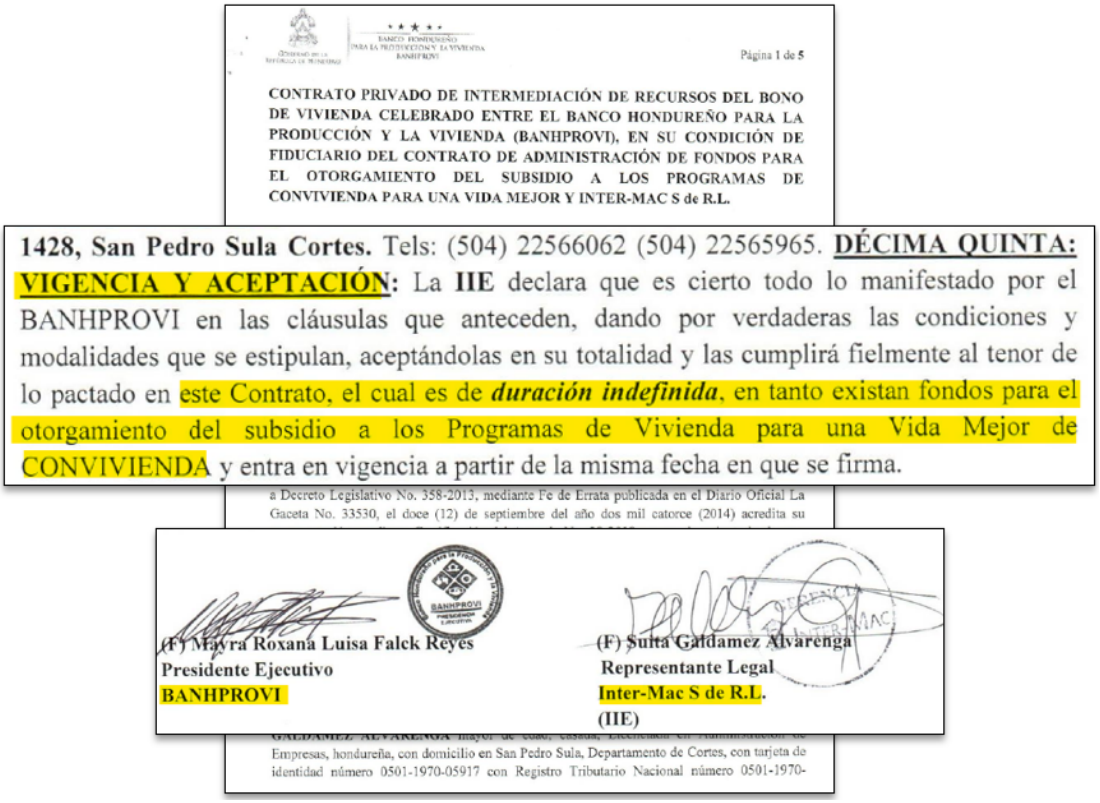
117. Juan Carlos immediately forwarded that letter to Ms. Falck requesting that BANHPROVI confirm the next steps that would need to be followed in order to assist the residents of "Los Castaños de Choloma."

Proofs:

a. **C-97** (22 August 2018) (Email from Juan Carlos Arguello to

several representatives from BANHPROVI) (referring to the conference call held on 26 July 2018 during which BANHPROVI provided a roadmap to follow and requesting confirmation of the next steps) ("***Quedamos muy atentos a la confirmación de los siguientes pasos*** *para avanzar en el establecimiento del marco legal descrito por BANHPROVI* ***para poder atender a los residentes que han venido ocupando y pagando sus alquileres en Los Castaños de acuerdo al esquema ABA de la Política Nacional de Vivienda por más de un año***.") (emphasis added).

118. Shortly thereafter, in September 2018, BANHPROVI entered into a second intermediation agreement with Inter-Mac in order to regulate the transfer of subsidies to be awarded to Inter-Mac on behalf of the residents of "Los Castaños de Choloma" under the Social Housing Programs (the "**2018 Intermediation Agreement**"). Unlike the 2015 Intermediation Agreement which was set to expire after one year, the 2018 Intermediation Agreement explicitly stated that as long as there were funds available to issue subsidies under the Social Housing Programs, the agreement would ***not expire*** ("*duración indefinida*"). This modification further reinforced Claimants' expectations that the Honduran State, including BANHPROVI, was committed to fulfilling its obligations toward both Claimants and the residents of "Los Castaños de Choloma":



Página 1 de 5

CONTRATO PRIVADO DE INTERMEDIACIÓN DE RECURSOS DEL BONO DE VIVIENDA CELEBRADO ENTRE EL BANCO HONDUREÑO PARA LA PRODUCCIÓN Y LA VIVIENDA (BANHPROVI), EN SU CONDICIÓN DE FIDUCIARIO DEL CONTRATO DE ADMINISTRACIÓN DE FONDOS PARA EL OTORGAMIENTO DEL SUBSIDIO A LOS PROGRAMAS DE CONVIVIENDA PARA UNA VIDA MEJOR Y INTER-MAC S de R.L.

1428, San Pedro Sula Cortes. Tels: (504) 22566062 (504) 22565965. **DÉCIMA QUINTA: VIGENCIA Y ACEPTACIÓN:** La **IIE** declara que es cierto todo lo manifestado por el BANHPROVI en las cláusulas que anteceden, dando por verdaderas las condiciones y modalidades que se estipulan, aceptándolas en su totalidad y las cumplirá fielmente al tenor de lo pactado en este Contrato, el cual es de ***duración indefinida***, en tanto existan fondos para el otorgamiento del subsidio a los Programas de Vivienda para una Vida Mejor de CONVIVIENDA y entra en vigencia a partir de la misma fecha en que se firma.

a Decreto Legislativo No. 358-2013, mediante Fe de Errata publicada en el Diario Oficial La Gaceta No. 33530, el doce (12) de septiembre del año dos mil catorce (2014) acredita su

(F) Mayra Roxana Luisa Falck Reyes
Presidente Ejecutivo
BANHPROVI

(F) Sulta Galdamez Alvarenga
Representante Legal
Inter-Mac S de R.L.
(IIE)

Empresas, hondureña, con domicilio en San Pedro Sula, Departamento de Cortes, con tarjeta de identidad número 0501-1970-05917 con Registro Tributario Nacional número 0501-1970-

Proofs:

a. **C-20** (10 September 2018) ("Contrato Privado de Intermediación de Recursos del Bono de Vivienda" executed

between BANHPROVI and Inter-Mac) (indicating that the 2018 Intermediation Agreement had no expiration).

b. **C-82** (13 November 2015) ("Contrato privado de intermediación especial para el otorgamiento de bono para los programas de vivienda para una vida mejor") (confirming the transfer of funds from BANHPROVI to Inter-Mac, Artícle 15).

119. From November 2018 through the end of 2020, BANHPROVI issued subsidies to Inter-Mac on behalf of the residents of the Housing Project. By the end of 2020, BANHPROVI had issued subsidies to some residents in the Housing Project totaling approximately USD $3 million.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 68).

b. **C-101** (1 November 2018) (Letter from Inter-Mac to BANHPROVI) (requesting the issuance of subsidies for 210 families residing in "Los Castaños de Choloma," totaling L 22.75 million under the ABA Program, along with a receipt confirming Inter-Mac's acknowledgment of the corresponding funds from BANHPROVI).

c. **C-102** (8 October 2019) (Letter from Inter-Mac to BANHPROVI) (requesting the issuance of subsidies for 14 families residing in "Los Castaños de Choloma," totaling L 1.61 million under the ABA Program, along with a receipt confirming Inter-Mac's acknowledgment of the corresponding funds from BANHPROVI).

d. **C-103** (29 October 2019) (Letter from Inter-Mac to BANHPROVI) (requesting the issuance of subsidies for 26 families residing in "Los Castaños de Choloma," totaling L 2.99 million under the ABA Program, along with a receipt confirming Inter-Mac's acknowledgment of the corresponding funds from BANHPROVI).

120. Despite the above, Honduras failed to fulfill commitments essential to the success of the Housing Project: (i) the State failed to provide ***any*** subsidy to Inter-Mac under the AFD Program (while it had issued subsidies under that same program to domestic and foreign developers), and (ii) BANHPROVI failed to approve the issuance of ***any*** long-term mortgages that would have enabled the residents of the Housing Project to exercise their purchase options under the Lease-Purchase Contracts they had concluded with Hola Realty.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 69).

b. **C-104** (20 November 2017) (Letter from CONVIVIENDA to S. Galdamez (Inter-Mac)) (evidencing that a list of 14 other

social housing projects had received subsidies under the AFD Program).

c. **C-105** (10 October 2023) (Article from El Heraldo, "Grupo Williams asegura que no hay fraude con bonos habitacionales," also available at: https://www.elheraldo.hn/elheraldoplus/investigaciones/grupo-williams-asegura-que-no-hay-fraude-con-bonos-habitacionales-KD15701083) (evidencing that the State issued subsidies in the amount of L 138.6 million to the Honduran developer known as "Grupo W" or "Grupo William" under the AFD Program).

121. Consequently, the Arguellos engaged the consultancy services of Mr. Roberto Arguello (who is not related to Claimants), along with his company, CEO Advisors, to pursue an amicable resolution with the Honduran Government.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 67).

122. In this context, on 20 May 2020, Roberto Arguello held a virtual meeting with the Private Secretary to the President of Honduras, Mr. Marco Midence, to discuss a potential solution with respect to the Housing Project. During this meeting, Roberto Arguello addressed Honduras' failure to issue the required mortgages to the residents of the Housing Project who had established their creditworthiness through timely rental payments over a duration of six months. This was one of the assurances included in the ABA Program implemented by the Honduran Government which Claimants had relied upon to pursue their Investments in Honduras.

Proofs:

a. **C-106** (21 May 2020) (Email from Roberto Arguello to Mr. Marco Midence, the Private Secretary to the Honduran President, attaching minutes of the Zoom meeting held between them on 20 May 2020) (evidencing BANHPROVI's assurances that it could finance the acquisition of "used" and "new" homes through state-sponsored subsidies).

123. Following that meeting, Roberto Arguello had a phone conversation with Honduran President Hernández, during which he raised the critical situation concerning the Housing Project. Under President Hernández's instructions, Roberto Arguello worked with government representatives over a period of four months in an effort to overcome the existing challenges regarding disbursements to residents of the Housing Project. Separately, the DFC was having its own meetings with representatives of the Honduran Government.

Proofs:

a. **C-107** (18 September 2020) (Email from Roberto Arguello to Ms. Sabrina Teichman, former Senior Advisor to the CEO of the DFC) (reporting on his meetings with the Honduran State over the past few months and requesting the DFC's assistance

in resolving the critical situation of the Housing Project).

b. **C-108** (18 September 2020) (Email from Sabrina Teichman (former employee of the DFC) to Roberto Arguello referring to a meeting held between the CEO of the DFC, Honduras' foreign minister and Honduras Ambassador to the United States) (stating: "It was nice to meet you virtually yesterday. As discussed I had a meeting with our CEO and the Honduran Foreign Minister and Ambassador yesterday afternoon. It was a very productive discussion on investment in Honduras. **I did have the opportunity to raise the issues involved in this project – especially highlighting the GOH subsidies. The Foreign Minister said he would look into it right away**. I am going to follow up with foreign ministry today to get an update on their next steps.") (emphasis added).

c. **C-187** (4 December 2020) (Readout from the Meeting with Honduran President, Juan Orlando Hernández, and DFC CEO Adam Boehler) (evidencing that the DFC was committed to using its financing tools to assist Honduras and its people).

124. In June 2020, BANHPROVI and CONVIVIENDA held a meeting to address the issues described above and reached an agreement to work together to finally provide financial assistance to the residents of the Housing Project. In order to accelerate this process, BANHPROVI requested detailed information regarding the Project, including the number of occupied homes, the amount of rents received by Inter-Mac, the amount of any interest being generated on those rents, and the number of homes built more than a year ago. Juan Carlos promptly provided the requested information.

Proofs:

a. **C-109** (2-4 June 2020) (Email exchange between Mr. Luis Ramos, Roberto Arguello and Juan Carlos Arguello) (reporting on the meeting held between BANHPROVI and CONVIVIENDA on 1 June 2024).

125. As further evidence of the State's assurances that it would indeed comply with its agreed-upon commitments, the Executive Director of CONVIVIENDA, Mr. Gabriel Henríquez, sent an official communication to Claimants in early 2021 requesting their 2021 projection of the payments that the State would need to make with respect to the Housing Project. Once again, Claimants promptly provided the requested information, confident that the residents of the Housing Project would soon receive the long-awaited financial assistance from the State to purchase homes at "Los Castaños de Choloma."

Proofs:

a. **C-21** (26 March 2021) (Communication No. 228-2021 from CONVIVIENDA asking Inter-Mac to provide the amount of Payments required for 2021) (evidencing that Honduras continuously gave assurances to Claimants that it would comply with its obligations regarding the development of the Project).

b. **C-22** (9 April 2021) (Communication from Inter-Mac to CONVIVIENDA in response to Oficio No. 228-2021) (providing projections of the Payments to be made with respect to the Housing Project during the months of April 2021 through November 2021).

G. Honduras Removed the Final Obstacles for the Issuance of Subsidies and Long-Term Mortgages for the Housing Project

126. Concurrently with Honduras' requests to the Arguellos that they provide information in order to process the disbursement of funds to the residents of "Los Castaños de Choloma," the State implemented a series of significant changes to its Social Housing Programs, effectively removing the final obstacles the State had unilaterally imposed to issue the subsidies and long-term mortgages to the residents of the Housing Project.

Proofs:

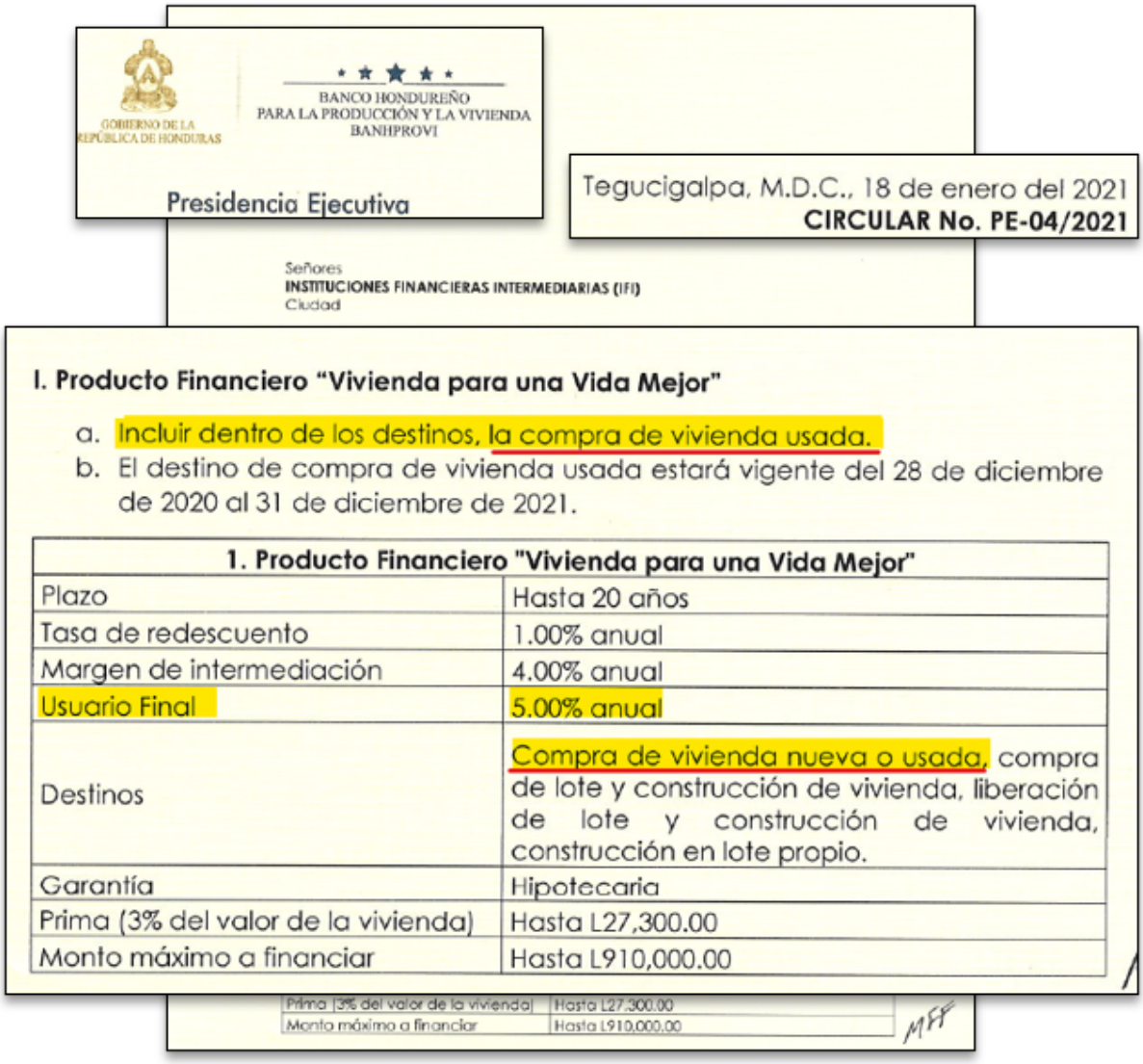
a. *See infra*.

127. More specifically, on 18 January 2021, BANHPROVI and the Central Bank of Honduras approved a series of amendments to the State's Social Housing Programs ("**2021 Amendments"**). The 2021 Amendments were meant to provide additional support to Honduran families in response to the floods caused by Hurricanes ETA and IOTA, which impacted the country in late November 2020, as well as the subsequent economic downturn resulting from the COVID-19 pandemic.

Proofs:

a. **C-110** (18 January 2021) (Circular No. PE-04/2021 issued by BANHPROVI) (informing the IFIs of the adoption by BANHPROVI and the Honduran Central Bank of a new financial product, "Vivienda para una Vida Mejor," which included the purchase of "used homes").

128. Crucially for Claimants, the 2021 Amendments explicitly provided that ***the purchase of used homes*** would be eligible for long-term mortgages under the scope of the "Vivienda para unaVida Mejor" Social Housing Programs. This represented a significant change, as BANHPROVI had arbitrarily opposed the issuance of long-term mortgages to the residents of "Los Castaños de Choloma" alleging that their homes were considered "used" and therefore ineligible for funding under the previous programs. Additionally, the 2021 Amendments significantly reduced interest rates for 20-year mortgages from 9.7% to 5%:



GOBIERNO DE LA REPÚBLICA DE HONDURAS

BANCO HONDUREÑO PARA LA PRODUCCIÓN Y LA VIVIENDA BANHPROVI

Presidencia Ejecutiva

Tegucigalpa, M.D.C., 18 de enero del 2021

CIRCULAR No. PE-04/2021

Señores
INSTITUCIONES FINANCIERAS INTERMEDIARIAS (IFI)
Ciudad

I. Producto Financiero "Vivienda para una Vida Mejor"

a. Incluir dentro de los destinos, la compra de vivienda usada.
b. El destino de compra de vivienda usada estará vigente del 28 de diciembre de 2020 al 31 de diciembre de 2021.

1. Producto Financiero "Vivienda para una Vida Mejor"	
Plazo	Hasta 20 años
Tasa de redescuento	1.00% anual
Margen de intermediación	4.00% anual
Usuario Final	5.00% anual
Destinos	Compra de vivienda nueva o usada, compra de lote y construcción de vivienda, liberación de lote y construcción de vivienda, construcción en lote propio.
Garantía	Hipotecaria
Prima (3% del valor de la vivienda)	Hasta L27,300.00
Monto máximo a financiar	Hasta L910,000.00

Proofs:

a. **C-110** (18 January 2021) (Circular No. PE-04/2021 issued by BANHPROVI) (informing the IFIs of the adoption by BANHPROVI and the Honduran Central Bank of a new financial product, "Vivienda para una Vida Mejor," which included the purchase of "used" homes).

b. **C-111** (24 March 2021) (Press article from "tunota" titled "Hondureños podrán adquirir su casa mediante el programa vivienda para una vida mejor de BANHPROVI" reporting on the amendment to "Vivienda para una Vida Mejor," also available here: https://www.tunota.com/radar-comercial/hondurenos-podran-adquirir-su-casa-mediante-el-programa-vivienda-para-una-vida-mejor-de-banhprovi) (*"Falck también indicó que el producto financiero estará disponible **para adquisición de una vivienda** nueva o **usada**, construcción de viviendas, compras y liberaciones de lotes,*

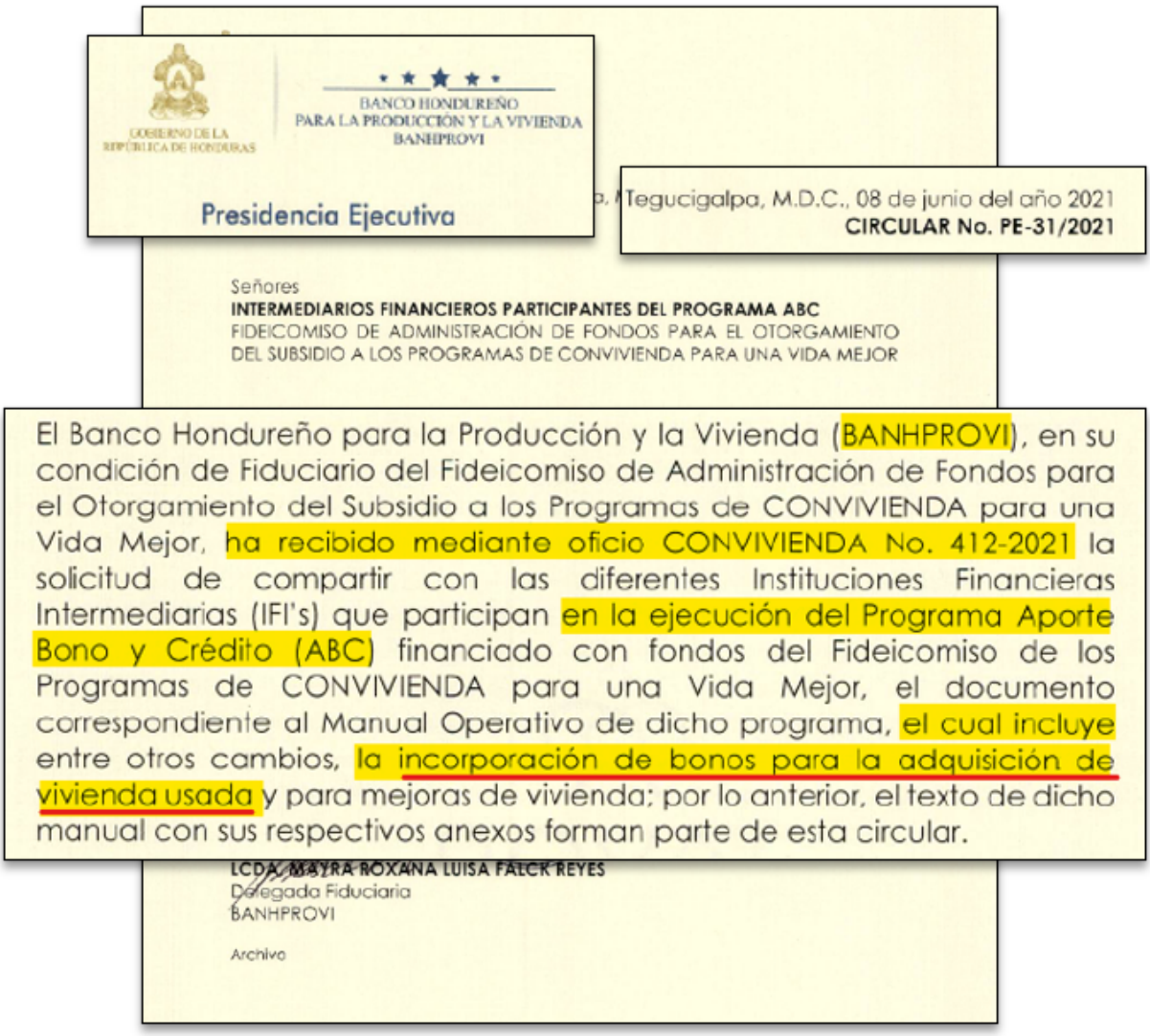
así como mejoramiento y reparaciones, entre otros.")
(emphasis added).

129. "Vivienda para una Vida Mejor" was further amended on 26 November 2021 to increase its funding to a total of L 1,516 million (approximately USD $62.7 million) and to extend its duration until those funds were fully utilized.

Proofs:

a. **C-112** (26 November 2021) (Circular No. PE-55/2021 issued by BANHPROVI) (increasing the funding of "Vivienda para una Vida Mejor" to a total of L 1,516 million and extending its duration until such time as the funds are fully used).

130. In parallel, CONVIVIENDA amended its operational regulation for the ABC Program to include, among other changes, the issuance of subsidies for the purchase of "used" homes:



GOBIERNO DE LA REPÚBLICA DE HONDURAS

BANCO HONDUREÑO PARA LA PRODUCCIÓN Y LA VIVIENDA BANHPROVI

Presidencia Ejecutiva

Tegucigalpa, M.D.C., 08 de junio del año 2021
CIRCULAR No. PE-31/2021

Señores
INTERMEDIARIOS FINANCIEROS PARTICIPANTES DEL PROGRAMA ABC
FIDEICOMISO DE ADMINISTRACIÓN DE FONDOS PARA EL OTORGAMIENTO DEL SUBSIDIO A LOS PROGRAMAS DE CONVIVIENDA PARA UNA VIDA MEJOR

El Banco Hondureño para la Producción y la Vivienda (BANHPROVI), en su condición de Fiduciario del Fideicomiso de Administración de Fondos para el Otorgamiento del Subsidio a los Programas de CONVIVIENDA para una Vida Mejor, ha recibido mediante oficio CONVIVIENDA No. 412-2021 la solicitud de compartir con las diferentes Instituciones Financieras Intermediarias (IFI's) que participan en la ejecución del Programa Aporte Bono y Crédito (ABC) financiado con fondos del Fideicomiso de los Programas de CONVIVIENDA para una Vida Mejor, el documento correspondiente al Manual Operativo de dicho programa, el cual incluye entre otros cambios, la incorporación de bonos para la adquisición de vivienda usada y para mejoras de vivienda; por lo anterior, el texto de dicho manual con sus respectivos anexos forman parte de esta circular.

LCDA. MAYRA ROXANA LUISA FALCK REYES
Delegada Fiduciaria
BANHPROVI

Archivo

Proofs:

a. **C-114** (8 June 2021) (Circular No. PE-31/2021 issued by BANHPROVI) (informing IIEs and IFIs of the amendments of CONVIVIENDA's operational regulation for the ABA Program to include, among other changes, the purchase of "used" homes).

b. **C-115** (May 2021) (CONVIVIENDA's amended operational regulation for the ABC Program) (including the issuance of subsidies for the purchase of "used" homes).

c. **C-116** (9 June 2021) (Email from Mr. Jorge López (BANHPROVI) to a number of IFIs and IIEs attaching copies of Circular No. PE-31/2021 and CONVIVIENDA's amended operational regulation for the ABA Program) ("*Señores IIB y IIE Su atención a CIRCULAR PE-31-2021, se adjunta anexos referente a los programas de vivienda para una vida mejor,* ***que incluye la modificación del destino de compra de vivienda usada*** *y mejoras de vivienda*.") (emphasis added).

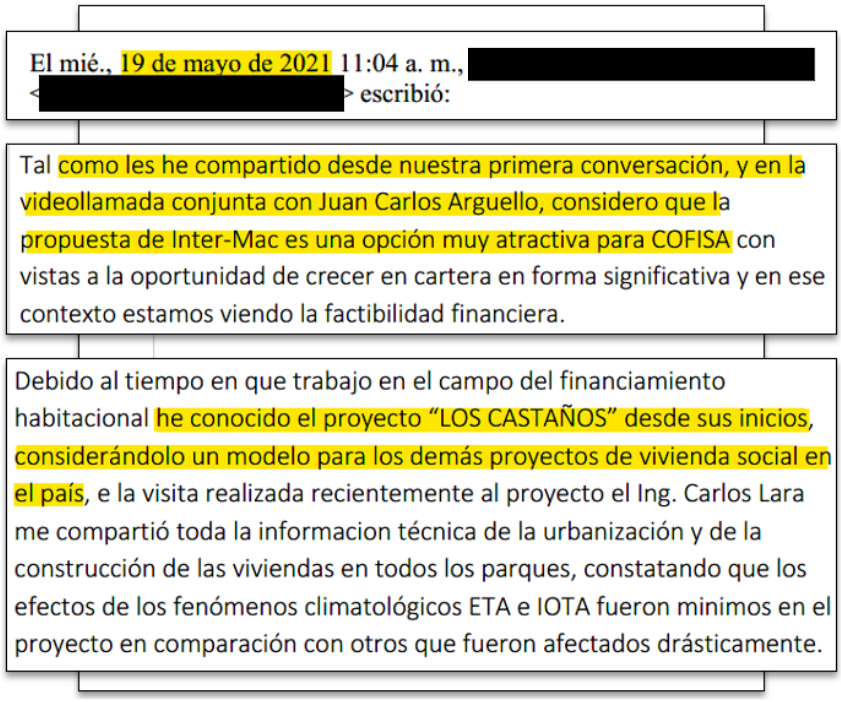
131. Claimants were thrilled to learn about the 2021 Amendments as this meant that a key arbitrary obstacle to BANHPROVI's issuance of subsidies and long-term mortgages to the residents of the Housing Project was finally removed. Acting promptly on these good news, on 11 March 2021, Inter-Mac issued a communication to the residents of "Los Castaños de Choloma," informing them of the 2021 Amendments and inviting them to contact Inter-Mac's local office to initiate the required paperwork for the issuance of lempira-denominated long-term mortgages.

Proofs:

a. **C-117** (11 March 2021) (Communication from Inter-Mac to the residents of "Los Castaños de Choloma") (informing of the possibility for BANHPROVI to issue mortgages for "used" homes under the 2021 Amendments to "Vivienda para una Vida Mejor" and inviting interested residents to approach Inter-Mac's local office).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 70-73).

132. Claimants also continued their efforts to identify IFIs willing to extend long-term mortgages to the residents of the Housing Project, and retained the services of Mr. Fernando Aguilera to assist in this endeavor. As part of this process, Juan Carlos and Mr. Aguilera held a conference call with a representative from Compañía Financiera, S.A. ("**Cofisa**") (an IFI specializing in mortgage issuance approved by the State) to explore its interest in issuing long-term mortgages to the residents of the Project. Similar to other banking entities (such as Banco Financiera Comercial Hondureña, S.A. ("**Ficohsa**") and Banrural), Cofisa expressed great interest in providing financing to the residents of the Housing Project:


El mié., 19 de mayo de 2021 11:04 a. m., [redacted] escribió:

Tal como les he compartido desde nuestra primera conversación, y en la videollamada conjunta con Juan Carlos Arguello, considero que la propuesta de Inter-Mac es una opción muy atractiva para COFISA con vistas a la oportunidad de crecer en cartera en forma significativa y en ese contexto estamos viendo la factibilidad financiera.

Debido al tiempo en que trabajo en el campo del financiamiento habitacional he conocido el proyecto "LOS CASTAÑOS" desde sus inicios, considerándolo un modelo para los demás proyectos de vivienda social en el país, e la visita realizada recientemente al proyecto el Ing. Carlos Lara me compartió toda la informacion técnica de la urbanización y de la construcción de las viviendas en todos los parques, constatando que los efectos de los fenómenos climatológicos ETA e IOTA fueron minimos en el proyecto en comparación con otros que fueron afectados drásticamente.

Proofs:

a. **C-118** (19 May 2021) (Email exchange between [redacted] (Cofisa), Fernando Aguilera and Juan Carlos Arguello) (evidencing Cofisa's knowledge and great interest in issuing mortgages to the residents of the Housing Project).

b. **C-184** (26 May 2021) (Email from Fernando Aguilera to [redacted] (Cofisa)) (detailing the financing needed for the first 100 residents of the Housing Project so they could receive long-term mortgages under the revised "Vivienda para Una Vida Mejor" program).

c. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 75).

133. The State's implementation of significant changes to its Social Housing Programs continued following President Xiomara Castro's election in January 2022. More specifically, in June 2022, BANHPROVI adopted a new financial product named "Esta casa es mía." Similar to the financing available under "Vivienda para una Vida Mejor," this product offered long-term mortgages to finance the purchase of used homes for amounts of up to L 910,000 (approximately USD $37,000). With this new financial product, the Government further extended the duration of long-term mortgages to 30 years and reduced the applicable interest rate from 5% to 4%. The President of BANHPROVI, Mr. Edwin Araque, promoted this new financial product as the most beneficial for low-income residents, stressing that the 4% interest rate was the lowest interest rate offered in contemporary Honduran history.

Proofs:

a. **C-113** (2 June 2022) (Circular No. PE-11/2022 issued by

BANHPROVI) (creating a new financial product, "Esta casa es mía," lowering the interest rate applicable to "Vivienda para una Vida Mejor" from 5% to 4% and extending the total duration of mortgages to 30 years).

b. **C-121** (23 June 2022) (Public presentation from Mr. Luis Araque on "Esta casa es mía," also available at: https://www.facebook.com/watch/live/?ref=watch_permalink&v=398675328872244)(promoting BANHPROVI's new financial product named "Esta casa es mía").

c. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 96).

134. A key difference with the State's previous programs was that now BANHPROVI was authorized to act as a first-tier bank ("*banco de primer piso*") to finance the purchase of "***used***" homes, which meant that it could issue mortgages directly to the Project residents under the State's Social Housing Programs, eliminating the need to obtain such financing from IFIs/local banks.

Proofs:

a. **C-122** (22 June 2022) (Article from "La Prensa" titled "Hondureños con oportunidad histórica de tener su casa entre inflación y bajos salarios", also available at: https://www.laprensa.hn/premium/hondurenos-con-oportunidad-historica-de-tener-su-casa-entre-inflacion-y-bajos-salarios-JB8751380) (evidencing that BANHPROVI was acting as a first-tier bank).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 97).

135. A month later, in July 2022, BANHPROVI's regional branch manager in San Pedro Sula (a city adjacent to Choloma), Ms. Xochilt Funes, confirmed to Inter-Mac's and Hola Realty's general managers, Ms. Suita Galdamez and Mr. Claudio Discua, that the prequalification process for residents could commence while BANHPROVI established its internal protocols to issue mortgages.

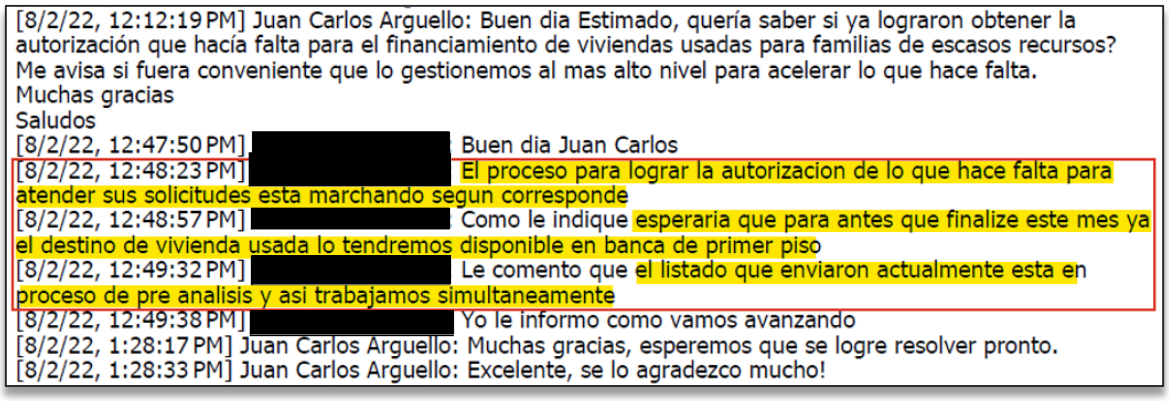
Proofs:

a. **C-123** (14 July 2022) (Email from Xochilt Funes and Mirian Castro (BANHPROVI) to Ms. Suita Galdamez (Inter-Mac) and Mr. Claudio Discua (Hola Realty)) (confirming that BANHPROVI could proceed with the prequalification process for residents of "Los Castaños de Choloma") ("*Buenas Tardes Estimados, Deseo copiarles a mi compañera Mirian Castro ya que* ***ella es la [que] procederá con las precalificaciones de los clientes que nos envíen también y llevará los créditos correspondientes***.") (emphasis added).

b. **C-124** (14 July 2022) (Emails from Ms. Xochilt Funes (BANHPROVI) to Ms. Suita Galdamez (Inter-Mac) and Mr. Claudio Discua (Hola Realty)) (confirming that BANHPROVI could proceed with the prequalification process

for residents of "Los Castaños de Choloma" while BANHPROVI worked on resolving its internal procedures) ("*Solamente deseo aclararle, que nosotros con gusto le podemos atender en nuestra agencia de SPS,* ***sin embargo, debemos de tener paciencia ya que hay algunos trámites internos que se está trabajando para que nosotros Banca de Primer Piso podamos llevar este tipo de casos (casas usadas)***. *Podemos iniciar con lo siguiente: 1.* ***Con gusto podemos iniciar con la precalificación de clientes que le envíen a mirian castro*** *con copia a mi persona, para que iniciemos y esperar mientras documentamos lo correspondiente de los casos […].*") (emphasis added).

136. Ms. Galdamez shared the first set of prequalification documents on behalf of Project residents to BANHPROVI's regional branch in San Pedro Sula shortly thereafter. A few weeks later, on 2 August 2022, the general manager of BANHPROVI's [redacted] confirmed to Juan Carlos by text message that: (i) the process required for the approval of long-term mortgages to the residents of the Housing Project was proceeding as planned; (ii) the inclusion of "used" homes in the scope of projects eligible for BANHPROVI's long-term financing as a first-tier bank was likely to be finalized by the end of the month; and (iii) BANHPROVI was reviewing the files provided on behalf of the residents of the Housing Project:


[8/2/22, 12:12:19 PM] Juan Carlos Arguello: Buen dia Estimado, quería saber si ya lograron obtener la autorización que hacía falta para el financiamiento de viviendas usadas para familias de escasos recursos? Me avisa si fuera conveniente que lo gestionemos al mas alto nivel para acelerar lo que hace falta.
Muchas gracias
Saludos
[8/2/22, 12:47:50 PM] [redacted]: Buen dia Juan Carlos
[8/2/22, 12:48:23 PM] [redacted]: El proceso para lograr la autorizacion de lo que hace falta para atender sus solicitudes esta marchando segun corresponde
[8/2/22, 12:48:57 PM] [redacted]: Como le indique esperaria que para antes que finalize este mes ya el destino de vivienda usada lo tendremos disponible en banca de primer piso
[8/2/22, 12:49:32 PM] [redacted]: Le comento que el listado que enviaron actualmente esta en proceso de pre analisis y asi trabajamos simultaneamente
[8/2/22, 12:49:38 PM] [redacted]: Yo le informo como vamos avanzando
[8/2/22, 1:28:17 PM] Juan Carlos Arguello: Muchas gracias, esperemos que se logre resolver pronto.
[8/2/22, 1:28:33 PM] Juan Carlos Arguello: Excelente, se lo agradezco mucho!

Proofs:

a. **C-125** (July-October 2022) **(**Exchange of WhatsApp messages between Juan Carlos Arguello and [redacted] (BANHPROVI)) (evidencing that BANHPROVI was analyzing the files shared by Claimants on behalf of the residents of the Housing Project).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 100-101).

137. The improvements and amendments made by the State to its Social Housing Programs again reinforced the Arguellos' expectations that Honduras would comply with its commitments and would extend the financial assistance long promised. Regrettably, as will be explained below, this was not the case.

Proofs:

a. *See infra*.

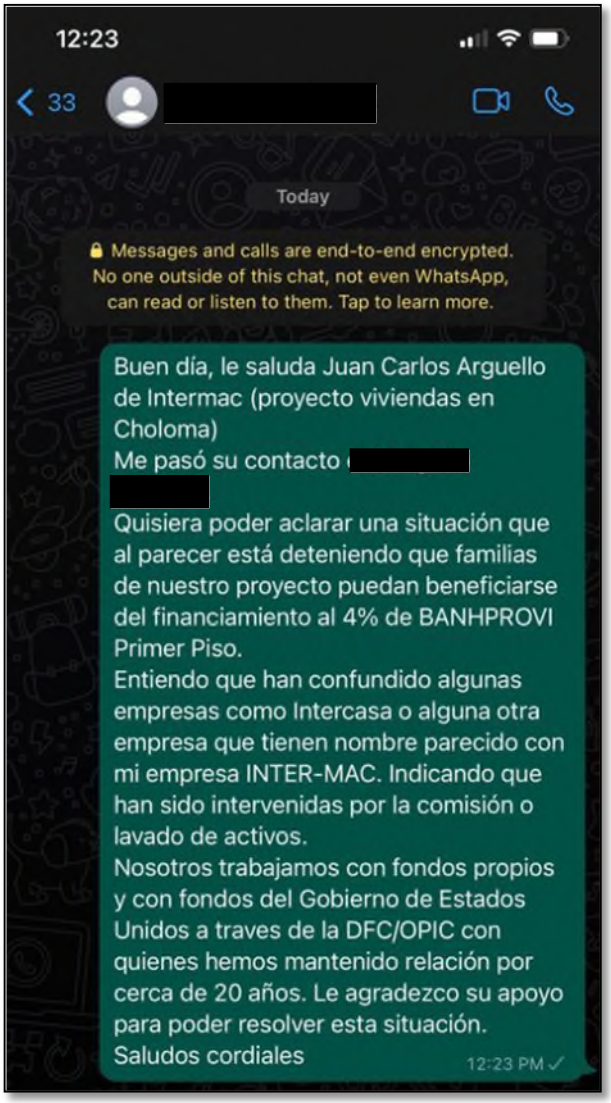
H. Honduras Reneged on its Commitments and Acted Discriminatorily Against Claimants and the Residents of the Housing Project

138. Despite its repeated assurances and promises to the Arguellos, Respondent failed to uphold its commitments, providing subsidies to fewer than 50% of the residents of "Los Castaños de Choloma" and excluding the Housing Project from the scope of projects eligible to receive long-term mortgages. The State's conduct was arbitrary, discriminatory, and lacked transparency, as evidenced by the series of unfounded and misleading allegations Honduras made against the Housing Project in the months leading up to the permanent exclusion of the Housing Project from BANHPROVI's financing.

Proofs:

a. *See infra*.

139. More specifically, each time the Arguellos followed up with the State's entities, they were faced with excuses and new unfounded allegations to justify why the residents of the Project had not yet received any mortgages. For instance, BANHPROVI mistakenly conflated Inter-Mac with unrelated companies such as "Intercasa" or "MAC Internacional Inc." These were entities that were being investigated by the Honduran government for alleged money laundering, but that had ***no*** relation to Claimants' companies. Juan Carlos reached out to BANHPROVI's [redacted], to clarify this confusion:



Proofs:

a. **C-31** (7 July 2021) (Communication No. 609-2021 from CONVIVIENDA) (evidencing that Honduras informed Inter-Mac that there were no more available funds for the Housing Project).

b. **C-126** (Undated) (WhatsApp message from Juan Carlos Arguello to [redacted] (BANHPROVI)) (seeking to clarify with BANHPROVI's [redacted], that Inter-Mac had no connection with other companies under investigation for alleged money laundering).

140. Subsequently, BANHPROVI alleged that it could not issue mortgages to the residents of "Los Castaños de Choloma" because the residents had supposedly already benefited from banking funding. This claim was inaccurate. As Juan Carlos clarified, at the time they applied for funding under "Vivienda para una Vida Mejor," residents of "Los Castaños de

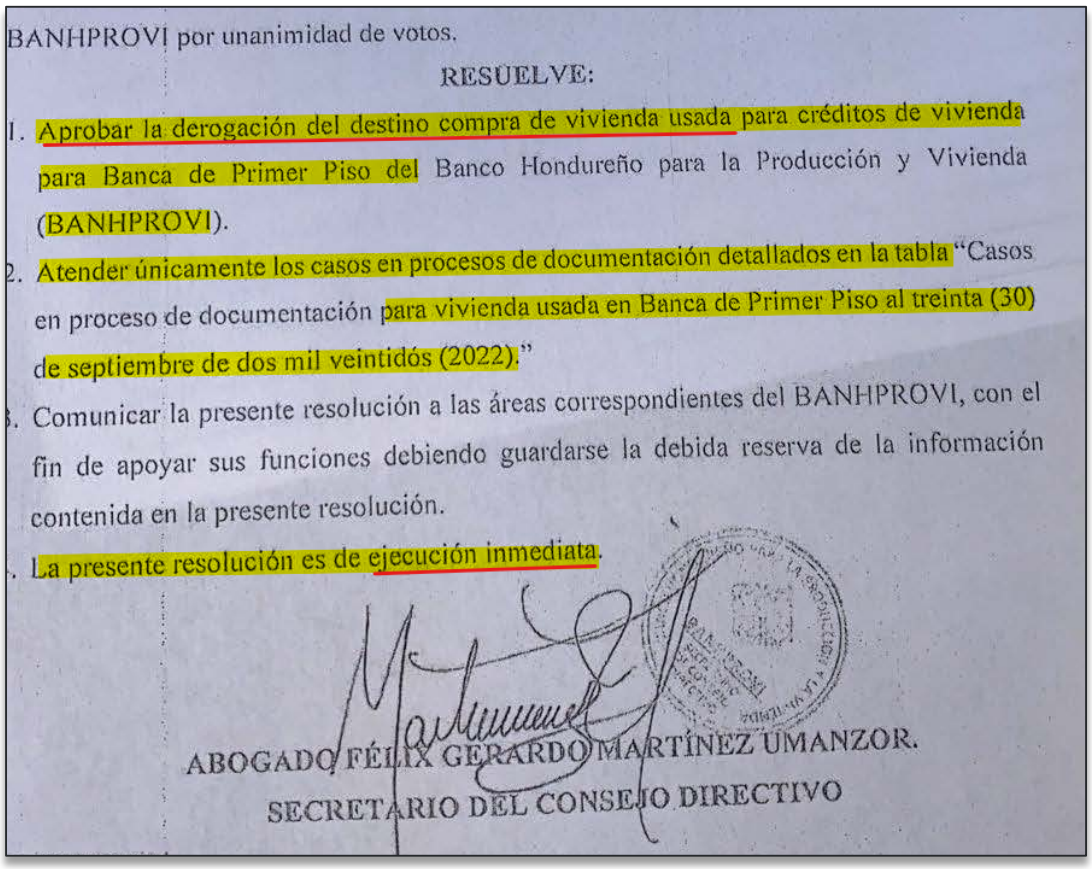
Choloma" ***had not incurred any pre-existing debt with IFIs or local banks***; they were simply paying their rent under the tenancy agreements with purchase options with Inter-Mac.

Proofs:

a. **C-127** (26 July 2022) (Email from Juan Carlos Arguello to BANHPROVI employee) (explaining that residents of the Housing Project had not incurred pre-existing debt with IFIs or local banks, but were merely paying rents under the Lease-Purchase Contracts they had concluded with Inter-Mac, and were therefore eligible to receive BANHPROVI's long-term mortgages).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶103).

141. Respondent's arbitrary conduct culminated on 4 October 2022 when BANHPROVI terminated, ***with immediate effect*** ("*de ejecución inmediata*"), the possibility for BANHPROVI to issue mortgages to residents purchasing "used" homes in its capacity as first-tier bank ("**2022 Resolution**"). Notably, the 2022 Resolution was issued ***three weeks after*** Claimants served their Notice of Intent related to this dispute, all of which evidences the retaliatory nature of the 2022 Resolution:



BANHPROVI por unanimidad de votos.

RESUELVE:

1. Aprobar la derogación del destino compra de vivienda usada para créditos de vivienda para Banca de Primer Piso del Banco Hondureño para la Producción y Vivienda (BANHPROVI).
2. Atender únicamente los casos en procesos de documentación detallados en la tabla "Casos en proceso de documentación para vivienda usada en Banca de Primer Piso al treinta (30) de septiembre de dos mil veintidós (2022)."
3. Comunicar la presente resolución a las áreas correspondientes del BANHPROVI, con el fin de apoyar sus funciones debiendo guardarse la debida reserva de la información contenida en la presente resolución.
4. La presente resolución es de ejecución inmediata.

ABOGADO FÉLIX GERARDO MARTÍNEZ UMANZOR.
SECRETARIO DEL CONSEJO DIRECTIVO

Proofs:

a. **C-30** (1 September 2022) (Claimants' Notice of Intent under

Article 10.6.2. of the CAFTA-DR).

b. **C-128** (4 October 2022) (Resolution adopted during BANHPROVI's ordinary session No. CD-39-2002) (incomplete, pages 4 to 7 only)) (evidencing that the State excluded financing for residents purchasing used homes under the State's social housing programs and disregarded the applications submitted by Inter-Mac on behalf of residents of "Los Castaños de Choloma").

142. While the 2022 Resolution included an exemption for applications under review ("*casos en procesos de documentación*"), remarkably, ***not a single resident*** of "Los Castaños de Choloma" was included among the outstanding applications that BANHPROVI agreed to consider for exemption. BANHPROVI's arbitrary disregard of the pending applications previously submitted by Claimants (through Inter-Mac) lacks any rational explanation, particularly given BANHPROVI's previous assurances to the Arguellos that "the list [of residents] sent [by Inter-Mac] [was] ***in the process of pre-analysis***" and that BANHPROVI would finally be able to finance the purchase of "used" homes in its capacity as first-tier bank.

Proofs:

a. *See* Claimants' Statement of Claim at paragraph 136.

b. **C-125** (July-October 2022) **(**Exchange of WhatsApp messages between Juan Carlos Arguello and [redacted] (BANHPROVI)) (evidencing that BANHPROVI was analyzing the files shared by Claimants on behalf of the residents of the Housing Project).

c. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 111.

143. The arbitrary nature of BANHPROVI's exclusion of the residents of "Los Castaños de Choloma" from the scope of the State's social housing financing was subsequently confirmed to Juan Carlos by a BANHPROVI employee. In the employee's own words (whose name has been redacted for fear of retaliation), BANHPROVI issued the 2022 Resolution to ***purposefully*** hurt Claimants and exclude the residents of the Project from the benefit of BANHPROVI's mortgages:



Proofs:

a. **C-129** (28 October 2022) (Redacted exchange of WhatsApp messages between Juan Carlos Arguello and an employee from BANHPROVI regarding the issuance of long-term mortgages to the residents of the Housing Project) (evidencing that BANHPROVI had purposefully excluded the purchase of used homes from the scope of the State-sponsored long-term mortgages to avoid issuing any mortgages to the residents of the Housing Project).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 110).

144. The State's intent to purposefully injure Claimants and the Project is evidenced by the series of events that transpired right before the 2022 Resolution was approved and issued by BANHPROVI. As explained by Claimant, Juan Carlos:

> 107. (…) during the board meeting at least one board member questioned the sudden decision to cancel this program that had just been approved a month before. Following an initial discussion on the topic, **Mr. Araque abruptly requested that the recording be stopped**.
>
> 108. **Once off the record**, **Mr. Araque admitted that the exclusion of "used" homes** from BANHPROVI's financing as a "banco de primer piso" **was exclusively designed to prevent our Project from receiving any payments**. Mr. Araque attempted to justify this decision by alleging that we were foreign criminals, echoing Mr. Benítez's prior defamatory statements against us. Notably, at the time Mr. Benítez was serving as the Advisor Minister of Strategy and Communications to the

> Honduran President. The BANHPROVI employee also informed me that **during this off-the-record discussion, Mr. Araque intimidated board members by pounding the table and yelling, all in an effort to get them to approve the Resolution**.
>
> 109. Once the recording was restarted, all **board members approved the Resolution** to leave a record of the voting that took place, but **without leaving trace of Mr. Araque's intimidatory tactics and arbitrary orders against us** and our Housing Project. (emphasis added).
>
> **Proofs**:
>
> a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 107-109).

145. As Juan Carlos further explains in his witness statement, the State's (i) exclusion with immediate effect of "used" homes from the scope of BANHPROVI's financing as a first-tier bank, coupled with (ii) its refusal to consider ***any*** applications submitted by Inter-Mac under the same, and (iii) its failure to issue ***any*** of the promised subsidies under the AFD Program to Inter-Mac, was the final straw after Claimants' years of investment in time and resources into the Housing Project, particularly given that the State issued subsidies to other Honduran and foreign developers.

Proofs:

a. **C-104** (20 November 2017) (Letter from CONVIVIENDA to S. Galdamez (Inter-Mac)) (evidencing that a list of 14 other social housing projects had received subsidies under the AFD Program).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 111).

I. Honduras Accredited a Violent and Radical Organization that Assumed de Facto Control Over the Housing Project and Engaged in a Campaign of Harassment Against Claimants, their Employees and their Investments

146. Honduran law allows communities to designate and appoint "patronatos." Patronatos are organizations appointed by a community and accredited by the State to ensure the welfare of the community and defend and manage its needs and interests.

Proofs:

a. **C-131** (10 February 2014) (Decree Law No. 253-2013 adopting the "Ley de Patronatos y Asociaciones Comunitarias") (setting out the rules applicable to the election and functioning of *patronatos* in Honduras) (*see* Article 9: "*[l]os patronatos y asociaciones comunitarias deben elegir a sus autoridades en elecciones libres y democráticas en la forma en que se establezca en sus propios estatutos*.").

b. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 10).

147. With respect to "Los Castaños de Choloma," prior to the establishment of the Patronato, Inter-Mac, Hola Realty, and the Arguellos maintained a harmonious relationship with the residents of the Housing Project, responding directly and effectively to the community's concerns and needs. This dynamic, however, drastically changed following Hurricanes ETA and IOTA, which, as previously mentioned, struck the country in late November 2020. In the aftermath, a group of individuals began holding clandestine meetings—without the participation or knowledge of the majority of residents—with the intent of influencing the community and rallying opposition against the Arguellos and the Housing Project.

Proofs:

a. **C-191** (First Declaration of Claudio Antonio Discua, at ¶¶ 17-18).

148. As a result of these secret meetings, these individuals conformed a new patronato known as "Patronato Pro-Mejoramiento de Castaños de Choloma" (previously defined as "**Patronato**"). Given that Honduran law mandates that patronatos be accredited by the State, in early 2021, the Patronato sought accreditation before the governmental authorities of the Municipality of Choloma.

Proofs:

a. **C-131** (10 February 2014) (Decree Law No. 253-2013 adopting the "Ley de Patronato's y Asociaciones Comunitarias") (setting out the rules applicable to the election and functioning of *patronatos* in Honduras).

b. **C-164** (28 October 1990) (Law of Municipalities, Decree No. 134-90) (evidencing that Honduran law contemplated the patronato as a community association for the protection and defense of the community's interest).

c. **C-191** (First Declaration of Claudio Antonio Discua, at ¶¶ 18-19).

149. On 11 January 2021, the Municipality of Choloma authorized the establishment of the Patronato, empowering it "*para realizar todo tipo de labor que traiga el desarrollo y bienestar*" in "Los Castaños de Choloma." The Patronato comprised eleven (11) members, with Mr. Carlos Roberto Velásquez serving as President and Mr. Samy Joel Mejia as Vice-President. Mr. Milton Benítez, a public figure known in Honduras at the time for his populist TV and radio program "El Perro Amarillo"—who currently holds the position of Advisor Minister of Strategy and Communications in the Honduran Government—is another key and notorious figure behind the Patronato since its inception.

Proofs:

a. **C-23** (11 January 2021) (Accreditation of the "Patronato Pro-

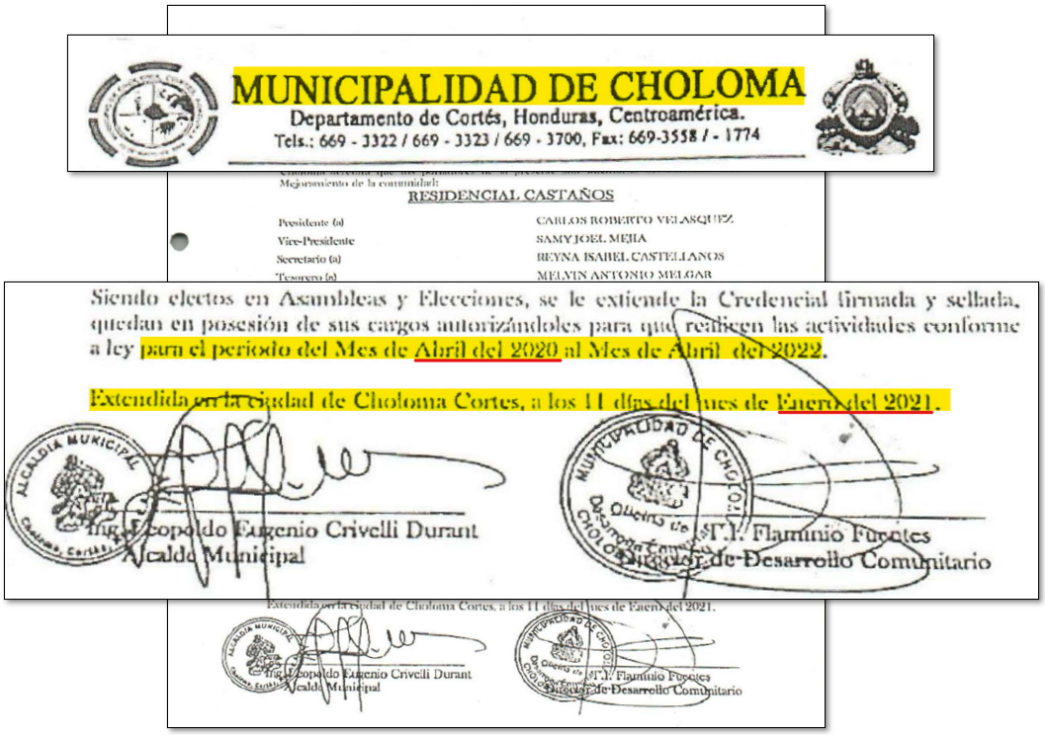
Mejoramiento de la comunidad" "Los Castaños de Choloma" adopted by the Municipality of Choloma) (evidencing the composition of the Patronato and that the Patronato was empowered by Honduran State representatives "*para realizar todo tipo de labor que traiga el desarrollo y bienestar*" in "Los Castaños de Choloma").

b. **C-130** (1 July 2022) (Press article from La Prensa, "Milton Benítez, ministro de Estrategia, en Lista Negra de Estados Unidos," also available at: https://www.laprensa.hn/honduras/milton-benitez-ministro-de-estrategia-en-lista-negra-de-estados-unidos-YB8892562) (evidencing that Mr. Benítez is known in Honduras as the "Perro Amarillo," after the name of his TV and radio show, and that he is the "Ministro Asesor en Materia de Estrategia y Comunicaciones" to the Honduran President).

c. **C-131** (10 February 2014) (Decree Law No. 253-2013 adopting the "Ley de Patronatos y Asociaciones Comunitarias") (setting out the rules applicable to the election and functioning of *patronatos* in Honduras).

d. **C-191** (First Declaration of Mr. Claudio Antonio Discua, at ¶¶ 19-21, 29).

150. Notably, although the Patronato was not organized until late 2020, the accreditation credential issued by the State on 11 January 2021 retroactively recognized the Patronato as representing the community from April 2020 to April 2022. This indicates that the State improperly authorized the Patronato to act on behalf of the community during a period in which it did not yet exist:


MUNICIPALIDAD DE CHOLOMA
Departamento de Cortés, Honduras, Centroamérica.
Tels.: 669 - 3322 / 669 - 3323 / 669 - 3700, Fax: 669-3558 / - 1774

RESIDENCIAL CASTAÑOS

Presidente (a)	CARLOS ROBERTO VELASQUEZ
Vice-Presidente	SAMY JOEL MEJIA
Secretario (a)	REYNA ISABEL CASTELLANOS
Tesorero (a)	MELVIN ANTONIO MELGAR

Siendo electos en Asambleas y Elecciones, se le extiende la Credencial firmada y sellada, quedan en posesión de sus cargos autorizándoles para que realicen las actividades conforme a ley para el periodo del Mes de Abril del 2020 al Mes de Abril del 2022.

Extendida en la ciudad de Choloma Cortes, a los 11 días del mes de Enero del 2021.

Ing. Leopoldo Eugenio Crivelli Durant
Alcalde Municipal

T.V. Flaminio Fuentes
Director de Desarrollo Comunitario

Proofs:

a. **C-23** (11 January 2021) (Accreditation of the "Patronato Pro-Mejoramiento de la comunidad" "Los Castaños de Choloma" adopted by the Municipality of Choloma) (evidencing the composition of the Patronato and that the Patronato was empowered by Honduran State representatives "*para realizar todo tipo de labor que traiga el desarrollo y bienestar*" in "Los Castaños de Choloma").

b. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 22).

151. Although the Patronato was supposedly established to serve as a community organization focused on enhancing the development and well-being of the residents of the Housing Project, it quickly transformed into a radical and violent group that instigated a harassment campaign against Claimants, Inter-Mac, Hola Realty, and the Housing Project.

Proofs:

a. **C-23 (**11 January 2021) (Accreditation of the "Patronato Pro-Mejoramiento de la comunidad" "Los Castaños de Choloma" adopted by the Municipality of Choloma) (evidencing the composition of the Patronato and that the Patronato was empowered by Honduran State representatives "*para realizar todo tipo de labor que traiga el desarrollo y bienestar*" in "Los Castaños de Choloma").

b. **C-131** (10 February 2014) (Decree Law No. 253-2013 adopting the "Ley de Patronatos y Asociaciones

Comunitarias") (setting out the rules applicable to the election and functioning of *patronatos* in Honduras, Article 2).

c. **C-191** (First Declaration of Claudio Antonio Discua, at ¶¶ 24-25).

152. Indeed, within two months of its creation, the Patronato initiated a widespread campaign of harassment against Inter-Mac, Hola Realty, and the Arguellos. In a video published on Facebook on 4 March 2021, Mr. Benítez urged the residents of "Los Castaños de Choloma" to stop paying their rents to Inter-Mac, claiming that the Housing Project should be regarded as territory belonging to the Honduran people and alleging that Inter-Mac had defrauded them. This was the start of the Patronato's "No Pay" policy against Inter-Mac. In Mr. Benítez's own words:

> "**[N]o deben pagar Castaños de Choloma y continuar con el derecho a su vivienda** y más adelante hablaremos porque también hicieron estafa vendiéndole como un contrato donde ahí mismos renunciaban a sus derechos Inter-Mac y ya tenemos todos los socios y **ya no están pagando ni deben pagar Castaños de Choloma que es un territorio ciudadano de los y las habitantes** […]". (emphasis added).

Proofs:

a. **C-132 (**4 March 2021) (last accessed on 11 April 2025) (Video featuring Mr. Benítez published on Facebook, also available at: https://www.facebook.com/arlenny.steinhof/videos/120523903345173/?idorvanity=2824449361207267) (exhorting residents of "Los Castaños de Choloma" to stop paying their rents to Inter-Mac).

b. **C-182** (8 April 2021) (Communication from the Patronato to the residents of "Los Castaños de Choloma" (evidencing that the Patronato urged residents not to pay rent to Inter-Mac).

153. The Patronato fiercely promoted its "No Pay" policy through various means, including vandalism. A photograph taken at the time at "Los Castaños de Choloma" shows that the Housing Project was vandalized with messages urging the residents to stop paying their rents to Inter-Mac:



Proofs:

a. **C-133 (**Undated) (Photograph taken by Inter-Mac employees) (evidencing the Patronato's "No Pay" policy against Inter-Mac).

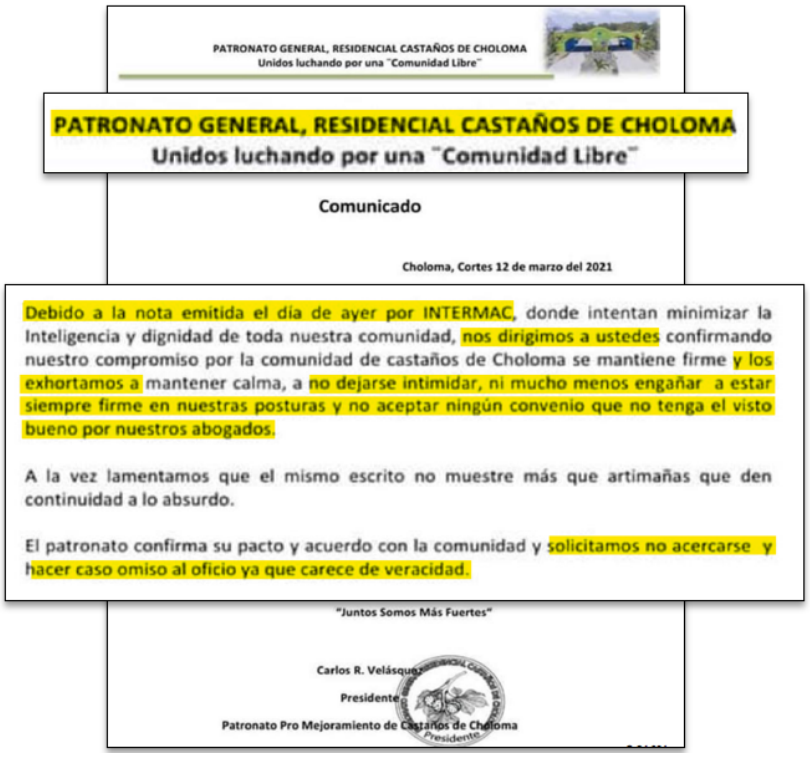
154. Notably, Mr. Benítez used the Project as part of his campaign during the Honduran Presidential election. During the presidential campaign, he posted multiple videos on the Patronato's Facebook page disparaging the Project, encouraging residents not to pay their lease agreements, and referring to the Arguellos as American "criminals."

Proofs:

a. **C-153** (Undated) (Video from the "Perro Amarillo" during Mr. Benítez's Honduran presidential campaign) (referring to Claimants as American criminals).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 81).

155. The Patronato's harassment campaign against the Project also included releasing defamatory communications with the goal of misleading the community so they would not be able to obtain information regarding finance options to purchase their homes. For example, on 12 March 2021, the day after Inter-Mac informed the residents of the 2021 Amendments, the Patronato released a defamatory communication urging residents not to be misled by Inter-Mac and advising them against accepting any agreements that had not been previously reviewed by the Patronato's attorneys. The Patronato also baselessly characterized Inter-Mac's communication as false:



PATRONATO GENERAL, RESIDENCIAL CASTAÑOS DE CHOLOMA
Unidos luchando por una "Comunidad Libre"

PATRONATO GENERAL, RESIDENCIAL CASTAÑOS DE CHOLOMA
Unidos luchando por una "Comunidad Libre"

Comunicado

Choloma, Cortes 12 de marzo del 2021

Debido a la nota emitida el día de ayer por INTERMAC, donde intentan minimizar la Inteligencia y dignidad de toda nuestra comunidad, nos dirigimos a ustedes confirmando nuestro compromiso por la comunidad de castaños de Choloma se mantiene firme y los exhortamos a mantener calma, a no dejarse intimidar, ni mucho menos engañar a estar siempre firme en nuestras posturas y no aceptar ningún convenio que no tenga el visto bueno por nuestros abogados.

A la vez lamentamos que el mismo escrito no muestre más que artimañas que den continuidad a lo absurdo.

El patronato confirma su pacto y acuerdo con la comunidad y solicitamos no acercarse y hacer caso omiso al oficio ya que carece de veracidad.

"Juntos Somos Más Fuertes"

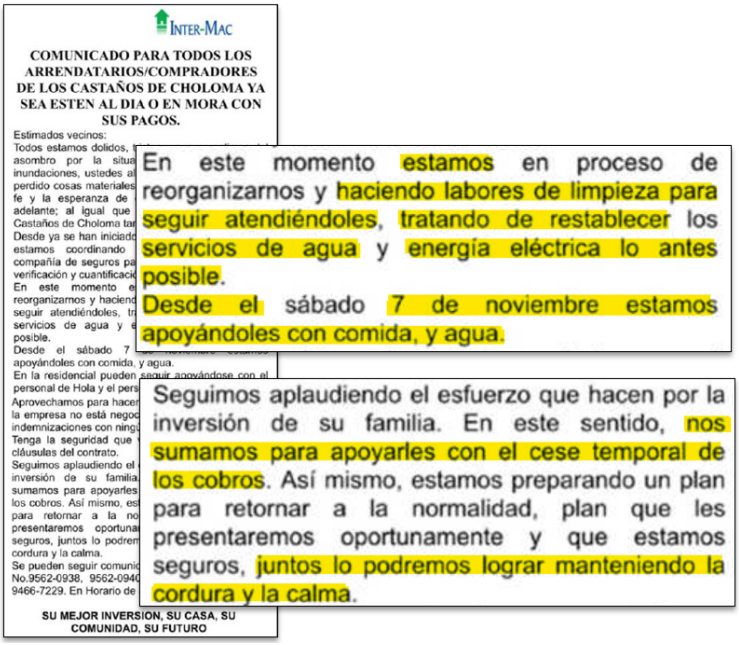
Carlos R. Velásquez
Presidente
Patronato Pro Mejoramiento de Castaños de Choloma

Proofs:

a. **C-117** (11 March 2021) (Communication from Inter-Mac to the residents of "Los Castaños de Choloma") (informing of the possibility for BANHPROVI to issue mortgages for "used" homes under the 2021 Amendments to "Vivienda para una Vida Mejor" and inviting interested residents to approach Inter-Mac's local office).

b. **C-24** (12 March 2021) (Communication from the Patronato to the residents of "Los Castaños de Choloma") (evidencing that the Patronato instructed the residents of "Los Castaños de Choloma" to disregard Inter-Mac's communication of 11 March 2021).

156. Additionally, the Patronato forced the residents to reject the significant assistance that the Arguellos were providing them following the damage caused by Hurricanes ETA and IOTA which devastated the area in November 2020. Indeed, faced with the devastation caused by the hurricanes, the Arguellos intervened to provide the following critical assistance to the residents: (i) supplying hot food and potable water at no cost for a total duration of three weeks; (ii) evacuating residents whose homes were affected by flooding due to the breach of a riverbank located several kilometers away; (iii) offering evacuated residents access to emergency housing at no cost; and (iv) suspending rent payments for six months, from November 2020 until April 2021:


INTER-MAC

COMUNICADO PARA TODOS LOS ARRENDATARIOS/COMPRADORES DE LOS CASTAÑOS DE CHOLOMA YA SEA ESTEN AL DIA O EN MORA CON SUS PAGOS.

Estimados vecinos:

En este momento estamos en proceso de reorganizarnos y haciendo labores de limpieza para seguir atendiéndoles, tratando de restablecer los servicios de agua y energía eléctrica lo antes posible.

Desde el sábado 7 de noviembre estamos apoyándoles con comida, y agua.

Seguimos aplaudiendo el esfuerzo que hacen por la inversión de su familia. En este sentido, nos sumamos para apoyarles con el cese temporal de los cobros. Así mismo, estamos preparando un plan para retornar a la normalidad, plan que les presentaremos oportunamente y que estamos seguros, juntos lo podremos lograr manteniendo la cordura y la calma.

SU MEJOR INVERSION, SU CASA, SU COMUNIDAD, SU FUTURO

Proofs:

a. **C-134** (Undated) (Communication from Inter-Mac to the residents of "Los Castaños de Choloma" following the passage of hurricane ETA in Honduras) (evidencing that Inter-Mac provided assistance to the residents of "Los Castaños de

Choloma" as early as 7 November 2020).

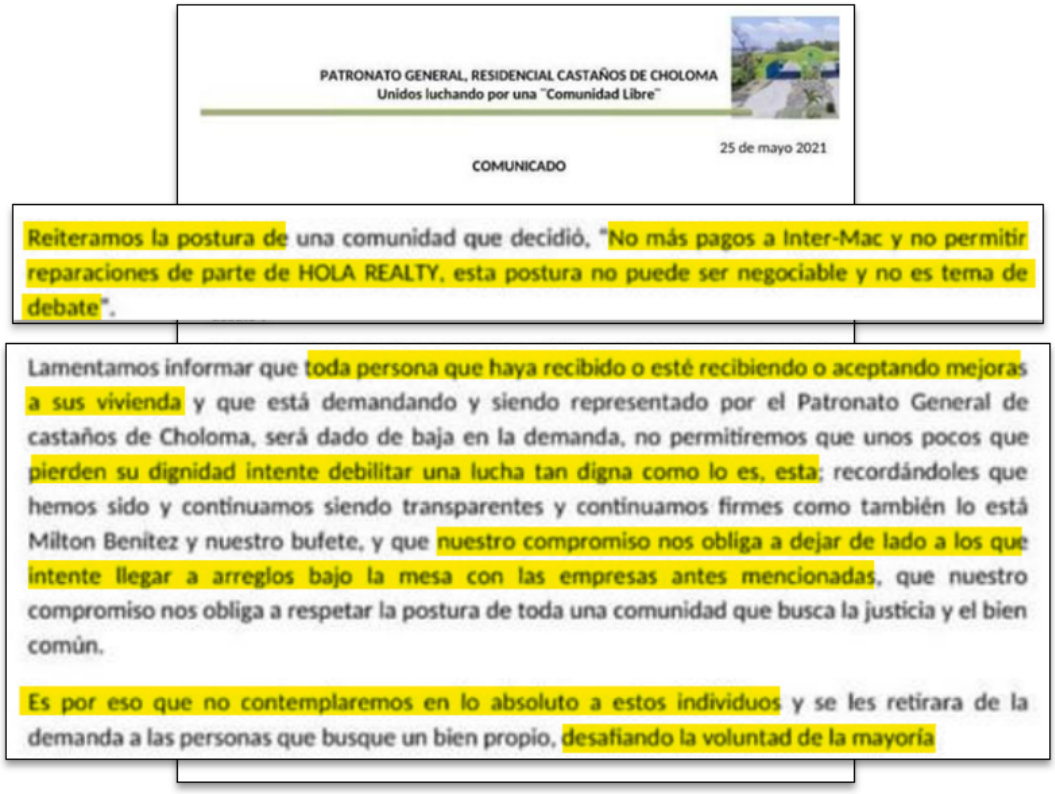
b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 85).

157. For several months thereafter, Claimants dedicated substantial resources to restoring "Los Castaños de Choloma" to its former condition. For instance, through their company, Hola Realty, they (i) cleaned the Housing Project by removing debris caused by Hurricanes ETA and IOTA; (ii) repaired the drainage and water evacuation systems; (iii) successfully restored electricity to "Los Castaños de Choloma;" and (iv) worked on conducting necessary repairs on the damaged homes.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 85).

158. During this period, Claimants encountered significant resistance from some residents who had been misled by the Patronato, which had expanded its "No Pay" policy into a "No Pay and No Repairs" policy. For example, in a communication dated 25 May 2021, the Patronato urged residents to stop paying their rents and obstruct Claimants' efforts to carry out repairs:



PATRONATO GENERAL, RESIDENCIAL CASTAÑOS DE CHOLOMA
Unidos luchando por una "Comunidad Libre"

25 de mayo 2021

COMUNICADO

Reiteramos la postura de una comunidad que decidió, "No más pagos a Inter-Mac y no permitir reparaciones de parte de HOLA REALTY, esta postura no puede ser negociable y no es tema de debate".

Lamentamos informar que toda persona que haya recibido o esté recibiendo o aceptando mejoras a sus vivienda y que está demandando y siendo representado por el Patronato General de castaños de Choloma, será dado de baja en la demanda, no permitiremos que unos pocos que pierden su dignidad intente debilitar una lucha tan digna como lo es, esta; recordándoles que hemos sido y continuamos siendo transparentes y continuamos firmes como también lo está Milton Benítez y nuestro bufete, y que nuestro compromiso nos obliga a dejar de lado a los que intente llegar a arreglos bajo la mesa con las empresas antes mencionadas, que nuestro compromiso nos obliga a respetar la postura de toda una comunidad que busca la justicia y el bien común.

Es por eso que no contemplaremos en lo absoluto a estos individuos y se les retirara de la demanda a las personas que busque un bien propio, desafiando la voluntad de la mayoría

Proofs:

a. **C-25** (25 May 2021) (Communication from the Patronato to

the residents of "Los Castaños de Choloma") (exhorting the residents to oppose any repairs carried out by Hola Realty following the passage of Hurricanes ETA and IOTA).

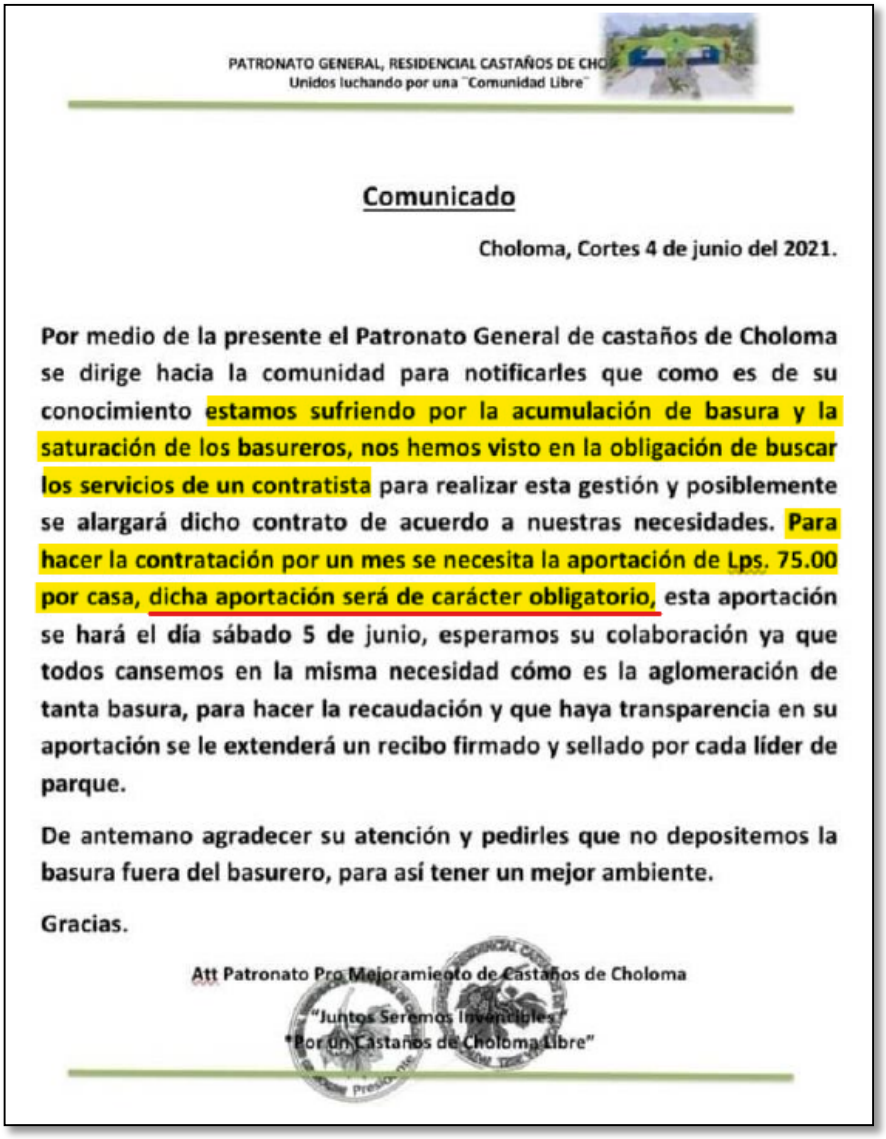
b. **C-135** (Undated) (Voice note from a resident of the Housing Project to an employee of Inter-Mac) (evidencing that Hola Realty had been conducting repairs to the resident's house and referring to the obstruction, threats and insults she received from the members of the Patronato for accepting such repairs) (*see* 1:40-3:30, explaining that a member of the Patronato obstructed the employees from Hola Realty who were repairing the roof of her home and then intimidated and insulted her).

c. **C-139** (13 June 2021) (Communication from the Patronato to the residents of the Housing Project published on the Patronato's Facebook page) (informing residents that they could still join the judicial complaint against Inter-Mac on the condition that they did not enter into any agreements with Inter-Mac or accept repairs to their homes).

d. **C-183** (Undated) (Audio from the Patronato to the residents of "Los Castaños de Choloma") (urging the residents of the Housing Project not to allow Inter-Mac to conduct repairs to their homes).

e. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 26).

159. Not content with obstructing repairs to the Housing Project and interfering with the residents' rental payments, on 4 June 2021, the Patronato imposed illegal payment demands on the residents of the Housing Project, requiring each household to pay a mandatory fee of L.75.00/house for alleged garbage collection services that were not previously charged to the residents:



PATRONATO GENERAL, RESIDENCIAL CASTAÑOS DE CHO
Unidos luchando por una "Comunidad Libre"

Comunicado

Choloma, Cortes 4 de junio del 2021.

Por medio de la presente el Patronato General de castaños de Choloma se dirige hacia la comunidad para notificarles que como es de su conocimiento estamos sufriendo por la acumulación de basura y la saturación de los basureros, nos hemos visto en la obligación de buscar los servicios de un contratista para realizar esta gestión y posiblemente se alargará dicho contrato de acuerdo a nuestras necesidades. Para hacer la contratación por un mes se necesita la aportación de Lps. 75.00 por casa, dicha aportación será de carácter obligatorio, esta aportación se hará el día sábado 5 de junio, esperamos su colaboración ya que todos cansemos en la misma necesidad cómo es la aglomeración de tanta basura, para hacer la recaudación y que haya transparencia en su aportación se le extenderá un recibo firmado y sellado por cada líder de parque.

De antemano agradecer su atención y pedirles que no depositemos la basura fuera del basurero, para así tener un mejor ambiente.

Gracias.

Att Patronato Pro Mejoramiento de Castaños de Choloma

"Juntos Seremos Invencibles"
"Por un Castaños de Choloma Libre"

Proofs:

a. **C-26** (4 June 2021) (Patronato's communication to the residents of the Housing Project) (requiring each household to pay a mandatory fee of L.75.00/house for alleged garbage collection services).

160. The Patronato subsequently employed a similar *modus operandi* by establishing a fictitious municipal water board, referred to as "Junta de Agua," through which it usurped control over the Housing Project's water systems, including the water tanks, pipes and wells pertaining to the Arguellos. The Patronato intimidated and threatened any resident who refused to pay for this additional service by cutting off their access to potable water and appearing at their homes armed with machetes. As stated by a resident of the Housing Project in a YouTube video from the Honduran media outlet Panorama Informativo:

> [S]alió un grupo **para tratar de recepcionar lo que serían cobros de una forma ilegal ¿verdad? porque literalmente ellos no están autorizados ni tienen todo, ni siquiera Inter-Mac les ha cedido a ellos el proyecto del agua** y están realizando los cobros de una manera abrupta, **o sea intimidando a personas**. Tenemos pruebas de las intimidaciones que he sufrido yo y otro grupo de vecinos también donde llegan con un grupo de personas a visitar las casas, […] dicen ellos que estamos morosos porque no queremos pagar, […] sí queremos pagar pero de una forma decente, que haya una pauta que uno pueda tener la tranquilidad de que están haciendo las cosas bien, no interponiéndose […]. **No pueden cobrar de una manera obligando a las personas ni intimidando a las personas** porque para eso hay un sistema legal que le dice a uno cuantos años de cárcel toca […]. Expusieron mi casa en redes sociales, salió un video de mi casa […]. **En la misma vez que llegaron, llegó un señor con un machete a la casa,** en la parte atrás de mi casa que eso dicen es una zona libre, una zona municipal, la parte detrás de mi casa donde colinda mi ventana. **Increíble o sea llegan con un machete, dañan a mi propiedad, dañan los tubos de mi casa y eso lo vamos a detener**. (emphasis added).

Proofs:

a. **C-136** (September 2024) (Interview conducted by the Honduran media outlet, Panorama Informativo, with residents of the Housing Project, also available at: https://www.youtube.com/watch?v=4Ff_6fOkkiE) (evidencing that the illegal organization, the "Junta de Agua," (i) usurped control over the Housing Project's water systems, including the water tanks and wells, owned by Claimants and intimidated and threatened their residents and (ii) charged L.300 fee per household for garbage collection and potable water) (*see* from 0:11 to 1:45).

b. **C-137** (16 March 2021) (Video from the "Perro Amarillo" published on the Patronato's Facebook page, also available at: https://www.facebook.com/103976471658883/videos/473636947010435/) (confirming the intention of Mr. Velásquez, President of the Patronato, to create "a comitiva de la Junta de Aguas").

161. In the same video, another resident corroborates experiencing threats and intimidation from this illegal organization. She explains that the mandatory monthly fee for garbage collection and potable water was L.300 per household—four times ***higher*** than the initial fee that the Patronato had attempted to impose illegally:

> […] **Nos están cortando el agua con formas de amenaza porque andan con machetes**. Como le puedo decir, **yo ando**

> **evidencias, que yo las puedo demostrar, donde andan con machete cortándome los tubos, haciéndome daño ya personal en mi casa**. Ellos dicen que porque es detrás de mi casa está la tubería. […] Yo digo yo pago pero **aquí no están dando un servicio con el dinero que están recaudando** […] Ellos solo es que andan amedrentando con machetes "ustedes va a ir a pagar o sino mandan una persona por la casa". […] **¿Cuánto están pagando por el servicio de agua? 300 lempiras están cobrando tren de aseo y agua potable pero los basureros no se miran, están llenos de basura**.

Proofs:

a. **C-136** (September 2024) (Interview conducted by the Honduran media outlet, Panorama Informativo, with residents of the Housing Project, also available at: https://www.youtube.com/watch?v=4Ff_6fOkkiE) (evidencing that the illegal organization, the "Junta de Agua," (i) usurped control over the Housing Project's water systems, including the water tanks and wells, owned by Claimants and intimidated and threatened their residents and (ii) charged L.300 fee per household for garbage collection and potable water) (*see* from 1:57 to 3:18).

162. The Patronato's harassment campaign, led by Mr. Benítez, did not limit itself to intimidating and threatening the residents of "Los Castaños de Choloma"; it extended its threats to any individual or company associated with Claimants, Inter-Mac or Hola Realty. For example, around June 2021, the Patronato threatened Cofisa, which was then considering extending long-term mortgages to residents of the Project under "Vivienda para una Vida Mejor." During a general assembly held in "Los Castaños de Choloma" and broadcast on the Patronato's Facebook page, Mr. Velásquez, the President of the Patronato, explained that Cofisa was already aware that the Housing Project belonged to the residents and that no negotiations would be permitted ("Pero ya deben saberlo, **y eso lo sabe Cofisa**, eso lo sabe Flores Peña, **que Castaños de Choloma tiene que ser de los y de las ciudadanos que lo están habitando, sin ninguna negociación**"). In another video, Mr. Velásquez threatened and ordered Cofisa to withdraw from the Housing Project ("**La gente de Cofisa tiene que salirse de acá** […]").

Proofs:

a. **C-119** (Undated) (Excerpt of a video showing the president of the Patronato, Mr. Velasquez, convening a general assembly with the residents of the Housing Project) (evidencing that the Patronato threatened Cofisa so it would exit the Housing Project).

b. **C-120** (Undated) (Excerpt of a video showing the president of the Patronato, Mr. Velasquez, ordering Cofisa to exit the Housing Project) (evidencing that the Patronato deterred Cofisa from providing mortgages to the residents of the Project).

c. **C-174** (9 February 2023) (Post by the Honduran National Police about the arrest of the Patronato's President, Carlos Roberto Velásquez) (evidencing that Carlos Velásquez, President of the Patronato, was detained by the local Police for domestic violence).

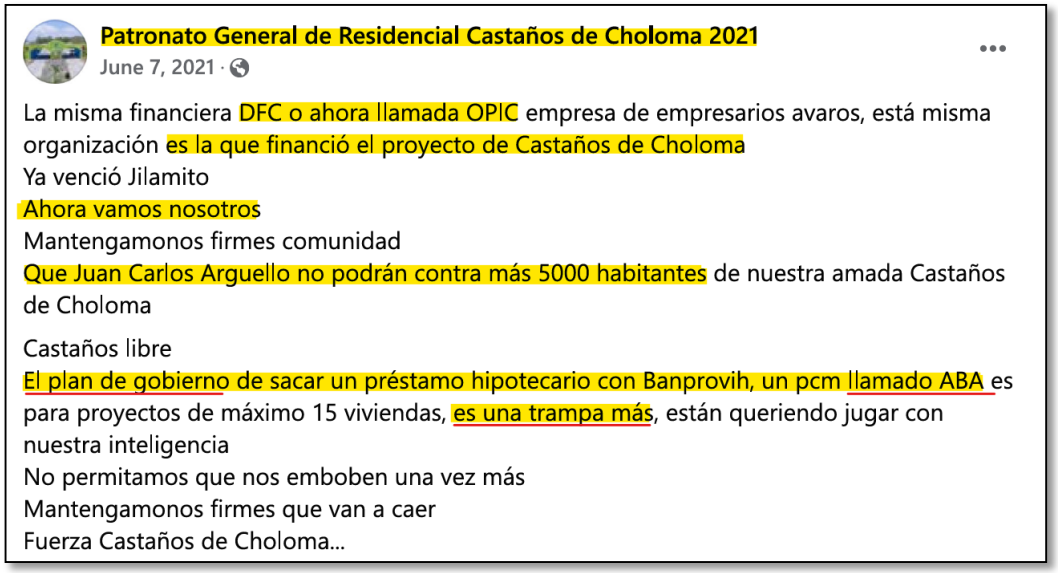
d. **C-175** (Undated) (Post by the social leader, Isaac Dubón, regarding the arrest of the Patronato President, Carlos Roberto Velásquez) (evidencing that Carlos Velásquez, President of the Patronato, was under the influence of alcohol and drugs when he was detained by the local Police).

e. **C-176** (Undated) (Social media post of residents of "Los Castaños de Choloma") (evidencing that the residents of "Los Castaños de Choloma" denounced that the secretary of the Patronato was the owner of a brothel in the area of the Project and requested the Honduran Police to intervene to protect the community).

f. **C-181** (8 March 2021) (Communication from the Patronato to the residents of "Los Castaños de Choloma") (referring to Milton Benítez as the Patronato's "líder de lucha").

g. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 89-90.

163. That same month, the Patronato published a post on its Facebook page, specifically targeting Juan Carlos and OPIC. The post urged residents to continue resisting and warned them not to fall into the trap of the ABA Program:



Proofs:

a. **C-138** (7 June 2021) (Post published on the Patronato's webpage) (targeting Juan Carlos Arguello and OPIC and urging the residents to keep resisting and avoid falling in the

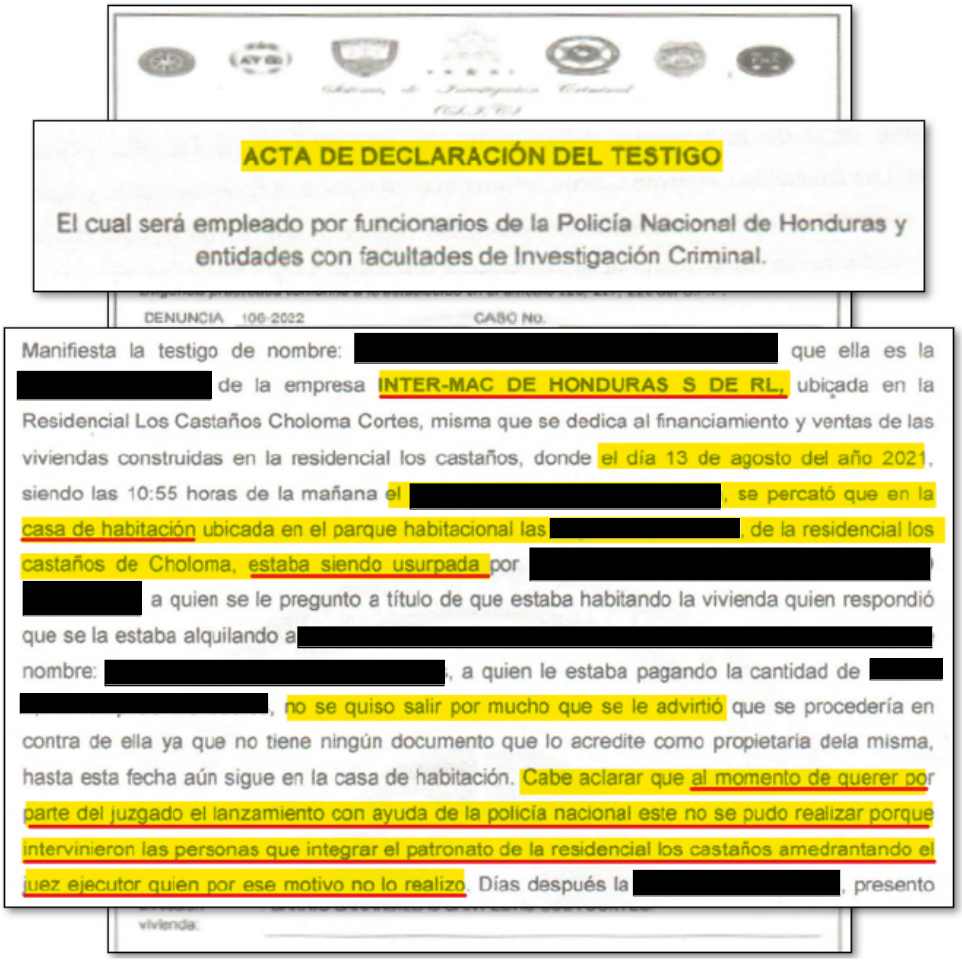
trap of the ABA Program).

164. Over time, as a result of the Patronato's policies against the Arguellos, hundreds of residents stopped paying their rents and other individuals (who had not signed lease agreements with Inter-Mac) illegally invaded the residences within the Housing Project. Claimants exercised their legal rights to evict these individuals by initiating hundreds of evictions claims before the Honduran judicial authorities.

Proofs:

a. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 31).

165. The Arguellos secured judicial orders in favor of their eviction actions. These orders, however, were not enforced due to the criminal acts of the Patronato. In fact, as detailed by Inter-Mac in a statement submitted to the Honduran national police on 22 February 2022, when an executing judge attempted to enforce a judgment from the Choloma sectional court that had ordered an eviction procedure against a resident who had illegally occupied a home in the Housing Project, members of the Patronato intimidated the judge, resulting in the eviction not being carried out:



ACTA DE DECLARACIÓN DEL TESTIGO

El cual será empleado por funcionarios de la Policía Nacional de Honduras y entidades con facultades de Investigación Criminal.

DENUNCIA 106-2022 CASO No.

Manifiesta la testigo de nombre: [redacted] que ella es la [redacted] de la empresa INTER-MAC DE HONDURAS S DE RL, ubicada en la Residencial Los Castaños Choloma Cortes, misma que se dedica al financiamiento y ventas de las viviendas construidas en la residencial los castaños, donde el día 13 de agosto del año 2021, siendo las 10:55 horas de la mañana el [redacted], se percató que en la casa de habitación ubicada en el parque habitacional las [redacted], de la residencial los castaños de Choloma, estaba siendo usurpada por [redacted] a quien se le pregunto a título de que estaba habitando la vivienda quien respondió que se la estaba alquilando a [redacted] nombre: [redacted], a quien le estaba pagando la cantidad de [redacted], no se quiso salir por mucho que se le advirtió que se procedería en contra de ella ya que no tiene ningún documento que lo acredite como propietaria dela misma, hasta esta fecha aún sigue en la casa de habitación. Cabe aclarar que al momento de querer por parte del juzgado el lanzamiento con ayuda de la policía nacional este no se pudo realizar porque intervinieron las personas que integrar el patronato de la residencial los castaños amedrantando el juez ejecutor quien por ese motivo no lo realizo. Días después la [redacted], presento

vivienda:

Proofs:

a. **C-140** (12 November 2021) (Communication from the Patronato to the residents of the Housing Project) (publicly slandering Inter-Mac and Hola Realty and declaring their security company persona non grata within the Housing Project).

b. **C-143** (22 March 2022) (Witness statement submitted by Inter-Mac's legal representative, [redacted], before the Honduran national police in the context of criminal complaint No. 106-2022) (evidencing that a Honduran judge failed to carry out the required eviction order after being intimidated by members of the Patronato).

c. **C-144** (10 February 2022) (Criminal complaint filed by Inter-Mac's legal representative, [redacted], with the Honduran Criminal Investigation Department to denounce the usurpation being carried out in a house of the Housing Project) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

d. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 60).

e. **C-191** (First Declaration of Claudio Antonio Discua, at ¶¶ 31-32).

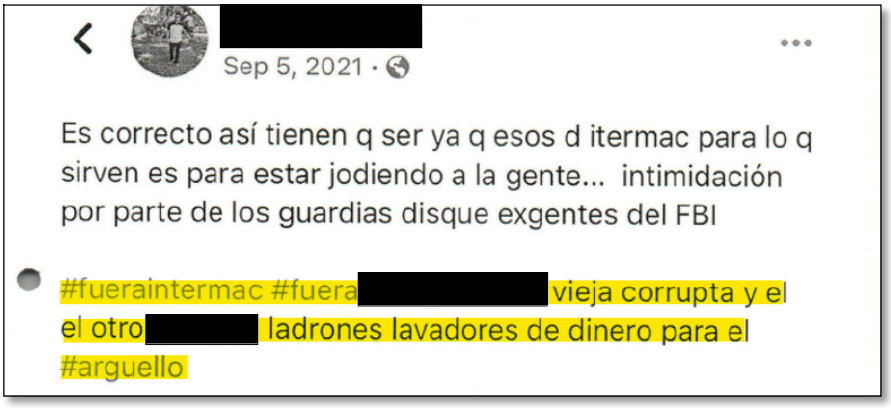
166. As a result, Inter-Mac filed a criminal complaint against the members of the Patronato before the Honduran criminal authorities. Unfortunately, to date, the Honduran authorities have failed to take action on the complaint and have not investigated or prosecuted those responsible for the acts of intimidation against the Project and against the Honduran public officials who attempted to lawfully evict the individuals illegally residing in the Housing Project.

Proofs:

a. **C-144** (10 February 2022) (Criminal complaint filed by Inter-Mac's legal representative, [redacted] with the Honduran Criminal Investigation Department to denounce the usurpation being carried out in a house of the Housing Project) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

b. **C-191** (First Declaration of Claudio Antonio Discua, at ¶¶ 32-33).

167. Despite the fact that Hola Realty and Inter-Mac were acting in accordance with Honduran law, the public defamation and intimidating messages from the Patronato continued. For example, on 5 September 2021, [redacted], who serves as Vocal V (Women, Seniors, and Youth) of the Patronato, posted on social media that various employees of Inter-Mac and Hola Realty were "*ladrones lavadores de dinero*" for the Arguellos:



Proofs:

a. **C-145** (11 February 2022) (Criminal complaint and its attachments filed by [redacted] on behalf of Inter-Mac before the special prosecutor's office for organized crime, known as the "Fiscalía Especial Contra el Crimen Organizado" against the members of the Patronato) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Fiscalía Especial Contra el Crimen Organizado).

b. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 34).

168. Similarly, on 12 November 2021, the Patronato published a statement on its social media accounts against Inter-Mac, Hola Realty, and the security guards of the Project, in which they slanderously accused various employees of the Project and Juan Carlos of committing abuses and provocations against the residents. A few days later, several armed men entered Hola Realty's offices (within the Project) around 9:00 a.m. After forcing the doors open, they demanded money from Hola Realty's employees, ransacked the business next door, and intimidated the employees with armed weapons. All of the above was recorded on the security cameras of the business located next to Hola Realty's offices:



Proofs:

a. **C-165** (17 November 2021) (Video from security cameras of store located next to Hola Realty's offices, published on Patronato's Facebook page) (evidencing that armed men broke into the offices of Hola Realty and threatened its employees with weapons).

b. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 36).

169. Two days later, on 19 November 2021, an employee of Inter-Mac, [redacted] was taking photographs in the Housing Project, when he was confronted by two members of the Patronato. They insulted and threatened him, inciting residents to use violence against him. Subsequently, a group of individuals armed with machetes surrounded and confined him in a park, threatening him not to attempt an escape. [redacted] filed a criminal complaint with the Honduran Criminal Investigation Department in which he expresses his fear of persecution due to his position as an Inter-Mac employee ("mi temor es por yo s[er] empleado"). Regrettably, the Honduran authorities have not processed this complaint or investigated those responsible for these acts of violence.

Proofs:

a. **C-141** (19 November 2021) (Criminal complaint filed by an employee of Inter-Mac, [redacted] with the Honduran Criminal Investigation Department to denounce the acts of threat and intimidation of the Patronato) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

170. The Patronato's widespread and violent harassment campaign against the residents of the Housing Project, the Arguellos, Inter-Mac, Hola Realty, and any person or company involved with them, intensified in early 2022. Specifically, in February 2022, the Patronato blocked Inter-Mac's offices and held its employees hostage for several hours. The Patronato documented this incident by recording videos that were posted on its social media accounts.

Proofs:

a. **C-142** (11 February 2022) (Criminal complaint filed by Inter-Mac's legal representative, [redacted], with the Honduran Criminal Investigation Department to denounce the acts of threat and intimidation of the Patronato against employees of Inter-Mac) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

b. **C-166** (February 2022) (Video recorded by Patronato during Patronato's blockade of Inter-Mac's offices) (evidencing that the Patronato blocked Inter-Mac's offices, retained its employees hostage for various hours, and threatened to go

after Hola Realty's General Manager, Claudio Antonio Discua Romero).

c. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 38).

171. Claudio Antonio Discua, Hola Realty's General Manager, repeatedly contacted the Honduran National Police seeking protection and security for the employees being held hostage. The Police, however, decided not to act, claiming that the Patronato was legitimately protesting due to the fact that Hola Realty had cut the water service without justification. Although Mr. Discua explained that this was not true, the Police force remained passive against the Patronato's actions. As a result, Mr. Discua sent various voice notes to the Sub-Comisario Rivera Thomas, pleading for the Police to fulfill their legal duties and provide protection to the Project and its employees. Below are some of the messages sent by Mr. Discua to the Honduran Police:

> Y **yo estoy demandando de la Policía ayuda desde el viernes que no podemos accesar a nuestra propiedad privada** y hoy hay otra gente, que necesita hacer trámite **en las oficinas no pueden ingresar porque tenemos secuestradas las oficinas por parte de ellos. Porque hay un oficial que está en el Proyecto, que no es capaz no tiene el valor** de decirles, miren esa bandera póngala en la pared, no la pongan en la entrada de la puerta, por eso.
>
> (…)
>
> Ante quién puedo acudir Thomas, porque **la gente que voz mandaste prácticamente fueron a pararse ahí y fueron a hacer nada**. El agua no se les ha quitado en todo el fin de semana. No ha habido ningún problema con el agua. Ellos obstaculizan la entrada a la oficina, que es una oficina pública… **ante quién puedo acudir ya que la gente de la Policía de Choloma a mí no me ha resuelto**, confírmame por favor.
>
> (…)
>
> ¿A cuenta de qué yo tengo que venir a verme obligado a sentarme con ellos, Thomas? ¿**O sea eso no es un terrorismo más bien que me quieran obligar a mi a hacer eso**? Puta **ustedes son la Policía ustedes deben de ser garantes de esa cuestión**. Lo que pasa es que yo veo que **ustedes se han acomodado bien fácil a no hacer nada** porque los van a, porque Tegucigalpa les va a llamar la atención ¿Hombre, y los derechos de nosotros a dónde quedan pues?

Proofs:

a. **C-167** (11 February 2022) (WhatsApp messages between Claudio Antonio Discua Romero, General Manager of Hola Realty, and police officer, Rivera Thomas) (evidencing that Hola Realty contacted the Honduran National Police

requesting protection and security for the Project).

b. **C-168** (11 February 2022) (WhatsApp Voice Note No. 1 sent by Claudio Antonio Discua Romero to Police Officer, Rivera Thomas) (evidencing that Hola Realty requested protection and security from the Honduran National Police following attacks by the Patronato).

c. **C-169** (11 February 2022) (WhatsApp Voice Note No. 2 sent by Claudio Antonio Discua Romero to Police Officer, Rivera Thomas) (evidencing that Hola Realty (i) informed the Honduran National Police that the Patronato was obstructing access to its offices and holding various employees hostage and (ii) had been requesting protection and security from the Honduran National Police for days).

d. **C-170** (11 February 2022) (WhatsApp Voice Note No. 3 sent by Claudio Antonio Discua Romero to Police officer, Rivera Thomas) (evidencing that Hola Realty informed the Honduran National Police that the Patronato's claims that Hola Realty was suspending the Project's water service were false).

e. **C-171** (11 February 2022) (WhatsApp Voice Note No. 4 sent by Claudio Antonio Discua Romero to Police officer, Rivera Thomas) (evidencing that Hola Realty informed the Honduran National Police that the officers on site were doing nothing to protect or secure the Project).

f. **C-173** (11 February 2022) (WhatsApp Voice note No. 6 sent by Claudio Antonio Discua Romero to Police officer, Rivera Thomas) (evidencing that Hola Realty informed the Honduran National Police that the Patronato's actions amounted to terrorism and that the Police had the obligation to provide protection and security to the Project, but was failing to do so).

g. **C-191** (First Declaration of Claudio Antonio Discua, at ¶¶ 39-46).

172. Ultimately, the response from the Honduran Police was that the situation with the Patronato had reached such a level that it exceeded the Police's capabilities. Specifically, Sub-Comisario Rivera Thomas informed Mr. Discua that "(…) *La verdad es que eso está en un nivel que usted debería ir a una corte.* ***Ya es un nivel ya que no está en las manos de la Policía****…yo pienso que tiene que atenderlos y ponerse de acuerdo entre ellos, con ellos.*"

Proofs:

a. **C-172** (11 February 2022) (WhatsApp Voice note No. 5 sent by Police officer, Rivera Thomas, to Claudio Antonio Discua Romero) (evidencing that the Honduran National Police informed Hola Realty that the situation with the Patronato was out of the Police's control and that Hola Realty should resort to the local courts).

173. Despite numerous attempts to seek assistance from local Police, the latter failed to take action to prevent the Patronato from carrying out these acts of vandalism, insults, threats, and extortion. Further, the Police's response that the situation was out of their hands left the Arguellos no choice but to file criminal complaints against the members of the Patronato for their acts of extortion and related offenses. To that end, Inter-Mac's [redacted], filed a criminal complaint with the Honduran Criminal Investigation Department for the acts of violence by the Patronato related to the hostage situation that took place on 11 February 2022.

Proofs:

a. **C-142** (11 February 2022) (Criminal complaint filed by Inter-Mac's [redacted] with the Honduran Criminal Investigation Department to denounce the acts of threat and intimidation of the Patronato against employees of Inter-Mac) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

b. **C-166** (February 2022) (Video recorded by Patronato during Patronato's blockade of Inter-Mac's offices) (evidencing that the Patronato blocked Inter-Mac's offices, retained its employees hostage for various hours, and threatened to go after Hola Realty's General Manager, Claudio Antonio Discua Romero).

c. **C-191** (First Declaration of Claudio Antonio Discua, at ¶¶ 48-49).

174. The Arguellos (through Inter-Mac) also filed a complaint with the special prosecutor's office for organized crime, known as the "Fiscalía Especial Contra el Crimen Organizado" ("**FESCCO**") ("**Criminal Complaint**"). The Criminal Complaint targeted individuals associated with the Patronato, including its President (Mr. Velásquez), and Vice-President (Mr. Mejia) for their alleged acts of extortion and related offenses against Claimants, Inter-Mac, Inter-Mac's employees, and residents of the Housing Project.

Proofs:

a. **C-145** (11 February 2022) (Criminal complaint and its attachments filed by [redacted] on behalf of Inter-Mac before the special prosecutor's office for organized crime, known as the "Fiscalía Especial Contra el Crimen Organizado" against the members of the Patronato) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Fiscalía Especial Contra el Crimen Organizado).

175. The Criminal Complaint referred, among others, to the Patronato's unlawful governmental accreditation without any electoral process in breach of Honduran law.

Additionally, it detailed various criminal acts perpetrated by members of the Patronato against Claimants, their companies and the residents of "Los Castaños de Choloma," including:

(i) Implementing "No Pay" and "No Repair" policies;

(ii) Coercing residents into paying "mandatory" fees for services that were previously provided free of charge by Inter-Mac, thereby jeopardizing the residents' financial stability and ability to meet their rent obligations;

(iii) Usurping property belonging to Inter-Mac;

(iv) Denying entry to Inter-Mac personnel into the Housing Project;

(v) Committing acts of vandalism within the Housing Project, including the destruction of private property and intentional arson targeting garbage receptacles located within residents' premises:





(vi) Forcefully replacing Inter-Mac's security personnel with those affiliated with the Patronato.

Proofs:

a. **C-10** (Undated) (Multiple photographs of Phase I of the Housing Project) (evidencing (i) the advances of Phase I of the Housing Project, (ii) the multiple awards and accolades received by the Housing Project, and (iii) the acts of vandalism carried out on the premises of the Project).

b. **C-27** (Undated) (Inter-Mac's Public Statement No. 9 to the residents of the Housing Project) (evidencing that the Patronato destroyed private property and deliberately set fires to the Project's garbage receptacles that were located within the perimeter of residents' homes).

c. **C-145** (11 February 2022) (Criminal complaint and its attachments filed by [redacted] on behalf of Inter-Mac before the special prosecutor's office for organized crime,

known as the "Fiscalía Especial Contra el Crimen Organizado" against the members of the Patronato) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Fiscalía Especial Contra el Crimen Organizado).

d. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 50).

176. Via the Criminal Complaint, Inter-Mac requested the FESCCO to initiate immediate investigations in order to confirm the reported facts and take appropriate legal action against the Patronato. Regrettably, more than two and a half years after the filing of the Criminal Complaint, Honduran authorities have yet to take ***any*** action in response to the Criminal Complaint or the various complaints that were previously filed against the Patronato. Moreover, to date the State has failed to take ***any*** action against the Patronato, a radical and violent organization that took over the Project and that continues to operate in the Housing Project with absolute impunity and no accountability.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 95).

b. **C-191** (First Declaration of Claudio Antonio Discua, at ¶¶ 51, 53).

J. Honduras' Illegal, Grossly Unfair and Arbitrary Conduct Resulted In the Loss of Claimants' Investments

177. Honduras' actions and omissions resulted in the loss of Claimants' Investment. On the one hand, Honduras' ongoing failure to issue the promised subsidies and long-term mortgages to the residents of the Housing Project, coupled with its failure to issue Inter-Mac subsidies to fund the construction of Phase II of the Project under the AFD Program, ultimately led to the DFC's withdrawal from the Housing Project in February 2022. With the DFC's exit, Claimants lost the opportunity to access further installments from the USD $70 million revolving facility of the OPIC Loan, which effectively prevented them from developing similar housing projects in Honduras and other countries within the DR-CAFTA region.

Proofs:

a. **C-186** (11 July 2019) (Amendment No. 1 to Amended and Restated OPIC Loan Agreement) (evidencing that the OPIC Loan Agreement had to be amended and restructured a few times over the years as a result of delays by the State regarding its provision of long-term financing).

b. **C-193** (31 August 2018) ("Reporte Oficial del Sistema de Licenciamiento Ambiental" issued by the Republic of Honduras, with accompanying "Memoria Descriptiva del Proyecto Condominios Las Flores," and architectural drawings and designs concerning "Condominios Las Flores" and "Condominios Primavera") (evidencing that Claimants had identified other sites and obtained an environmental license to build future housing projects near "Los Castaños de

Choloma").

c. **C-194** (12 August 2013) (Sale Purchase Agreement concerning land located in La Boquita, Aldea Quebrada Seca, Choloma, Cortés, Honduras with accompanying land-purchase option agreements and screenshots from the Honduran Land Property Registry) (evidencing that Claimants purchased additional land in Honduras, as well as executed option agreement to develop similar housing projects that would benefit from financial assistance from the State).

d. **C-196** (September 2012) (Architectural drawing and design of various phases of "Ciudad Residencial Los Castaños de Choloma.").

e. **C-190** (First Declaration of Ernesto Arguello, at ¶ 55).

f. **C-192** (Damages Expert Report of Secretariat Advisors), at ¶¶ 2.12-2.26, 3.55-3.57).

178. Moreover, as a result of Respondent's exclusion of the homes of the Housing Project from the scope of BANHPROVI's financing as a first-tier bank, ***none*** of the families residing in the 1,864 residential units that Claimants built in "Los Castaños de Choloma" received the long-term mortgages required to purchase their homes, preventing Claimants from obtaining a return on their Investment and further eroding the Arguellos' ability to invest into Phase II of the Housing Project.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 111).

b. **C-192** (Damages Expert Report of Secretariat Advisors), at ¶ 2.11).

179. On the other hand, the State's failure to provide protection and security to Claimants and their Investment has allowed the Patronato to take over the Housing Project, effectively barring the Arguellos and their employees from accessing the Project. Consequently, the Housing Project is in a current state of disarray, as is evidenced by recent photographs. Indeed, the State has allowed the Patronato to continue its acts of vandalism and extortion with total impunity, resulting in the homes and common areas of the Project deteriorating and being left in an abandoned state:







Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 119-

121).

b. **C-136** (September 2024) (Interview conducted by the Honduran media outlet, Panorama Informativo, with residents of the Housing Project, also available at: https://www.youtube.com/watch?v=4Ff_6fOkkiE) (evidencing that the illegal organization, the "Junta de Agua," (i) usurped control over the Housing Project's water systems, including the water tanks and wells, owned by Claimants and intimidated and threatened their residents and (ii) charged L.300 fee per household for garbage collection and potable water) (*see* from 0:11 to 1:45).

180. Regrettably, Honduras' conduct not only caused economic harm to Claimants, but it also deprived thousands of Honduran families of the opportunity to access homeownership. As Juan Carlos observes:

> Despite more than two decades of policies from successive State administrations aimed at addressing the lack of affordable housing in Honduras, the social housing crisis remains one of Honduras's most pressing challenges. It is disheartening that none of the successive Honduran governments have been able to take a firm stand to make affordable housing a reality. **By undermining our efforts to carry out the Project and develop similar housing initiatives, the Honduran Government not only deprived us of our investments, they also deprived thousands of Honduran families of the opportunity to finally access homeownership**. (emphasis added).

Proofs:

a. **C-189 (**First Declaration of Juan Carlos Arguello, at ¶ 124).

181. In light of the above, Claimants seek redress through this arbitration in an effort to obtain an award that confirms Honduras' violations of the Treaty and international law and that compensates Complaints for all the damage they have suffered and continue to suffer.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶ 59).

b. **C-189 (**First Declaration of Juan Carlos Arguello, at ¶ 111).

IV.
THE CONDITIONS FOR JURISDICTION HAVE BEEN MET

182. Claimants' claims in this arbitration arise under the Treaty between the United States and the Republic of Honduras. As established below, this Tribunal has jurisdiction over this dispute in accordance with the terms of the Treaty and the ICSID Convention.

A. The Republic of Honduras is a Party to the Treaty

183. The Treaty was signed by Honduras on 5 August 2004 and entered into force, with respect to Honduras, on 1 April 2006. The Treaty has not been terminated by Honduras, nor by the United States of America, and to date it continues to be in full force and effect.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter).

B. Claimants Are "Investors of a Party" Under the Treaty

184. Article 10.28 of the Treaty defines "investor of a Party" as "a party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party …."

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.28).

185. Claimants are natural persons and nationals of the United States of America. The United States is a contracting Party of the Treaty. Claimants have never been Honduran nationals. As such, Claimants are "investors of a Party" under the terms of the Treaty.

Proofs:

a. **C-1** (Various dates) (Copies of Claimants' United States Passports) (evidencing that Claimants are nationals of the United States).

C. Claimants Hold a Protected "Investment" Under the Treaty

186. Article 10.28 of the Treaty defines "investment" as follows:

> **[I]nvestment** means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit,

or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans;

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.28).

187. Claimants made an "investment" within the meaning of the Treaty. Claimants' investment includes, without limitation:

(i) the acquisition of their interest in the Inter-Mac Entities and Hola Realty ("an enterprise" and "shares, stock, and other forms of equity participation in an enterprise");

(ii) the establishment of the OPIC Loan for the development and construction of the Housing Project ("bonds, debentures, other debt instruments, and loans");

(iii) the rights obtained under the 2010 Memorandum of Understanding and the 2015 Cooperation Agreement ("turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts");

(iv) the rights obtained under the construction contracts related to the development of the Housing Project ("turnkey, construction,

management, production, concession, revenue-sharing, and other similar contracts");

(v) the rights, licenses and permits related to the development and construction of Phase I of the Housing Project ("licenses, authorizations, permits, and similar rights conferred pursuant to domestic law");

(vi) the rights, licenses and permits related to the development and construction of Phase II of the Project ("licenses, authorizations, permits, and similar rights conferred pursuant to domestic law");

(vii) the homes, school, community and sports centers, commercial retail centers, and other facilities that were built as part of Phase I of the Housing Project ("other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges");

(viii) other assets related to the Housing Project ("other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges"); and

(ix) the acquisition of the Land ("other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges").

188. Consequently, Claimants' Investment qualifies as a protected "investment" under the Treaty.

Proofs:

a. Claimants' Statement of Claim, *supra*, Sections I and III.

D. <u>The Parties Have Consented To Arbitrate This Dispute</u>

189. Article 10.16 of the Treaty states that:

> 1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:
>
> (a) the claimant, on its own behalf, may submit to arbitration under this Section [B] a claim
>
> (i) that the respondent has breached
>
> (A) an obligation under Section A [of Chapter Ten titled "Investment"],

[…]

and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A [of Chapter Ten titled "Investment"],

[…]

and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

[…]

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention; or

(c) under the UNCITRAL Arbitration Rules.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.16).

190. Article 10.17 of the Treaty further provides that "[e]ach Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement."

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.17).

191. As shown above, Honduras expressly consented, in the Treaty itself, to submit to arbitration all disputes with United States investors related to the State's investment obligations under the Treaty.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Articles 10.16, 10.17).

192. As for Claimants, they expressed their written consent to arbitrate through the filing of the Notice of Arbitration.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.18(2)).

b. **C-29** (5 April 2023) (Claimants' Written Waiver in compliance with Article 10.18(2) of the Treaty).

c. Claimants' Notice of Arbitration, Section IV.

193. In light of the above, both Parties have expressed their consent, in writing, to submit this dispute to arbitration.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Articles 10.16, 10.17, 10.18).

b. Claimants' Notice of Arbitration.

E. Claimants Have Satisfied the Submission to Arbitration Requirements Under the Treaty

194. Article 10.16(3) of the Treaty provides that a claimant may submit a claim to arbitration "provided that six months have elapsed since the events giving rise to the claim."

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-

United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.16(3)).

195. Article 10.16(2) of the Treaty further provides that "[a]t least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration."

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.16(2)).

196. On 12 September 2022, Claimants served a formal Notice of Intent under the Treaty against Honduras. Through the Notice of Intent, Claimants sought an amicable resolution of their dispute with Honduras. Regrettably, more than 90 days passed since the service of the Notice of Intent and the dispute remained unresolved as Honduras refused to acknowledge its breaches of the Treaty.

Proofs:

a. **C-28** (12 September 2022) (Acknowledgments of Receipt of Claimants' Notice of Intent by the Government of Honduras).

b. **C-30** (1 September 2022) (Claimants' Notice of Intent under Article 10.6.2. of the CAFTA-DR).

c. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.16).

197. Accordingly, Claimant has satisfied the submission to arbitration requirements under the Treaty, and the dispute can be resolved in arbitration.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.16).

b. **C-28** (12 September 2022) (Acknowledgments of Receipt of Claimants' Notice of Intent by the Government of Honduras).

c. **C-30** (1 September 2022) (Claimants' Notice of Intent under Article 10.6.2. of the CAFTA-DR).

d. Claimants' Notice of Arbitration.

F. The Jurisdictional Requirements of the ICSID Convention Have Been Met

198. Article 25(1) of the ICSID Convention governs ICSID's jurisdictional requirements. It provides as follows:

> The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

Proofs:

a. **CL-2** (ICSID Convention, Article 25(1)).

199. All jurisdictional requirements under the ICSID Convention have also been met in this case:

(i) The present dispute constitutes a "legal" dispute that relates to Honduras' multiple breaches of its obligations contained in the Treaty;

(ii) The legal dispute arises directly out of Claimants' Investment;

(iii) The legal dispute involves a Contracting State (Honduras) and a National of another Contracting State (the Arguellos who are nationals of the United States of America); and

(iv) The Parties have consented to submit the dispute to ICSID arbitration.

Proofs:

a. Claimants' Statement of Claim, Sections II, III-V.

200. As a result, and pursuant to the ICSID Convention, this dispute can be resolved via arbitration before ICSID.

Proofs:

a. **CL-2** (ICSID Convention, Article 25(1)).

b. **CL-3** (ICSID's Institution Rules, Rule 2(2)(b)(iv).

V.
HONDURAS BREACHED ITS OBLIGATIONS UNDER THE TREATY AND INTERNATIONAL LAW

201. Honduras' conduct is unlawful under the Treaty and international law. Honduras has violated Article 10.5 (Minimum Standard of Treatment), Article 10.7 (Expropriation and Compensation), Article 10.3 (National Treatment), and Article 10.4 (Most-Favored-Nation Treatment) of the Treaty. These breaches are detailed below.

Proofs:

a. *See infra*.

A. Honduras Denied Claimants Fair and Equitable Treatment

1. The Treaty's Fair and Equitable Treatment Standard Includes Protection Against a Broad Array of Harmful State Conduct

202. Article 10.5 of the Treaty entitled "Minimum Standard of Treatment" provides that "[e]ach Party shall accord to covered investments treatment **in accordance with customary international law, including fair and equitable treatment**" ("**FET**") (emphasis added).

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.5).

203. It is well-accepted that the "minimum standard of treatment" ("**MST**") under international law is not a singular, defined requirement of baseline treatment, but instead should be understood as "an umbrella concept incorporating a set of rules that over the centuries have crystallized into customary international law in specific contexts." Annex 10-B of the Treaty specifies that the Treaty's fair and equitable treatment standard "refers to **all customary international law principles that protect the economic rights and interests of aliens**." (emphasis added).

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter) (*see* Article 10.5(2): "For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments;" Annex 10-B: "The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Articles 10.5, 10.6, and Annex 10-C results from a **general and consistent practice of States** that they follow

from a sense of legal obligation. With regard to **Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens**.") (emphasis added).

b. **CL-81** (*ADF Group Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/1, Post-Hearing Submission of Respondent United States of America on Article1105(1) and *Pope & Talbot*, 27 June 2002, p. 2).

204. Accordingly, DR-CAFTA tribunals have sought to enforce the obligations of parties to the Treaty to afford fair and equitable treatment to investors in a manner consistent with the minimum standard of treatment prescribed by international law. For example, the tribunal in *RDC v. Guatemala* adopted the often-cited *Waste Management II* standard for fair and equitable treatment, stating:

> [T]he Tribunal **refers to and adopts** the conclusion reached by the tribunal in *Waste Management II* in considering NAFTA Article 1105 standard of review and after surveying NAFTA arbitral awards: '[. . .] the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is **arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory** and exposes the claimant to sectional or racial prejudice, or involves a **lack of due process** leading to an outcome which offends judicial propriety—as might be the case with a **manifest failure of natural justice in judicial proceedings** or a **complete lack of transparency and candor in an administrative process**. In applying this standard it is relevant that the treatment is in **breach of representations made by the host State which were reasonably relied on by the claimant**.' The Tribunal finds that *Waste Management II* persuasively integrates the accumulated analysis of prior NAFTA Tribunals and reflects a balanced description of the minimum standard of treatment. The Tribunal accordingly adopts the *Waste Management II* articulation of the minimum standard for purposes of this case. (emphasis added).

Proofs:

a. **CL-6** (*Railroad Development Corporation (RDC) v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, 29 June 2012, ¶ 219).

b. **CL-8** (Waste Management v. United Mexican States (II), ICSID Case No. ARB(AF)/00/3, Award, 30 April 2024).

205. Notwithstanding, the interpretation of the fair and equitable treatment in accordance with the MST must take into account the evolution of the MST as a rule of

customary international law. As the tribunal in *Murphy v. Ecuador (II)* concludes, arbitral case law emphasizes that the minimum standard of treatment is "an evolving concept that embraces the application and interpretation of the treaty FET standard." As a consequence, the FET standard and the MST "continue to influence each other and, in the view of the Tribunal… are increasingly aligned." The progressive alignment between these standards has led arbitral tribunals to repeatedly embrace a less stringent standard to determine a state's treaty breaches to the MST.

Proofs:

a. **CL-56** (*Murphy Exploration and Production Company International v. Republic of Ecuador (II)*, PCA Case No. 2012-16 (formerly AA 434), Partial Final Award, 6 May 2016, ¶ 207: "Other tribunals interpreting the customary international law obligation have **repeatedly embraced a less stringent standard** and have **emphasised that they were dealing with an evolving concept that embraces the application and interpretation of the treaty FET standard**. The Mondev International Ltd. v. United States of America tribunal interpreted the Free Trade Commission statement regarding the content and standard of Article 1105 of NAFTA as "incorporating current international law, whose content is shaped by the conclusions of more than two thousand bilateral investment treaties and many treaties of friendship and commerce. Those treaties largely and concordantly provide for 'fair and equitable' treatment of, and for 'full protection and security' for, the foreign investor and his investments"") (emphases added).

b. **CL-68** (*Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/(AF)/12/5, Award, 22 August 2016, ¶ 520: "The Tribunal shares Respondent's interpretation that when Art. II.2 of the BIT qualifies Venezuela's commitment to accord FET (and FPS) treatment 'in accordance with the principles of international law', the rule is referring to the CIM Standard. **But the incorporation of the CIM Standard into the definition of the FET does not provoke a major disruption in the level of protection: the CIS Standard has developed and today is indistinguishable from the FET standard and grants investors an equivalent level of protection as the latter**. The whole discussion of whether Art. II.2 of the BIT incorporates or fails to incorporate the CIS Standard when defining FET has become dogmatic: there is no substantive difference in the level of protection afforded by both standards") (emphasis added).

c. **CL-69** (1969 Vienna Convention on the Law of Treaties, Articles 31 and 32).

206. A current description of the MST as it applies to this case was provided by the tribunal in *Gramercy v. Peru*. In that case, the tribunal was tasked with interpreting Article 10.5 of the 2006 United States-Peru Free Trade Agreement ("**US-Peru FTA**"), a treaty provision

identical to Article 10.5 of the Treaty. Moreover, the US-Peru FTA included an Annex 10-A which also protects "all customary international law principles that protect the economic rights and interests of aliens." There, the tribunal described the MST as follows:

> The MST which an alien can expect includes that the State will abstain from arbitrariness and that the rule of law will not be undermined by prejudice, preference, bias, lack of reason or absence of proper procedure. **If an investment has been subject to arbitrary or unreasonable treatment by the host State**, the necessary consequence is that the MST under customary international law, including FET, have been violated (emphasis added).

Proofs:

a. **CL-70** (*Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022, ¶¶ 822-826, describing the content of Article 10.5 and Annex 10-A of the US-Peru FTA, which is substantially identical to the relevant language in Article 10.5 and Annex 10-B of the Treaty).

b. *Id.*, ¶ 833 (cited quoted).

207. Thus, a State will be deemed to have breached its obligation to afford investors FET treatment under Article 10.5 of the Treaty when it engages in conduct that: (i) contradicts representations it had made to the investor and on which the investor reasonably relied; (ii) is arbitrary, unreasonable, tainted by prejudice, preference bias, or lack of reason; or (iii) otherwise violates due process or lacks proper procedure.

Proofs:

a. **CL-6** (*Railroad Development Corporation (RDC) v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, 29 June 2012, ¶ 219).

b. **CL-70** (*Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022", ¶¶ 822-826).

208. As demonstrated below, through its favorable legal and regulatory framework and repeated assurances and representations, Honduras induced the Arguellos to invest in Honduras and expand their Investment by taking over the OPIC Loan and acquiring the Inter-Mac Entities. Honduras, however, frustrated Claimants' legitimate expectations, failed to act transparently, and acted arbitrarily and inconsistently towards Claimants' Investment in breach of the FET standard contained in Article 10.5 of the Treaty.

Proofs:

a. *See* Claimants' Statement of Claim, Section V.

2. Honduras Breached Claimants' Legitimate Expectations

209. Arbitral case law and doctrine have consistently determined that the protection of an investor's legitimate expectations is a core aspect of the FET standard. These legitimate expectations are based on the host State's legal framework and any representations made by the host state that the investor reasonably relied upon to invest.

Proofs:

a. **CL-12** (*Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶ 154).

b. **CL-14** (*Saluka Investments B.V. v. The Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, ¶ 302).

c. **CL-23** (R. Dolzer, U. Kriebaum and C. Schreuer, Principles of International Investment Law, Third Edition, Oxford University Press, January 2022, p. 208: "Tribunals have pointed to the dominant role of legitimate expectations for FET in international investment law. The investor's legitimate expectations are based on the host State's legal framework and on any undertakings and representations made explicitly or implicitly by the host State. The regulatory framework on which the investor is entitled to rely consists of legislation and treaties as well as of assurances contained in decrees, licences, and similar executive statements. Explicit representations and specific assurances play a central role in the creation of legitimate expectations. Explicit undertakings and representations made by the host State are the strongest basis for legitimate expectations. In the renewable energy cases against Spain, tribunals have increasingly looked for the existence of explicit assurances on the part of the host State").

d. **CL-71** (A. Newcombe and L. Paradell, Law and Practice of Investment Treaties: Standards of Treatment (Kluwer Law International 2009, p. 177: "Tribunals have identified the protection of legitimate expectations as a key element of fair and equitable treatment. Indeed, one tribunal has referred to it as the 'dominant element' of the standard. References to legitimate expectations have become ubiquitous in IIA claims and awards").

210. As noted recently by the *Lopez-Goyne v. Nicaragua* tribunal, the fair and equitable treatment standard in Article 10.5 of the Treaty "includes an **obligation for the host State not to frustrate the investor's legitimate expectations**, provided they are **reasonable and objective** in light of the circumstances and the State's conduct." Such objective analysis is to be carried out by "taking into account the specific facts of the case to determine whether (i) the State made **assurances or representations** that the investor relied on in making the investment, and (ii) the **reliance on those assurances was reasonable**." (emphasis added).

Proofs:

a. **CL-9** (*The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 1 March 2023, ¶¶ 422-423).

211. While the investor's expectations are assessed at the time the investor makes its investment, investment tribunals have recognized that new expectations can arise if there is subsequent State conduct that induces the investor to expand its investment. Accordingly, the investor's legitimate expectations will be assessed at each crucial stage of the investment.

Proofs:

a. **CL-10** (*Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶ 287: "[W]here investments are made through several steps, spread over a period of time, **legitimate expectations must be examined for each stage at which a decisive step is taken towards the creation, expansion, development, or reorganisation** of the investment.") (emphasis added).

b. **CL-11** (*Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, ¶ 557: "As the tribunal in *Frontier Petroleum v. Czech Republic* noted, in these instances 'legitimate expectations must be examined for each stage at which a decisive step is taken towards the creation, expansion, development, or reorganisation of the investment'. In this case, **Crystallex continued to invest throughout the process**, and made investments after the 16 May 2007 letter. Therefore, **the 16 May 2007 letter is in principle capable of founding a claim of legitimate expectations**, if it fulfills the requisite characteristics of a specific promise, which was later frustrated. It is to this aspect that the Tribunal now turns.") (emphasis added).

212. Notably, from the outset of the Project, the State consistently assured the Arguellos that it would provide financial support through the issuance of subsidies and long-term mortgages to the residents of the Project. These assurances were grounded not only in the State's Social Housing Programs (as previously described), but were also communicated directly to Claimants on numerous occasions, including the following instances:

- On 30 June 2008, the government agency then responsible for social housing in Honduras, the DGVU, issued a certificate confirming that the Project met all the criteria for the issuance of subsidies under Honduras' social housing program, "Programa Vivienda de Interés Social." As Juan Carlos testifies, obtaining this certificate was crucial for Claimants, as it led them to believe that the State would provide subsidies to the residents of the Project under the State's Social Housing Programs.

- In 2010, the State entered into the 2010 Memorandum of Understanding with Inter-Mac and undertook to implement Social Housing Programs that would provide for the issuance of subsidies and mortgages to low-income residents of the Project.

- On 23 January 2015, CONVIVIENDA, Inter-Mac, and Hola Realty entered into the 2015 Cooperation Agreement, in which CONVIVIENDA committed to provide subsidies to the residents of the Project.

- On 23 February 2015, the Honduran Secretary of State confirmed the State's commitment to issue subsidies and mortgages to the residents of the Project.

- On 5 May 2015, Mr. Díaz confirmed to Claimants that the President of Honduras had given specific instructions to provide subsidies to the residents of the Housing Project.

- On 10 July 2015, the State (through CONVIVIENDA) explicitly assured Inter-Mac that it would issue subsidies to ***any*** family that Inter-Mac would propose that would comply with the applicable rules under the ABA Program.

- On 11 November 2015, CONVIVIENDA certified that Inter-Mac complied with all the requirements for the creation and implementation of the ABA Program and, two days later, on 13 November, BANHPROVI and Inter-Mac entered into the 2015 Intermediation Agreement aimed at regulating the transfer of subsidies to Inter-Mac.

- On 7 February 2017, in a meeting held at the Presidential House, the Honduran Secretary of State confirmed to the Arguellos that the Honduran President and the State were committed to honoring the 2010 Memorandum of Understanding.

- On 31 May 2017, CONVIVIENDA unanimously approved the inclusion of Phase II of the Housing Project in the AFD Program, and promised to provide Inter-Mac with an upfront subsidy in the amount of up to L 180 million (approx. US $7.6 million) as part of the AFD Program to fund the construction of Phase II of the Housing Program.

- On 2 August 2017, the Honduran Secretary of State and CONVIVIENDA reaffirmed their continued support for the Project, assuring Claimants that CONVIVIENDA's operative regulation permitted BANHPROVI to redeem Lease-Purchase Contracts and convert them into long-term mortgages.

- On 10 September 2018, BANHPROVI and Inter-Mac entered into the 2018 Intermediation Agreement, which regulated the transfer of subsidies to Inter-Mac and was concluded for a "**duración indefinida** en tanto existan fondos para el otorgamiento del subsidio a los Programas de Vivienda para una Vida Mejor de CONVIVIENDA."

- From November 2018 through the end of 2020, BANHPROVI issued subsidies to Inter-Mac on behalf of some of the residents of the Housing Project, confirming the State's commitments to providing financial assistance to the Project's residents.

- In July 2022, BANHPROVI's regional branch manager in San Pedro Sula confirmed to Inter-Mac's and Hola Realty's general managers that the prequalification process for residents of the Project could commence.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-12** (14 February 2017) (Communication UT-H2020-012-2017 from the Secretary of State to the President of CONVIVIENDA) (evidencing the State acknowledged the existence of the 2010 Memorandum of Understanding and its commitment to honor its obligations under it).

c. **C-13** (23 January 2015) (Convenio de Concertación y Cooperación para la Masificación de Proyectos de Vivienda Social between CONVIVIENDA, Inter-Mac and Hola Realty) (evidencing CONVIVIENDA's agreement to provide the necessary subsidies to residents of the Housing Project, Article 4).

d. **C-15** (23 February 2015) (Communication SECM No. 111-2015 from the Honduran Secretary of State to the United States Ambassador in Honduras) (evidencing that Honduras provided assurances to the United States that it would honor its commitments related to the Project).

e. **C-18** (31 May 2017) (Communication CONVIVIENDA-Oficio No. 471-2017 from CONVIVIENDA to Inter-Mac) (in which Honduras informs Inter-Mac of the issuance of the "Certificado de Precalificación Técnica" for Phase II of the Project).

f. **C-20** (10 September 2018) ("Contrato Privado de Intermediación de Recursos del Bono de Vivienda" executed between BANHPROVI and Inter-Mac) (indicating that the 2018 Intermediation Agreement had no expiration).

g. **C-70** (26 September 2017) (Letter from Inter-Mac (E.

Arguello) to CONVIVIENDA's Executive Director (Ms. Sandra Moreno)) (evidencing that (i) the 2010 Memorandum of Understanding was concluded on 5 August 2010, (ii) the Government committed to issuing subsidies and long-term mortgages in support of the Housing Project, and (iii) Inter-Mac held a meeting with CONVIVIENDA on 20 September 2017, outlining support needed from CONVIVIENDA).

h. **C-76** (5 May 2015) (Email from Mr. Pablo Zuniga ("Secretaria Ejecutiva del Consejo de Ministros") to attendees to the meeting held in Casa Presidencial on 5 May 2015 between Honduras and Inter-Mac attaching meeting minutes prepared by the "Secretaria Ejecutiva del Consejo de Ministros") (evidencing the State's assurances to deliver subsidies to the residents of the Housing Project).

i. **C-78** (10 July 2015) (Letter from CONVIVIENDA to Inter-Mac) (assuring Inter-Mac that CONVIVIENDA would issue subsidies to ***any*** family of the Housing Project that met the requirements of the ABA Program).

j. **C-81** (11 November 2015) (Constancia from the Housing Director of CONVIVIENDA) (evidencing that "***INTERMAC ha cumplido con todos los requisitos para la creación y puesta en operación del Programa ABA*** *(Aporte Bono Arrendamiento), programa que forma parte de los Programas de Bono de Vivienda y Asentamientos Humanos (CONVIVIENDA) […]*") (emphasis added).

k. **C-82** (13 November 2015) ("Contrato privado de intermediación especial para el otorgamiento de bono para los programas de vivienda para una vida mejor") (confirming the transfer of funds from BANHPROVI to Inter-Mac) (*see* Article 2: "***MATERIA Y OBJETO DEL CONTRATO****. El presente Contrato tiene como objeto controlar la asignación de los montos transferidos por El Fiduciario a Inter-Mac Honduras, S. de R.L. como IIE autorizada para intermediar el Bono de Vivienda para una Vida Mejor*.").

l. **C-94** (7 August 2017) (Letter from Juan Carlos Arguello (Inter-Mac) to Mr. Sergio Amaya (President of BANHPROVI)) (referring to the meeting of 2 August 2017 in CONVIVIENDA's offices and evidencing the State's assurances regarding BANHPROVI's ability to issue long-term mortgages to the residents of the Project).

m. **C-106** (21 May 2020) (Email from Roberto Arguello to Mr. Marco Midence, the Private Secretary to the Honduran President, attaching minutes of the Zoom meeting held between them on 20 May 2020) (evidencing BANHPROVI's assurances that it could finance the acquisition of "used" and "new" homes through state-sponsored subsidies).

n. **C-123** (14 July 2022) (Email from Xochilt Funes and Mirian Castro (BANHPROVI) to Ms. Suita Galdamez (Inter-Mac) and Mr. Claudio Discua (Hola Realty)) (confirming that

BANHPROVI could proceed with the prequalification process for residents of "Los Castaños de Choloma") ("*Buenas Tardes Estimados, Deseo copiarles a mi compañera Mirian Castro ya que* ***ella es la [que] procederá con las precalificaciones de los clientes que nos envíen también y llevará los créditos correspondientes***.") (emphasis added).

o. **C-124** (14 July 2022) (Emails from Ms. Xochilt Funes (BANHPROVI) to Ms. Suita Galdamez (Inter-Mac) and Mr. Claudio Discua (Hola Realty)) (confirming that BANHPROVI could proceed with the prequalification process for residents of "Los Castaños de Choloma" while BANHPROVI worked on resolving its internal procedures) ("*Solamente deseo aclararle, que nosotros con gusto le podemos atender en nuestra agencia de SPS,* ***sin embargo, debemos de tener paciencia ya que hay algunos trámites internos que se está trabajando para que nosotros Banca de Primer Piso podamos llevar este tipo de casos (casas usadas)***. *Podemos iniciar con lo siguiente: 1.* ***Con gusto podemos iniciar con la precalificación de clientes que le envíen a mirian castro*** *con copia a mi persona, para que iniciemos y esperar mientras documentamos lo correspondiente de los casos […].*") (emphasis added).

p. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 33).

213. Based on these assurances, Claimants (i) decided to invest in Honduras; (ii) invested millions of dollars to build Phase I of the Housing Project; (iii) acquired Clark's interest in the Inter-Mac Entities as well as assumed responsibility for the OPIC Loan, and (iv) continued to invest millions of dollars for the development of their Investment.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 48-49).

214. Despite these assurances and commitments, Honduras violated the FET standard by, among other actions:

- Failing to issue subsidies to over 50% of the eligible residents of the Project without any apparent justification, despite having promised to issue subsidies to ***any*** family that met the requirements of the ABA Program;

- Failing to issue ***any*** mortgage to eligible residents of the Project after years of assurances and commitments to Claimants that the State would support the residents through the issuance of mortgages;

- Excluding on 4 October 2022, with immediate effect and in a manner that was arbitrary, politically motivated, discriminatory, and against

previous commitments from Honduras, the purchase of "used" homes from BANHPROVI's financing as a first-tier bank, while disregarding the outstanding applications of the residents of the Project; and

- Failing to issue ***any*** subsidy to Inter-Mac under the AFD Program, despite having certified that it would issue such subsidies to fund the construction of Phase II of the Project.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 48-49).

3. Honduras Engaged in Conduct that is Inconsistent, Contradictory, Arbitrary, and Non-Transparent

215. A state can also breach the FET standard in Article 10.5 of the Treaty by engaging in conduct that is inconsistent, contradictory, arbitrary or that lacks transparency. For instance, in *Tecmed v. Mexico*, the tribunal interpreted the FET standard of the Mexico-Spain bilateral investment treaty (which also includes a reference to international law) as follows:

> The Arbitral Tribunal considers that this provision of the Agreement, in light of the good faith principle established by international law, requires the Contracting Parties to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment. The foreign investor expects the host State **to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor, so that it may know beforehand any and all rules and regulations that will govern its investments**, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations. […] The foreign investor also expects the host State **to act consistently, i.e. without arbitrarily revoking any preexisting decisions or permits issued by the State that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities**. […] (emphasis added).

Proofs:

a. **CL-12** (*Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2023, ¶ 154).

b. **CL-13** (*MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, ¶ 165: "The Tribunal agrees with this statement as a matter of principle, but Chile also has an obligation to act coherently and apply its policies consistently, independently of how diligent an investor is. Under international law (the law that this Tribunal has to apply to a dispute under the BIT), the State of Chile needs to be considered by the Tribunal as a unit.").

c. **CL-14** (*Saluka Investments B.V. v. The Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, ¶ 309: "A foreign investor whose interests are protected under the Treaty is entitled to expect that the Czech Republic will not act in a way that is manifestly inconsistent, non-transparent, unreasonable (i.e. unrelated to some rational policy), or discriminatory (i.e. based on unjustifiable distinctions). In applying this standard, the Tribunal will have due regard to all relevant circumstances.").

d. **CL-15** (*Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶ 602: "[T]he [FET] standard also implies that the conduct of the State must be transparent, consistent, and non-discriminatory, that is, not based on unjustifiable distinctions or arbitrary.").

216. In similar terms, Professor Schreuer has defined the concept of arbitrary conduct of the State to encompass measures that: (i) inflict damage on the investor without serving any apparent legitimate purpose; (ii) are not based on legal standards but on discretion, prejudice, or personal preference; (iii) are taken for reasons that are different from those put forward by the decision maker; or (iv) are taken in willful disregard of due process and proper procedure. Arbitral case law, including the tribunals in *Gramercy v. Peru* and *EDF v. Romania* have directly applied and incorporated Professor Schreuer's definition as the correct statement of the law to determine treaty breaches through arbitrary state measures.

Proofs:

a. **CL-23** (R. Dolzer, U. Kriebaum and C. Schreuer, Principles of International Investment Law, Third Edition, Oxford University Press, January 2022, pp. 241-242).

b. **CL-70** (*Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022, ¶ 831, citing and incorporating Professor Schreuer's description of arbitrary measures into the decision).

c. **CL-72** (*EDF Services Ltd. v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, ¶ 303, citing and incorporating Professor Schreuer's description of arbitrary measures into the decision).

217. A state can also engage in arbitrary conduct in breach of the FET standard when state measures are taken for political purposes, without a legitimate purpose. In *Abengoa v. Mexico*, the tribunal found that the conduct of one of Mexico's *Ayuntamientos* and its municipal president, which led to the closure of the claimant's project, breached the FET standard because it was fueled purely for political purposes:

> From 2009, however, the CMI and the City Council have promoted an active campaign with the aim of closing the Plant… As part of this campaign, the municipal authorities have spread the idea, without having any evidence that the plant posed any risk to the environment or to public health, that its commissioning would have serious consequences for the population… The Town Council also cancelled the Operating License… The Arbitral Tribunal considers it relevant, in assessing these actions, that **the political group headed by Mr. Lozano had campaigned in both elections promising the population that the Plant would be closed. Obviously, after his election, the group pursued this objective for reasons that the Arbitral Tribunal finds totally disconnected from any legitimate consideration** regarding the environment, public health or respect for the law. The Arbitral Tribunal therefore **considers that the actions of the CMI and the City Council against the Plant from 2009 onwards have been arbitrary and totally contradictory to the positions** previously taken by the competent municipal, state and federal authorities (emphasis added).

Proofs:

a. **CL-73** (*Abengoa, S.A. and COFIDES, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/09/2, Award, 18 April 2013, para. 647-651).

b. **CL-57** (*Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No ARB(AF)/09/1, Award, 22 September 2024, ¶¶ 592-601).

218. Here, the State's conduct not only undermined Claimants' legitimate expectations, it was also arbitrary, unfair, contradictory, and discriminatory. After repeatedly assuring Claimants that it would provide the necessary financial support through subsidies and mortgages, BANHPROVI unexpectedly opposed the issuance of these mortgages, claiming that the homes in the Project were classified as "used" rather than "new" homes and therefore ineligible for financing. BANHPROVI's assertion lacked any merit. As Juan Carlos explained to government officials during a meeting held on 7 February 2017 at the Presidential House, BANHPROVI's own operational regulations stated that homes purchased within a year of construction, or for which the property had not yet been transferred from the developer to the end customer, should be classified as "new." This was the case for ***every*** home in the Project, as no

resident had been able to obtain a mortgage and purchase these properties.

Proofs:

a. **C-146** (11 August 2016) (BANHPROVI'S operative regulation, as published in Honduras' Official Journal on 11 August 2016) (confirming that homes purchased within a year of construction, should be classified as "new" and were thus eligible for financing, p. 37).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 58).

219. Even after BANHPROVI raised this arbitrary objection, CONVIVIENDA and BANHPROVI continued to assure Claimants that BANHPROVI would adopt new regulations that would enable the issuance of state-sponsored mortgages for the purchase of "used" homes. These assurances finally materialized on 18 January 2021 when BANHPROVI and the Honduran Central Bank approved the 2021 Amendments. As described above, a significant change introduced by the 2021 Amendments was the explicit inclusion of "used" homes within the scope of social housing projects eligible for long-term mortgages under the State's Social Housing Programs.

Proofs:

a. **C-98** (9 October 2018) (Letter from Juan Carlos Arguello (Inter-Mac) to Mayra Falck (BANHPROVI)) (referring to the meeting held on 26 July 2018 and attaching Claimants' letters to IFIs inquiring about their interest in issuing long-term lempira-denominated mortgages to the residents of the Housing Project).

b. **C-110** (18 January 2021) (Circular No. PE-04/2021 issued by BANHPROVI) (informing the IFIs of the adoption by BANHPROVI and the Honduran Central Bank of a new financial product, "Vivienda para una Vida Mejor," which included the purchase of "used homes").

220. Despite this positive and encouraging change, Honduras ultimately paid lip service to its promises. On 4 October 2022, BANHPROVI issued the 2022 Resolution, which excluded "used" homes from the scope of projects eligible for BANHPROVI's long-term financing as a first-tier bank. The 2022 Resolution was particularly arbitrary, contradictory and inconsistent with the State's prior representations, both in its merits and in the form in which it was implemented. Indeed, the State had no legal justification for reneging on its repeated assurances to Claimants.

Proofs:

a. **C-128** (4 October 2022) (Resolution adopted during BANHPROVI's ordinary session No. CD-39-2002) (incomplete, pages 4 to 7 only)) (evidencing that the State excluded financing for residents purchasing used homes under the State's social housing programs and disregarded the

applications submitted by Inter-Mac on behalf of residents of "Los Castaños de Choloma").

221. Moreover, the State implemented the 2022 Resolution with immediate effect, with the notable exception of applications under review ("*casos en procesos de documentación.*") However, in an intent to discriminate against the Arguellos for being United States nationals, ***not a single resident*** of "Los Castaños de Choloma" was included among the outstanding applications that BANHPROVI agreed to consider in the 2022 Resolution. This is no coincidence. Instead, the State blatantly disregarded and intentionally ignored all the pending applications on behalf of the Project's residents.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-125** (July-October 2022) **(**Exchange of WhatsApp messages between Juan Carlos Arguello and [redacted] (BANHPROVI)) (evidencing that BANHPROVI was analyzing the files shared by Claimants on behalf of the residents of the Housing Project).

222. The discriminatory nature of BANHPROVI's exclusion of the residents of the Project from the scope of Honduras' social housing financing was explicitly confirmed to Juan Carlos by a BANHPROVI employee in the following terms: "***cambiaron la ley para no dar préstamo para ustedes***."

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 110).

b. **C-129** (28 October 2022) (Redacted exchange of WhatsApp messages between Juan Carlos Arguello and an employee from BANHPROVI regarding the issuance of long-term mortgages to the residents of the Housing Project) (evidencing that BANHPROVI had terminated the issuance of mortgages to residents purchasing used homes from the scope of "Vivienda para una Vida Mejor" to exclude the residents of the Housing Project).

223. As in *Abengoa v. Mexico*, here Mr. Benítez promoted an active campaign with the aim of injuring the Arguellos. As part of this campaign, Mr. Benítez encouraged the Patronato to take over the Project and the residents to stop paying rent to the Arguellos, all while discriminating against Claimants for being U.S. investors. In assessing BANHPROVI's decision to issue the 2022 Resolution, the Tribunal should consider that the political group headed by Mr. Benítez had campaigned in the Honduran presidential election promising the residents of the Project that they would "push out" the U.S. investors (*i.e.* the Arguellos). Following the presidential election, this political group continued to pursue this objective for no legitimate reason. In accordance with Mr. Benítez's campaign promises (who by then was acting as Advisor Minister of Strategy and Communications to the Honduran President, Xiomara Castro), BANHPROVI's President admitted that the 2022 Resolution was approved with the main

objective of harming the Arguellos. Accordingly, the State's conduct was targeted, discriminatory, arbitrary, politically motivated, "totally disconnected from any legitimate consideration," and contradictory to the previous assurances and commitments made by the State to the Arguellos.

Proofs:

a. **CL-73** (*Abengoa, S.A. and COFIDES, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/09/2, Award, 18 April 2013, para. 649-651).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 107-110).

c. **C-129** (28 October 2022) (Redacted exchange of WhatsApp messages between Juan Carlos Arguello and an employee from BANHPROVI regarding the issuance of long-term mortgages to the residents of the Housing Project) (evidencing that BANHPROVI had terminated the issuance of mortgages to residents purchasing used homes from the scope of "Vivienda para una Vida Mejor" to exclude the residents of the Housing Project).

d. **C-130** (1 July 2022) (Press article from La Prensa, "Milton Benítez, ministro de Estrategia, en Lista Negra de Estados Unidos," also available at: https://www.laprensa.hn/honduras/milton-benitez-ministro-de-estrategia-en-lista-negra-de-estados-unidos-YB8892562) (evidencing that Mr. Benítez is known in Honduras as the "Perro Amarillo," after the name of his TV and radio show, and that he is the "Ministro Asesor en Materia de Estrategia y Comunicaciones" to the Honduran President).

e. **C-153** (Undated) (Video from the "Perro Amarillo" during Mr. Benítez's Honduran presidential campaign) (referring to Claimants as American criminals).

f. **C-195** (12 November 2021) (Press Article from "El Heraldo" titled "Milton Benítez, "Perro Amarillo", de Honduras Humana, se une a Xiomara Castro") (evidencing that Mr. Benítez was initially a presidential candidate in Honduras, but eventually joined forces with Xiomara Castro to get her elected).

224. In short, Honduras' failure to, among other actions, (i) issue subsidies to over half of the residents of the Project; (ii) provide ***any*** subsidy to Inter-Mac under the AFD Program; and (iii) issue ***any*** mortgages to the residents of the Project frustrated Claimants' legitimate expectations, was arbitrary, grossly unfair, contradictory, discriminatory, and politically motivated, violating Honduras' FET obligation under Article 10.5 of the Treaty.

Proofs:

a. *See supra*.

4. Honduras Denied Justice to Claimants

225. The FET standard in Article 10.5 of the Treaty expressly protects foreign investors against a denial of justice performed by the host state. Specifically, Article 10.5(2)(a) of the Treaty states:

> "[F]air and equitable treatment" **includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings** in accordance with the principle of due process embodied in the principal legal systems of the world. (emphasis added).

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.5).

226. Under the Treaty, Honduras' obligation not to deny justice protects foreign investors in case Honduran judicial or administrative bodies do not afford a fair procedure. This is a basic component of the FET standard and ensures that due process is observed in local domestic proceedings.

Proofs:

a. **CL-23** (R. Dolzer, U. Kriebaum and C. Schreuer, Principles of International Investment Law, Third Edition, Oxford University Press, January 2022, pp. 217-218: "Fair procedure includes the traditional international law concept of denial of justice. Access to the courts is a basic aspect of due process… Tribunals have held that the unjustified refusal of an access to justice was a denial of justice and hence a violation of the FET standard").

227. In deciding that Mexico denied justice to claimants, the tribunal in *Lion v. Mexico* concluded that the protection against denial of justice extends to: (i) the right to access justice; (ii) the right to be heard and to present one's case; and (iii) the right to obtain a decision without undue delay. According to the tribunal, the protection of the right to access justice under the denial of justice standard is "*uncontroversial*," and extends to situations where "*the foreigner has been hindered by the judicial authorities in the exercise of his right to pursue judicial remedies*." This right, which becomes particularly important when states contract it in their agreements, was best described, in the tribunal's opinion, by the *Ambatielos* judgment:

> Thus, when 'free access to the Courts' is covenanted by a State in favour of the subjects or citizens of another State, **the covenant is that the foreigner shall enjoy full freedom to appear before the**

courts for the protection or defence of his rights, whether as plaintiff or defendant…" (emphasis added).

Proofs:

a. **CL-74** (*Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021, ¶¶ 220-221: "A review of case law and scholarly writings reveal that procedural denial of justice can be classified in subtypes: the right to access justice… The first category of procedural denial of justice is uncontroversial. Prof. Paparinskis writes: 'The easiest case, accepted as uncontroversially wrongful under the Hague Conference, was a discriminatory denial of access to court, described in the Hague Texts as the situation where 'the foreigner has been hindered by the judicial authorities in the exercise of his right to pursue judicial remedies'").

b. *Id.*, ¶ 225 (cited above).

228. Equally uncontroversial is the foreign investor's protection against undue delay in the exercise of justice. In *Leon v. Mexico*, the tribunal clarified that undue delay cannot be measured in the abstract, and is tied to the facts of the case, including the complexity of the case, the behavior of the litigants involved, the significance of the interests at stake, and the behavior of the courts themselves.

Proofs:

a. **CL-74** (*Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021, ¶¶ 241-242: "It is common ground that there is no abstract manner of determining whether a particular period constitutes reasonable delay but each case should be scrutinized under the specific facts…The tribunal in *Chevron* devised a widely recognized test for denial of justice for undue delay: it found that 'some of the factors that may be considered are the complexity of the case, the behaviour of the litigants involved, the significance of the interests at stake in the case, and the behaviour of the Courts themselves'").

229. Through the inaction of its justice system, Honduras repeatedly delayed and denied the Arguellos the ability to exercise their rights to pursue judicial remedies against the Patronato and unlawful occupiers within the Housing Project, arbitrarily and unfairly denying them justice in local courts. Despite the fact that Claimants, through Inter-Mac, filed multiple eviction actions against illegal occupiers and tenants who refused to pay rent at the Patronato's behest, the eviction orders were not enforced. Mr. Discua frustratingly narrates in his Witness Declaration that Honduran judges and police were aware of the existence of illegal occupiers subject to eviction orders, but would not enforce them due to the violent intervention of Patronato members. Instead of enforcing the rule of law and ensuring compliance with binding

judicial orders, Honduran authorities decided to remain passive against the Patronato's violent conduct, refusing to follow the law.

Proofs:

a. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 32).

b. **C-143** (22 March 2022) (Witness statement submitted by Inter-Mac's l[redacted], before the Honduran National Police in the context of criminal complaint No. 106-2022) (evidencing that a Honduran judge failed to carry out the required eviction order after being intimidated by members of the Patronato).

230. Relying on Honduran institutions, Claimants also denounced the threats, violence and intimidation of the Patronato by filing various criminal complaints before the relevant judicial State authorities. To date, however, these complaints have not been processed, investigated, or prosecuted. Consequently, Claimants were effectively denied access to the Honduran criminal justice system, and the control of its Investment was left to the will of the violent Patronato.

Proofs:

a. **C-191** (First Declaration of Mr. Claudio Antonio Discua, at ¶ 33).

b. **C-141** (19 November 2021) (Criminal complaint filed by an employee of Inter-Mac, [redacted], with the Honduran Criminal Investigation Department to denounce the acts of threat and intimidation of the Patronato) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

c. **C-142** (11 February 2022) (Criminal complaint filed by Inter-Mac's [redacted] with the Honduran Criminal Investigation Department to denounce the acts of threat and intimidation of the Patronato against employees of Inter-Mac) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

d. **C-143** (22 March 2022) (Witness statement submitted by Inter-Mac's [redacted], before the Honduran National Police in the context of criminal complaint No. 106-2022) (evidencing that a Honduran judge failed to carry out the required eviction order after being intimidated by members of the Patronato).

e. **C-144** (10 February 2022) (Criminal complaint filed by Inter-Mac's [redacted], with the Honduran Criminal Investigation Department to denounce the usurpation being carried out in a house of the

Housing Project) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

f. **C-145** (11 February 2022) (Criminal complaint and its attachments filed by [redacted] on behalf of Inter-Mac before the special prosecutor's office for organized crime, known as the "Fiscalía Especial Contra el Crimen Organizado" against the members of the Patronato) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Fiscalía Especial Contra el Crimen Organizado).

231. In sum, more than ***two and a half years after*** the filing of the eviction and criminal actions, Honduran authorities have yet to take ***any*** action to address these complaints. Accordingly, Honduras has denied justice to the Arguellos in violation of its obligation under Article 10.5 of the Treaty.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

B. Honduras Denied Claimants Full Protection and Security in Breach of Article 10.5 of the Treaty

1. The Full Protection and Security Standard Under the Treaty

232. The standard of full protection and security is expressly included in Article 10.5 of the Treaty, which requires that "[e]ach Party **shall accord to covered investments** treatment in accordance with international law, including fair and equitable treatment and **full protection and security**." (emphasis added). Annex 10-B specifies that the Treaty's full protection and security obligation "refers to all customary international law principles that protect the economic rights and interests of aliens."

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.5 and Annex 10-B: "The Parties confirm their shared understanding that 'customary international law' generally and as specifically referenced in Articles 10.5, 10.6, and Annex 10-C results from a **general and consistent practice of States** that they follow from a sense of legal obligation. With regard to **Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens**.") (emphasis added).

b. **CL-6** (*Railroad Development Corporation (RDC) v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, 29 June 2012, ¶ 219: "Article 10.5(1) of CAFTA reflects that 'full

protection and security' is a core component of the minimum standard of treatment.").

233. The standard of full protection and security has its origins in customary international law. This standard was recognized in various treaties towards the end of the 19th century and was subsequently adopted in bilateral investment treaties, including the first bilateral investment treaty concluded between Germany and Pakistan.

Proofs:

a. **CL-16** (S. Mantilla Blanco, Full Protection and Security in International Investment Law, (Springer 2019), p. 5).

234. The International Court of Justice ("**ICJ**") has on multiple occasions recognized the obligation of states to provide full protection and physical security to aliens on their territory, and has accepted that a breach of this obligation occurs when the host state fails to take the necessary measures for the protection of aliens. In 1980, in deciding a case between the United States and Iran concerning US consular officials and diplomats, the ICJ recognized that Iran had breached its obligation to take all "appropriate steps" to ensure the protection of the American Embassy from attacks by certain protesters who, after attacking the compound, took certain American officials and individuals hostage. This obligation was, *inter alia*, based on a breach of Iran's obligation to provide 'constant protection and security' contained in a treaty of amity between the United States and Iran signed in 1955.

Proofs:

a. **CL-17** (International Court of Justice, *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran*), Judgment of 24 May 1980, ¶ 50: "The United States also presents claims in respect of alleged violations by Iran of Articles II, paragraph 4, XIII, XVIII and XIX of the Treaty of Amity, Economic Relations, and Consular Rights of 1955 between the United States and Iran, which entered into force on 16 June 1957 . . . Article II, paragraph 4, of the 1955 Treaty provides that '**nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party** . . .', the Court considers that at the present stage of the proceedings that Treaty has importance in regard to the **claims of the United States in respect of the two private individuals**.") (emphasis added).

b. *Id*., ¶ 63: "The facts set out in paragraphs 14 to 27 above establish to the satisfaction of the Court that on 4 November 1979 the Iranian Government **failed altogether to take any 'appropriate steps' to protect the premises, staff and archives of the United States' mission against attack by the militants**, and to take any steps either to prevent this attack or to stop it before it reached its completion. They also show that on 5 November 1979 the Iranian Government similarly failed to take appropriate steps for the protection of the United States Consulates at Tabriz and Shiraz. In addition they show, in the opinion of the Court, that the failure of the Iranian

Government to take such steps was due to more than mere negligence or lack of appropriate means." (emphasis added).

c. **CL-18** (International Court of Justice, *Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy*) (Judgment, 20 July 1989), ¶ 104: "Paragraph 1 thus provides for 'the most constant protection and security' for nationals of each High Contracting Party, both 'for their persons and property'; and also that, in relation to property, the term 'nationals' shall be construed to 'include corporations and associations'; and in defining the nature of the protection, the required standard is established by a reference to 'the full protection and security required by international law.'").

235. Specifically, the ICJ concluded that Iran had breached its obligation to provide security in that it (i) failed to take the necessary actions to prevent the attack, despite knowing that it would occur, and (ii) failed to make the necessary efforts to get the militants to withdraw from the compound and release the hostages. In addition, the ICJ found it particularly relevant that Iran had promised multiple times that it would provide the necessary security, and that the US had reiterated its urgent request for assistance. In doing so, the ICJ concluded that the Iranian government's lack of response and "inaction" in defending the American Embassy and its officials constituted a "clear and serious violation" of Iran's obligation under the treaty in question:

> **[D]espite assurances** previously given by them to the United States Government and **despite repeated and urgent calls for help, they [Iranian authorities] took no apparent steps either to prevent the militants from invading the Embassy or to persuade or to compel them to withdraw**. Furthermore, after the militants had forced an entry into the premises of the Embassy, the Iranian authorities **made no effort to compel or even to persuade them to withdraw from the Embassy** and to free the diplomatic and consular staff whom they had made prisoner.
>
> This inaction of the Iranian Government by itself constituted [a] **clear and serious violation** of Iran's obligations . . . [and] a breach of its obligations under Article II, paragraph 4, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights which, in addition to the obligations of Iran existing under general international law, requires the parties to ensure '**the most constant protection and security' to each other's nationals in their respective territories**. (emphasis added).
>
> **Proofs:**
>
> a. **CL-17** (International Court of Justice, *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran*), Judgment of 24 May 1980, ¶¶ 66-67).

236. The 'test' applied by the ICJ to determine that Iran had breached its international

obligations is illustrative of the scope of the full protection and security standard of protection in Article 10.5 of the Treaty. Specifically, the ICJ found that (i) Iran knew of its treaty obligation to provide security; (ii) Iran knew or should have known of the need to provide assistance, given the multiple requests by the American Embassy; (iii) Iran had the means to comply with its international obligation; and (iv) Iran failed utterly to comply with that obligation. As a consequence of this breach, the ICJ ordered Iran to make reparations to the United States.

Proofs:

a. **CL-17** (International Court of Justice, *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran*), Judgment of 24 May 1980, ¶ 68: "The Court is therefore led inevitably to conclude, in regard to the first phase of the events which has so far been considered, that on 4 November 1979 the Iranian authorities: (a) were fully aware of their obligations under the conventions in force to take appropriate steps to protect the premises of the United States Embassy and its diplomatic and consular staff from any attack and from any infringement of their inviolability, and to ensure the security of such other persons as might be present on the said premises; (b) were fully aware, as a result of the appeals for help made by the United States Embassy, of the urgent need for action on their part; (c) had the means at their disposal to perform their obligations; (d) completely failed to comply with these obligations.").

237. Since the ICJ's formulation of the applicable standard, numerous investment treaties have applied this standard in the context of multilateral or bilateral investment treaties. There appears to be a consensus among investment tribunals that the standard encompasses the State's obligation to protect the physical integrity and security of the investor and its investment against violence carried out by the State or third parties.

Proofs:

a. **CL-19** (*Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania (I)*, ICSID Case No. ARB/15/31, Award, 8 March 2024, ¶ 874: "Traditionally, the phrase 'full protection and security' referred to the protection of investors from physical interference with their investments caused by third parties.").

b. **CL-20** (*(DS)2, S.A., Peter de Sutter and Kristof De Sutter v. Madagascar (II)*, ICSID Case No. ARB/17/18, Award, 17 April 2020, ¶ 299: "The main purpose of the guarantee of constant security and protection is to protect the investment or investor from physical violence […].");

238. This standard covers both omissions and positive acts and applies to the harmful conduct of the State and its representatives, as well as that of third parties. As the *Parkerings v. Lithuania* tribunal observed, "[a] violation of the standard of full protection and security could arise in case of **failure of the State to prevent the damage, to restore the previous situation**

or to punish the author of the injury. The injury could be committed **either by the host State, or by its agencies or by an individual**." (emphasis added).

Proofs:

a. **CL-21** (*Parkerings-Compagniet A.S v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, ¶ 355).

b. **CL-22** (*Cengiz İnşaat Sanayi ve Ticaret A.S v. Libya*, ICC Case No. 21537/ZF/AYZ, Award, 7 November 2018, ¶ 403: "The perpetrator of such interference is irrelevant: it could be the State itself, (including agencies, groups, entities or other organs whose actions can be attributed to the State), or any other third party.").

c. **CL-20** (*(DS)2, S.A., Peter de Sutter and Kristof De Sutter v. Madagascar (II)*, ICSID Case No. ARB/17/18, Award, 17 April 2020, ¶ 303: "[T]he obligation of constant safety and protection applies to **the harmful actions of third parties, as well as those perpetrated by State bodies and representatives**. [. . .] The case law also recognizes that the guarantee covers **both the actions and omissions** of the [State]."") (emphasis added).

239. Investment tribunals have also found that although it does not imply a regime of strict liability, the full protection and security standard requires the State to exercise ***due diligence*** by taking all reasonable measures to avoid, prevent, or stop the physical occurrence of damage to the investor and its investment. Whether a State has complied with its due diligence obligation is assessed on an objective basis and in light of the specific circumstances of each case.

Proofs:

a. **CL-23** (R. Dolzer, U. Kriebaum and C. Schreuer, Principles of International Investment Law, Third Edition, Oxford University Press, January 2022, p. 232: "[I]t is generally accepted that the host state will have to exercise 'due diligence' and will have to take such measures to protect the foreign investment as are reasonable under the circumstances.").

b. **CL-24** (*Naturgy Energy Group S.A. v. República de Colombia*, ICSID Case No. ARB/18/1, Award, 12 March 2021, 563: "Para determinar una infracción, **el Tribunal debe comparar la conducta del Estado con una norma objetiva de diligencia y determinar que la conducta del Estado no cumplió con dicha norma** (…) el estándar 'se aplica esencialmente cuando la inversión extranjera se ha visto afectada por conflictos civiles y violencia física' […].") (emphasis added).

c. **CL-22** (*Cengiz İnşaat Sanayi ve Ticaret A.S v. Libya*, ICC Case No. 21537/ZF/AYZ, Award, 7 November 2018, ¶

403: "In the most basic formulation, the purpose of the FPS standard is to protect the physical integrity of an investment against interference by use of force […] FPS thus entails a two-fold obligation for the host State: - A negative obligation to refrain from directly harming the investment by acts of violence attributable to the State, plus - **A positive obligation to prevent that third parties cause physical damage to such investment**.") (emphasis added).

d. **CL-25** (*Ampal-American Israel Corp. et. al v, Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, ¶ 241: "The Tribunal is of the view that the duty imposed upon the host State by this standard is not one of strict liability. Rather the State **is obliged to exert due diligence in order to protect a claimant's investment**—a standard that must be assessed according to the particular circumstances in which the damage occurs.").

240. The tribunal's findings in *AMT v. Zaire* are particularly relevant to the present dispute. In that case, armed forces took control of the claimant's investment. After multiple ignored complaints, these armed forces attacked the complex a second time, which led to its closure. Faced with the State's complete inaction, the tribunal found that Zaire had violated its obligation to provide full protection and security in accordance with the minimum standard of treatment by failing to take all measures necessary to ensure the full enjoyment of protection and security of the claimant's investments on its territory:

> The obligation incumbent upon Zaire is an obligation of vigilance, in the sense that Zaire as the receiving State of investments made by AMT, an American company, **shall take all measures necessary to ensure the full enjoyment of protection and security of its investment and should not be permitted to invoke its own legislation to detract from any such obligation**. Zaire must show that it has taken all measure of precaution to protect the investments of AMT on its territory. It has not done so, by mere recognition of the existing reality of the damage caused while designating SINZA as the victim and alleging that its own national legislation has exonerated Zaire from all obligations to make reparation for the injuries sustained on its territory in the circumstances such as those giving rise to the present dispute. In this regard, the Tribunal has demonstrated the contrary. […] Zaire is responsible for **its inability to prevent the disastrous consequences of these events** adversely affecting the investments of AMT which Zaire had the obligation to protect. (emphasis added).

Proofs:

a. **CL-26** (*American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997, ¶¶ 6.05 and 6.08).

b. *Id*., ¶ 6.06: "These treatments of protection and security of investment required by the provisions of the [treaty] of which [claimant] is beneficiary must be in conformity with its applicable national laws and **must not be any less than those recognized by international law**. For the Tribunal, this last requirement is fundamental for the determination of the responsibility of [the host State]. It is thus an **objective obligation which must not be inferior to the minimum standard of vigilance and of care required by international law**." (emphasis added).

c. *Id*., ¶ 6.11: "The responsibility of the [host State] is incontestably engaged by the very fact of an omission by [it] to take every measure necessary to protect and ensure the security of the investment made by [claimant] in its territory.".

241. Moreover, repeated interference with an investor's investment is interpreted as a warning to the State that further interference may occur. Applying this principle, the tribunal in *Ampal v. Egypt* found that the first four attacks carried out on the investor's pipeline "should have been seen as a warning to the Egyptian State that **further attacks might be carried out if security measures were not taken and implemented**." (emphasis added). The tribunal concluded on that basis that "the failure by the Egyptian authorities to take any concrete steps to protect the Claimants' investment from damage in reaction to third party attacks on the upstream pipeline system, as of the date of attack no. 5 […] constitutes a breach of the obligation of due diligence that Egypt was required to exercise in ensuring the full protection and security of the Claimants' investment."

Proofs:

a. **CL-25** (*Ampal-American Israel Corp. et. al v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, ¶¶ 289-290).

b. **CL-16** (S. Mantilla Blanco, Full Protection and Security in International Investment Law, (Springer), 2019, p. 469-470: "The diligence required from local authorities should be proportionate to the seriousness of the situation of risk […] The seriousness of the situation of risk depends on both the likelihood of a harmful event and the significance of its potential effects. As to the first point, **there can be no doubt that the higher probability of the harmful event, the higher the degree of diligence that can be expected from the state**.") (emphasis added).

242. Finally, the full protection and security standard applies to both acts of physical violence as well as threats of violence against an investor or its investment. In *Bernard von Pezold v. Zimbabwe*, the claimant's farmland had been invaded and occupied by settlers, who had also threatened the claimant's representatives. In its award, the tribunal observed that the full protection and security standard referred not only to physical security, but also to **threats of violence**. The tribunal concluded that Zimbabwe had breached the full protection and security standard due to (i) the police's failure to protect the claimants' properties from occupation or to remove the settlers, and (ii) the non-responsiveness of the police to various violent incidents that

occurred.

Proofs:

a. **CL-27** (*Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, ¶ 596: "The Parties agree that the FPS standard is not a strict liability test, but is an 'all reasonable measures' (i.e., a due diligence) standard. The Tribunal also considers that **this standard relates to physical security and threats of violence and is materially the same under both BITs**.") (emphasis added).

b. *Id*., ¶ 597: "The Tribunal finds that the Respondent has breached this FPS standard in relation to the failure of police to protect the Claimants' properties from occupation or to remove Settlers/War Veterans. The Tribunal also finds that the Respondent breached this standard in relation to the nonresponsiveness of police to various violent incidents that occurred[…]".

243. The same conclusion was reached by the tribunal in *Energía y Renovación v. Guatemala*. In that case, the claimant's project was constantly threatened and attacked by violent groups for years who, under the guise of conducting peaceful protests, destroyed claimant's property. This occurred despite the fact that the police was aware and could foresee the occurrence of the threats and attacks, and notwithstanding that claimants begged the state to provide protection and security. In deciding that Guatemala had breached the full protection and security standard, the tribunal considered that the police did not have an effective control of the area of the project, and that "*la presencia policial desplegada para frenar los actos de violencia en la región… era, en el mejor de los casos, espectadora de esos mismos actos de violencia, cuando no era ella misma victima de los ataques*."

Proofs:

a. **CL-67**, (*Energía y Renovación Holding, S.A., c. República de Guatemala*, ICSID Case No. ARB/21/56, Award, 31 March 2025, ¶ 328; "***[E]l gobierno*** *guatemalteco* ***promovió voluntariamente la inversión y se obligó a protegerla plenamente***;" ¶ 330 "*[N]o es razonable suponer que el Estado podría cumplir con su deber de vigilancia y diligencia simplemente implementando acciones eminentemente formales, sin ninguna repercusión material*." (emphasis added).

b. *Id*. ¶331 "***[A]unque el Estado no ha permanecido totalmente inerte*** *ante la violación sistemática y continuada de la integridad física del Proyecto y de sus colaboradores,* ***su actuación ha carecido de consecuencias prácticas****. Existen pruebas en el expediente de que se aplicaron medidas policiales, se emprendieron acciones legales, así como de la existencia de un intento de arreglo político en forma del Acuerdo para la Paz. Sin embargo,* ***ninguna de estas medidas tuvo efectos concretos****. Es decir,* ***ninguna de estas medidas***

resultó ser suficiente o adecuada para abordar los problemas de seguridad relacionados con el Proyecto." (emphasis added).

c. *Id.*, ¶ 336 (quoted above).

2. Honduras' Conduct Breached the Full Protection and Security Standard

244. As held by the tribunal in *Cengiz v. Libya*, Honduras had an obligation "to protect the physical integrity" of the Investment "***against interference by use of force***" by ***any*** perpetrator, be it "the State itself, (including agencies, groups, entities or other organs whose actions can be attributed to the State), ***or any other third party***." (emphasis added).

Proofs:

a. **CL-22** (*Cengiz İnşaat Sanayi ve Ticaret A.S v. Libya*, ICC Case No. 21537/ZF/AYZ, Award, 7 November 2018, ¶ 403: "**The perpetrator of such interference is irrelevant**: it could be the State itself, (including agencies, groups, entities or other organs whose actions can be attributed to the State), or any other third party.") (emphasis added).

b. **CL-21** (*Parkerings-Compagniet A.S v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, ¶ 355: "A violation of the standard of *full protection and security* could arise in case of **failure of the State to prevent the damage, to restore the previous situation or to punish the author** of the injury. The injury could be committed **either by the host State, or by its agencies or by an individual**.") (emphasis added).

c. **CL-20** (*(DS)2, S.A., Peter de Sutter and Kristof De Sutter v. Madagascar (II)*, ICSID Case No. ARB/17/18, Award, 17 April 2020, ¶ 303: "[T]he obligation of constant safety and protection applies to **the harmful actions of third parties, as well as those perpetrated by State bodies and representatives**. [. . .] The case law also recognizes that the guarantee covers **both the actions and omissions** of the [State].") (emphasis added).

245. Honduras breached the full protection and security standard of the Treaty on a number of accounts, including due to:

- The failure of Honduras' police and other State authorities to prevent the acts of destruction, extortion and intimidation perpetrated by the Patronato in "Los Castaños de Choloma;"

- The failure of Honduras' police and other State authorities to sanction the Patronato for their acts of destruction, extortion and intimidation; and

- The ongoing failure by Honduran police and other State authorities to expel the Patronato from "Los Castaños de Choloma."

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

246. As in the case of *United States v. Iran*, in the present dispute (i) Honduras was fully aware of its international obligations under the Treaty to accord "full protection and security" to Claimants' Investment; (ii) Honduras received many complaints from Claimants and employees from Inter-Mac and Hola Realty regarding the acts of destruction, extortion and intimidation being carried out by the Patronato; (iii) Honduras, as a sovereign State, had (and still has) the means to prevent the Patronato's conduct and to defend the Investment from the harmful consequences of the Patronato's actions; and (iv) despite being aware of the state of insecurity prevailing in "Los Castaños de Choloma," Honduras failed to provide physical protection and security to the Arguellos, the Investment, the residents of the Project, and the employees of Inter-Mac and Hola Realty. Honduras has thus failed to exercise due diligence by not taking ***any*** measures, much less reasonable measures, to avoid, prevent, or stop the physical occurrence of damage to Claimants' Investment. Moreover, several years have passed since Inter-Mac filed eviction actions and criminal complaints with the Honduran authorities, and the Honduran authorities have yet to take ***any*** action in response to these.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-10** (Undated) (Multiple photographs of Phase I of the Housing Project) (evidencing the acts of vandalism carried out on the premises of the Project).

c. **C-190** (First Declaration of Ernesto Arguello, at ¶ 95).

d. **CL-25** (*Ampal-American Israel Corp. et. al v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, ¶ 241: "The Tribunal is of the view that the duty imposed upon the host State by this standard is not one of strict liability. Rather the State **is obliged to exert due diligence in order to protect a claimant's investment** – a standard that must be assessed according to the particular circumstances in which the damage occurs.").

e. **CL-17** (International Court of Justice, *United States Diplomatic and Consular Staff in Tehran* (United States of America v. Iran), Judgment of 24 May 1980, ¶ 68: "The Court is therefore led inevitably to conclude, in regard to the first phase of the events which has so far been considered, that on 4 November 1979 the Iranian authorities: (a) were fully aware of their obligations under the conventions in force to take appropriate steps to protect the premises of the United States Embassy and its diplomatic and consular staff from any attack and from any infringement of their inviolability, and to ensure

the security of such other persons as might be present on the said premises; (b) were fully aware, as a result of the appeals for help made by the United States Embassy, of the urgent need for action on their part; (c) had the means at their disposal to perform their obligations; (d) completely failed to comply with these obligations.").

f. **C-141** (19 November 2021) (Criminal complaint filed by an employee of Inter-Mac, [redacted] with the Honduran Criminal Investigation Department to denounce the acts of threat and intimidation of the Patronato) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

g. **C-142** (11 February 2022) (Criminal complaint filed by Inter-Mac's [redacted], with the Honduran Criminal Investigation Department to denounce the acts of threat and intimidation of the Patronato against employees of Inter-Mac) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

h. **C-144** (10 February 2022) (Criminal complaint filed by Inter-Mac's [redacted], with the Honduran Criminal Investigation Department to denounce the usurpation being carried out in a house of the Housing Project) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Honduran Criminal Investigation Department).

i. **C-143** (22 March 2022) (Witness statement submitted by Inter-Mac's [redacted] before the Honduran National Police in the context of criminal complaint No. 106-2022) (evidencing that a Honduran judge failed to carry out the required eviction order after being intimidated by members of the Patronato).

j. **C-145** (11 February 2022) (Criminal complaint and its attachments filed by [redacted] on behalf of Inter-Mac before the special prosecutor's office for organized crime, known as the "Fiscalía Especial Contra el Crimen Organizado" against the members of the Patronato) (evidencing that Inter-Mac employees filed criminal complaints against members of the Patronato with the Fiscalía Especial Contra el Crimen Organizado).

247. Further, and similar to *Energía y Renovación v. Guatemala*, in this case, Honduras not only welcomed the Arguellos' Investment, but actively promoted it by referring to the Housing Project as a "model to replicate in other areas of Honduras." The Investment, however, was ultimately harmed by acts of violence perpetrated by the Patronato, who sought to cloak their conduct under the guise of "peaceful protests." Honduran authorities, regrettably, failed in their duty to provide effective protection and security to the Project. While the State

was not entirely inactive—intermittently deploying police or judicial authorities to the Project site—such measures proved wholly insufficient, lacking both the consistency and efficacy necessary to safeguard Claimants' Investment. The State's inaction, or at best its ineffectual response, amounted to a breach of its full protection and security obligations, leaving the Housing Project vulnerable to continued disruption and harm, and ultimately resulting in the erosion of Claimants' Investment.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-15** (23 February 2015) (Communication SECM No. 111-2015 from the Honduran Secretary of State to the United States Ambassador in Honduras) (evidencing that Honduras provided assurances to the United States that it would honor its commitments related to the Project).

c. **C-191** (First Declaration of Mr. Claudio Antonio Discua, at ¶¶ 24-51, 56-60).

d. **CL-67** (*Energía y Renovación Holding, S.A. c. República de Guatemala*, ICSID Case No ARB/21/56, Laudo, 31 marzo 2025, ¶ 480: "*[E]l Tribunal reconoce que el principio de reparación integral impone la concesión de intereses previo al laudo como forma de compensar el capital inmovilizado por ocasión de la violación del Tratado.*").

e. **C-188** (Various dates) (Multiple Photographs of the Project featured in President Hernández's presentations and posts on social media) (evidencing that the Housing Project "Los Castaños de Choloma" was the poster child of the State's social housing programs).

f. **C-190** (First Declaration of Ernesto Arguello, at ¶ 56).

248. As a result of the State's repeated inaction, the Patronato continues to intimidate, extort and threaten the residents of "Los Castaños de Choloma" with absolute impunity and no accountability, resulting in the Project's deterioration and current disastrous state. As detailed by Hola Realty's General Manager, Claudio Antonio Discua, in his Witness Statement:

> 56. Desafortunadamente, **desde que el Patronato asumió el control de "Los Castaños de Choloma," el deterioro del Proyecto ha sido significativo** debido a que no se ha dado mantenimiento a las casas y a las áreas comunes. En efecto, hoy en día puede verse (i) casas en ruinas, con ventanas y puertas rotas; (ii) infraestructura cayéndose a pedazos; (iii) tuberías de agua brotando de la tierra; y (iv) montañas de basura acumuladas en las calles, entre otras muchas afectaciones. **Es desolador ver que una comunidad que una vez fue tan bonita y moderna hoy es prácticamente un botadero de basura**.

57. Adicionalmente, luego de que el Patronato se apoderó del área, **los empleados de Inter-Mac y de Hola Realty lamentablemente no han podido volver al Proyecto por temor** a lo que el Patronato pueda hacer en su contra. Éste es el caso, por ejemplo, de Suita Galdamez, quien fue amenazada en varias oportunidades por el Patronato.

58. **Lo mismo ocurre con los Arguello**. Desde que llegó el Patronato ellos no han podido volver a visitar la zona porque **el ambiente que se vive en "Los Castaños de Choloma" es muy hostil y, tras las amenazas del Patronato, su integridad personal corre peligro**. (emphasis added).

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 117-121).

c. **C-191** (First Declaration of Claudio Antonio Discua, at ¶ 56-58).

249. The State's inaction has been of such magnitude that Claimants have lost all control of their Investment and, to date, cannot even access the Project or enforce their rights over the Project. This conduct, in short, violates Honduras' full protection and security obligation under Article 10.5 of the Treaty.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 117-118).

C. Honduras Illegally Expropriated Claimants' Investment

1. The Treaty Protects Investors Against Expropriation

250. Article 10.7 of the Treaty expressly prohibits DR-CAFTA Parties from directly or indirectly expropriating an investor's investment or taking "measures equivalent to expropriation or nationalization" unless certain conditions are met:

> 1. No Party may expropriate or nationalize a covered investment **either directly or indirectly through measures equivalent to expropriation or nationalization** ("expropriation"), **except**:
>
> a. for a public purpose;
>
> b. in a non-discriminatory manner;

c. on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and

d. in accordance with due process of law and Article 10.5.

2. Compensation shall:

a. be paid without delay;

b. be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

c. not reflect any change in value occurring because the intended expropriation had become known earlier; and

d. be fully realizable and freely transferable. (emphasis added).

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.7).

251. Where an expropriation takes place and these stated conditions are not met, the expropriating party is deemed to have committed an unlawful expropriation in violation of Article 10.7 of the Treaty.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.7).

252. Article 10.7 of the Treaty expressly refers to indirect expropriation "through measures equivalent to expropriation or nationalization." In line with arbitral practice, Annex 10-C of the Treaty specifies that indirect expropriation occurs where an action or a series of actions by a CAFTA-DR Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Annex 10-C(4): "The second situation addressed by Article 10.7.1 is indirect expropriation, where an action **or series of actions by a Party** has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.") (emphasis added).

b. **CL-28** (*Metalclad Corp. v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 103: "[E]xpropriation […] includes not only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favor of the host State, **but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be expected economic benefit of property even if not necessarily to the obvious benefit of the host State**.") (emphasis added).

c. **CL-29** (*Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, 21 November 2007, ¶ 240: "An expropriation occurs if the interference is substantial and deprives the investor of all or most of the benefits of the investment. There is a broad consensus in academic writings that the intensity and duration of the economic deprivation is the crucial factor in identifying an indirect expropriation or equivalent measure.").

d. **CL-30** (*Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002, ¶ 107: finding that an indirect expropriation results when "measures are taken by a State the effect of which is to deprive the investor of the use and benefit of his investment even though he may retain nominal ownership of the respective rights being the investment.").

253. Investment tribunals have found indirect expropriations where the State's conduct has the effect of substantially and permanently depriving an investor of the value of its investment. This is the case in respect of shareholding interests where the shares and the rights deriving therefrom have lost all significant commercial value, or where the State's conduct effectively freezes or destroys the owner's ability to reasonably exploit the economic potential of his shares. For example, in *Westwater Resources v. Turkey*, the tribunal found that the State's cancellation of a local subsidiary's uranium licenses constituted an indirect expropriation of the claimant's shares in a local subsidiary, which had lost all their value.

Proofs:

a. **CL-31** (*Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3, Final Award, 6 October 2023, ¶ 343: "[T]he Tribunal generally agrees with Respondent that if no formal transfer of property has taken place, there cannot be a direct expropriation. At the same time, the Tribunal also generally agrees with Claimant that this does not prevent it from assessing whether Respondent's actions could amount to indirect expropriation. In this regard**, the Tribunal understands that an expropriation could also result from a behavior which substantially and permanently deprives an investor of the value of its investment.**[…].") (emphasis added).

b. **CL-32** (*Enkev Beheer B.V. v. Republic of Poland*, PCA Case No. 2013-01, First Partial Award, 29 April 2014, ¶¶ 339-341: "[T]here can be little doubt that, as of now, **the commercial value of the Claimants' rights in its shareholding in Enkev Polska has been adversely affected, albeit not destroyed, by the predicament facing Enkev Polska**. The question therefore arises whether such diminution in value amounts in this case to an indirect deprivation of the Claimant's investment within the meaning of Article 5 of the Treaty. […] **[T]he Claimant must prove, on the facts of this case, that its investment in the form of shares in Enkev Polska and rights deriving from such shares has lost all or almost all significant commercial value**.") (emphasis added).

c. **CL-33** (*Latin American Regional Aviation Holding S. de R.L. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/19/16, Award, 13 February 2024, ¶¶ 998-999: "*[U]na serie de medidas ilícitas puede tener el efecto de expropiar una inversión realizada en una compañía aunque las mismas no hayan privado al inversionista de su control jurídico sobre las acciones. En el presente caso, el efecto expropiatorio de las medidas consiste en* ***el hecho de que han llegado a paralizar la compañía, poniéndola en una situación de imposibilidad de continuar con sus actividades y privando así la inversión de todo su valor***. *La situación en la cual las medidas habían puesto a la compañía fue la causa de que la Demandante tuviera que ceder sus acciones a Uruguay sin compensación. Como indica el tribunal del caso Compañía del Desarrollo de Santa Elena c. Costa Rica citado por la Demandada, una medida es expropiatoria si* **'effectively freezes or blights the possibility for the owner reasonably to exploit the economic potential of the property'**. *Este es exactamente la situación a la cual se enfrentó el inversionista como consecuencia de las medidas en disputa, las cuales equivalen por lo tanto a una privación sustancial del derecho de propiedad de la inversión*.") (emphasis added).

d. **CL-34** (*UP (formerly Le Chèque Déjeuner) and C.D. Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, ¶ 305: "**Even if shares remain legally held by a claimant, if a State's measures result in the loss of the shares' economic value, this may be considered an indirect expropriation**. This is confirmed by a wide body of jurisprudence such as the awards in RosInvest, Burlington Resources, and others. The Metalclad tribunal defined indirect expropriation as an interference which has the effect of depriving the owner 'of the use or reasonably-to-be-expected economic benefit of property […]' It has further been established that such a loss of value must be substantial and sufficiently permanent, though a substantial deprivation alone will suffice.") (emphasis added).

e. **CL-35** (*Westwater Resources, Inc. v. Republic of Turkey*, ICSID Case No. ARB/18/46, Award, 3 March 2023, ¶ 253: "[T]he cancellation of Adur's licenses constitutes an indirect expropriation of Westwater's investment, being its shares in

Adur, which have lost all their value. The taking of the license deprived Adur and its uranium project of any value and as a consequence deprived Westwater's share of their value. In terms of compensation, the result is the same").

254. Additionally, an expropriation need not be for the direct benefit of the State. There may be an expropriation even though there is no obvious benefit to the State concerned.

Proofs:

a. **CL-36** (*Alpha Projektholding GmbH v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010, ¶ 408).

b. **CL-28** (*Metalclad Corp v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 103).

c. **CL-12** (*Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶ 113).

d. **CL-37** (*Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶ 707).

255. A State's expropriation is said to be a "creeping expropriation" when it takes place incrementally through a series of damaging acts or omissions, which may or may not constitute unlawful acts independently, but which, cumulatively, are expropriatory in their nature and effect.

Proofs:

a. **CL-38** (*Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, 17 January 2007, ¶ 263: "By definition, creeping expropriation refers to a process, to steps that eventually have the effect of an expropriation. If the process stops before it reaches that point, then expropriation would not occur. This does not necessarily mean that no adverse effects would have occurred. Obviously, each step must have an adverse effect but by itself may not be significant or considered an illegal act. **The last step in a creeping expropriation that tilts the balance is similar to the straw that breaks the camel's back**. The preceding straws may not have had a perceptible effect but are part of the process that led to the break.") (emphasis added).

b. **CL-39** (*Compañía del Desarrollo de Santa Elena, S.A. v. The Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, 17 February 2000, ¶ 76: "[T]he period of time involved in the process may vary – from an immediate and comprehensive taking **to one that only gradually and by small steps reaches a condition in which it can be said that the owner has truly lost all the attributes of ownership**. It is clear, however, that a measure or series of measures can still eventually amount to a taking, though the individual steps in

the process do not formally purport to amount to a taking or to a transfer of title.") (emphasis added).

256. Notably, a creeping expropriation can take place as a result of a State's omissions. As the *Toto Costruzioni v. Lebanon* tribunal held, a State's "**substantive failure to take reasonable precautionary and preventive action** is sufficient to engage the international responsibility of [that] state for damage to public and private property in that area." (emphasis added).

Proofs:

a. **CL-40** (*Toto Costruzioni Generali S.p.A. v. Lebanese Republic*, ICSID Case No. ARB/07/12, Award, 7 June 2012, ¶ 150).

b. **CL-41** (*Fireman's Fund Insurance Company v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, 17 July 2006, n. 155: "A failure to act [an "omission"] by a host State may also constitute a State measure tantamount to expropriation under particular circumstances. . .").

c. **CL-42** (International Law Commission, Commentaries to the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, Article 2 : "There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.").

2. Honduras Expropriated Claimants' Investment

257. Here, after multiple broken promises and little by little, Honduras' acts and omissions culminated in an indirect expropriation of Claimants' Investment. Honduras' acts leading to the creeping expropriation of Claimants' Investment include the following: (i) Honduras' failure to issue subsidies to over 50% of the residents of the Project; (ii) Honduras' failure to provide ***any*** of the State-sponsored long-term, lempira-denominated mortgages it had agreed to provide; (iii) Honduras' failure to pay ***any*** of the upfront subsidies it had promised to pay to Inter-Mac under the AFD Program; (iv) Honduras' failure to prevent the Patronato's intimidation, threats and acts of violence and extortion against the residents of the Housing Project, Claimants and their Investment, which culminated in the residents stopping their rental payments to Inter-Mac and the Patronato taking *de facto* control over "Los Castaños de Choloma" and denying Claimants, Inter-Mac, Hola Realty and most of their employees access thereto. Honduras' creeping expropriation culminated with the 2022 Resolution, which excluded, with immediate effect, ***any*** Project home from the possibility of receiving long-term mortgages through BANHPROVI.

Proofs:

a. *See* Claimants' Statement of Claim, Sections III.

b. **C-128** (4 October 2022) (Resolution adopted during

BANHPROVI's ordinary session No. CD-39-2002) (incomplete, pages 4 to 7 only)) (evidencing that the State excluded financing for residents purchasing used homes under the State's social housing programs and disregarded the applications submitted by Inter-Mac on behalf of residents of "Los Castaños de Choloma").

c. **C-129** (28 October 2022) (Redacted exchange of WhatsApp messages between Juan Carlos Arguello and an employee from BANHPROVI regarding the issuance of long-term mortgages to the residents of the Housing Project) (evidencing that BANHPROVI had purposefully excluded the purchase of used homes from the scope of the State-sponsored long-term mortgages to avoid issuing any mortgages to the residents of the Housing Project).

d. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 57-59).

e. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 105, 111).

258. As a result of Honduras' conduct, Claimants' have been deprived of their Investment. *First*, Claimants have been deprived of both the use and enjoyment of their Investment, as they can no longer access the Housing Project and only a few residents are currently paying rent. *Second*, Claimants have been deprived of the ability to sell the homes of the Housing Project to their residents because the State failed to provide long-term mortgages. *Third and finally*, Claimants lost the opportunity to access further installments from the US $70 million revolving facility of the OPIC Loan, which prevented them from developing similar housing projects in other countries within the DR-CAFTA region.

Proofs:

a. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 111, 117).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶ 55).

c. **C-192** (Damages Expert Report of Secretariat Advisors), at ¶¶ 1.7, 2.12-2.26).

3. Honduras' Expropriation of Claimants' Investment was Unlawful

259. As established above, the State expropriated Claimants' Investment, thus depriving the Arguellos of the use and benefit of their Investment. In so doing, the State also failed to fulfil the criteria in the Treaty that would otherwise render its expropriation lawful under international law. In this respect, the Treaty prohibits expropriations unless they are carried out (i) "for a public purpose"; (ii) "in a non-discriminatory manner"; (iii) "on payment of prompt, adequate, and effective compensation"; and (iv) "in accordance of due process of law" and in a manner consistent with the "minimum standard of treatment" prescribed in Article 10.5 of the Treaty. These requirements are cumulative. As such, Honduras' breach of **any** of these requirements renders its expropriation unlawful under the Treaty and international law. Here,

the State did not even attempt to comply with the requirements for a lawful expropriation. In all respects, Honduras' expropriation was blatantly unlawful.

Proofs:

a. *See* Claimants' Statement of Claim, Sections III.

b. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.7: "No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except: a. for a public purpose; b. in a non-discriminatory manner; c. on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and d. in accordance with due process of law and Article 10.5.").

260. ***First***, Honduras' expropriation of Claimants' Investment was not grounded on any public purpose. As part of its efforts to refuse to issue mortgages to the residents of the Project, BANHPROVI alleged (among other excuses) that the Project homes were ineligible for financing because they were supposedly "used" homes and because the residents of the Project had already incurred pre-existing debt that made them ineligible for State-sponsored funding. As discussed above, this is false, which evidences that the State's allegations were and remain arbitrary. As a BANHPROVI employee explained to Juan Carlos at the time, the 2022 Resolution was politically motivated and adopted to purposefully exclude the residents of the Project from the scope of the State's Social Housing Programs: "***cambiaron la ley para no dar préstamo para ustedes***."

Proofs:

a. *See* Claimants' Statement of Claim, Sections III and V.

b. **C-126** (Undated) (WhatsApp message from Juan Carlos Arguello to [redacted] (BANHPROVI)) (seeking to clarify with BANHPROVI's [redacted], that Inter-Mac had no connection with other companies under investigation for alleged money laundering).

c. **C-127** (26 July 2022) (Email from Juan Carlos Arguello to BANHPROVI employee) (explaining that residents of the Housing Project had not incurred pre-existing debt with IFIs or local banks, but were merely paying rents under the Lease-Purchase Contracts they had concluded with Inter-Mac, and were therefore eligible to receive BANHPROVI's long-term mortgages).

d. **C-129** (28 October 2022) (Redacted exchange of WhatsApp messages between Juan Carlos Arguello and an employee from BANHPROVI regarding the issuance of long-term mortgages to the residents of the Housing Project) (evidencing that BANHPROVI had purposefully excluded the purchase of used homes from the scope of the State-sponsored long-term

mortgages to avoid issuing any mortgages to the residents of the Housing Project).

e. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 101-111).

261. ***Second***, Honduras' expropriation was not carried out "in a non-discriminatory manner," but rather specifically targeted the Arguellos as United States nationals and their Investment. Indeed, while the 2022 Resolution included an exemption for applications under review ("*casos en procesos de documentación*"), **not a single resident** of "Los Castaños de Choloma" was included among the outstanding applications that BANHPROVI agreed to consider. Moreover, the State failed to issue ***any*** of the promised subsidies to Inter-Mac under the AFD Program, while issuing subsidies under that very program to other Honduran and foreign developers.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-104** (20 November 2017) (Letter from CONVIVIENDA to S. Galdamez (Inter-Mac)) (evidencing that a list of 14 other social housing projects had received subsidies under the AFD Program).

c. **C-125** (July-October 2022) **(**Exchange of WhatsApp messages between Juan Carlos Arguello and [redacted] (BANHPROVI)) (evidencing that BANHPROVI was analyzing the files shared by Claimants on behalf of the residents of the Housing Project).

d. **C-128** (4 October 2022) (Resolution adopted during BANHPROVI's ordinary session No. CD-39-2002) (incomplete, pages 4 to 7 only)) (evidencing that the State excluded financing for residents purchasing used homes under the State's social housing programs and disregarded the applications submitted by Inter-Mac on behalf of residents of "Los Castaños de Choloma").

262. ***Third***, Claimants have not received ***any*** compensation following Honduras' expropriation of their Investment. As a result of Honduras' conduct, Claimants are no longer able to run, develop further, or even access the Project, even though tens of millions of dollars were invested in the construction, maintenance, operation, and administration of the Project. Further, despite still possessing title to the Choloma land over which the Project was developed, Claimants have no means of accessing the Project homes or enjoying the benefits of their Investment. In fact, due to the State's multiple breaches, including its failure to execute eviction orders, hundreds of individuals have usurped the homes within the Project, while refusing to pay rent for many years. The State, however, has failed to pay any compensation to Claimants, much less "prompt, adequate and effective compensation." For this reason alone, Honduras' expropriation is illegal under the Treaty and international law.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.7).

263. ***Fourth and finally***, in expropriating the Investment, the State failed to afford Claimants due process. Notably, Claimants were denied due process when BANHPROVI unilaterally adopted the 2022 Resolution under dubious circumstances, excluding, with immediate effect, "used" homes from the scope of BANHPROVI's financing as a first-tier bank and disregarding any applications that had been submitted on behalf of the residents of the Project. Neither Claimants, nor Inter-Mac or Hola Realty, nor their employees were afforded the opportunity to be heard or to challenge the 2022 Resolution. Honduras' failure to afford Claimants due process further confirms the unlawfulness of Honduras' expropriation in violation of Article 10.7 of the Treaty.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.7).

c. **CL-43** *(ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary,* ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 435: "Some basic legal mechanisms, such as reasonable advance notice, a fair hearing and an unbiased and impartial adjudicator to assess the actions in dispute, are expected to be readily available and accessible to the investor to make such legal procedure meaningful.").

D. Honduras Discriminated Against Claimants and Their Investment in Breach of Articles 10.3 and 10.4 of the Treaty

1. The National Treatment and Most-Favored-Nation Treatment Standards

264. Article 10.3 of the Treaty provides that each Party shall accord to investors of another Party and covered investments "**treatment no less favorable than that it accords, in like circumstances, to its own investors [and their investments]** with respect to the

establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments" ("**National Treatment**") (emphasis added).

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.3).

265. Additionally, Article 10.4 of the Treaty titled "Most-Favored-Nation Treatment" provides that each Party shall accord to investors of another Party and covered investments "**treatment no less favorable than that it accords, in like circumstances**" to investors of any other Party or of any non-Party or their investments "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments" ("**MFN Treatment**") (emphasis added).

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.4).

266. Article 1.2 of the Treaty expressly refers to National Treatment and MFN Treatment as examples of "the principles and rules" that contribute to elaborating the objectives of the Treaty. As discussed below, Honduras breached these two standards of protection by granting more favorable treatment to social housing projects developed by other Honduran and foreign companies prejudicing the Arguellos' rights.

Proofs:

a. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 1.2).

b. *See* Claimants' Statement of Claim, Section V.

267. Investment tribunals tasked with adjudicating claims under the similarly worded national treatment and most-favored nation treatment protections in Articles 1102 and 1103 of NAFTA have often applied a three-step analysis to assess potential violations of these standards. This analysis involves: (i) identifying the relevant subjects for comparison; (ii) considering the treatment received by each comparator; and (iii) examining any factors that may justify any differences in treatment.

Proofs:

a. **CL-29** (*Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, 21 November 2007, ¶196).

b. **CL-44** (*United Parcel Service of America, Inc. (UPS) v. Government of Canada*, UNCITRAL, Award on the Merits,

24 May 2007, ¶83).

268. ***First***, the relevant subjects for comparison must be, according to the terms of Articles 10.3 and 10.4 of the Treaty, in "like circumstances" to the investment or investor to which those subjects are being compared. As the *S.D. Meyers* tribunal found, "the interpretation of 'like' must depend on all circumstances of each case," and:

> The concept of 'like circumstances' invites an examination of whether a non-national investor complaining of less favourable treatment is in **the same 'sector'** as the national investor. The [t]ribunal takes the view that **the word 'sector' has a wide connotation** that includes the concepts of 'economic sector' and 'business sector.' (emphasis added).

Proofs:

a. **CL-45** (*S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award on the Merits, 13 November 2000, ¶ 250 (quoted above)).

b. **CL-7** (*Cargill v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009, ¶ 228: "[T]he requirement for MFN treatment tracks that of the national treatment requirement. Accordingly, **it must be demonstrated first that the Claimant, as an investor, is in 'like circumstances' with the investor of another Party or of a non-Party**, **or that the Claimant's investment is in 'like circumstances' with the investment of an investor of another Party or of a non-Party** […].") (emphasis added).

c. **CL-46** (*Mercer International Inc. v. Government of Canada*, ICSID Case No. ARB(AF)/12/3, Award, 6 March 2018, ¶ 7.10: "**[T]he requirements for establishing a violation of NAFTA Article 1103 are the same as establishing a violation of NAFTA Article 1102**, except that the applicable comparator, in like circumstances, is a foreign (non-Canadian) investor or investment.") (emphasis added).

269. ***Second***, the tribunal must determine whether the investor or investment in like circumstances has suffered treatment "less favorable" than treatment of a local or other foreign investor or investment. The tribunal in *Archer Daniels Midland v. Mexico* explained:

> Article 1102 prohibits treatment which discriminates on the basis of the foreign investor's nationality. Nationality discrimination is established by showing that a foreign investor has unreasonably been treated less favorably than domestic investors in like circumstances. Accordingly, Claimants and their investment are entitled to the best level of treatment available to any other domestic investor or investment operating in like circumstances.

Proofs:

a. **CL-29** (*Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, 21 November 2007, ¶ 205).

270. The *Merrill & Ring* tribunal clarified that the scope of "treatment" "is very broad, as it "includes **almost any conceivable measure that can be with respect to the beginning, development, management and end of an investor's business activity**." (emphasis added). In *S.D. Meyers*, the tribunal determined that "treatment" violative of NAFTA's national treatment standard must have a practical impact on the investment; merely demonstrating motive or intent behind a measure is insufficient.

Proofs:

a. **CL-45** (*S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award on the Merits, 13 November 2000, ¶ 254).

b. **CL-47** (*Merrill & Ring Forestry L.P. v. The Government of Canada*, ICSID Case No. UNCT/07/1, Award, 31 March 2010, ¶ 79: finding that the scope of national treatment "includes almost any conceivable measure that can be with respect to the beginning, development, management and end of an investor's business activity.").

c. **CL-48** (*Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, 16 December 2002, ¶ 181: "Article 1102. . . by its terms suggests that it is sufficient to show less favorable treatment for the foreign investor than for domestic investors in like circumstances.").

d. **CL-49** (*Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility, 15 January 2008, ¶ 115: "[T]he parties in the present case agreed that Article 1102 embraces de facto as well as de jure discrimination. The Tribunal agrees").

271. ***Third and finally***, a tribunal must consider whether there are any factors justifying different treatment between the investor or investment and domestic/foreign investors or investments. As the tribunal in *Feldman* found, once "the [c]laimant has made a *prima facie* case for differential and less favorable treatment," the host state can attempt to address how, objectively, the conduct was not a denial of equal competitive opportunities. Accordingly, once a claimant proves its *prima facie* case of discrimination, the burden shifts to the respondent to "introduce credible evidence into the record to rebut that presumption."

Proofs:

a. **CL-48** (*Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, 16 December 2002, ¶ 177).

272. In *S.D. Meyers*, for example, the claimant had established an investment in Canada to collect and send a particular type of waste ("**PCBs**") to its treatment facility in the United States of America. Canada then issued an order prohibiting exports of that type of waste at least partially because Canada was "concerned to ensure the economic strength of the Canadian industry [and] wanted to maintain the ability to process PCBs within Canada in the future." The tribunal determined that Canada's goal in imposing this measure was legitimate, but that the way in which the measure was imposed—an outright effective cancellation of the investor's investment—was illegitimate and discriminatory. Thus, even where the State's goals were legitimate, a State's differential treatment violates a national treatment mandate when the treatment is illegitimate.

Proofs:

a. **CL-45** (*S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award on the Merits, 13 November 2000, ¶¶ 255-256).

2. Honduras' Discriminatory Treatment of Claimants' Investment Breached the National Treatment and MFN Treatment Standards

273. In this case, the State acted discriminatorily against Claimants and their Investment in breach of its obligations under the Treaty. The discriminatory nature of the State's conduct towards Claimants and their Investment is particularly noticeable in the State's refusal to issue a ***single*** mortgage to the residents of the Project. Notably, in the 2022 Resolution, the State chose to issue mortgages to some residents of "used" homes belonging to other projects—excluding, arbitrarily and with immediate effect, homes from the Housing Project.

Proofs:

a. **C-128** (4 October 2022) (Resolution adopted during BANHPROVI's ordinary session No. CD-39-2002 (incomplete, pages 4 to 7 only)) (evidencing that the State excluded financing for residents purchasing used homes under the State's social housing programs and disregarded the applications submitted by Inter-Mac on behalf of residents of "Los Castaños de Choloma").

274. The State also acted discriminatorily by failing to issue ***any*** subsidy to Inter-Mac under the AFD Program, despite having explicitly assured the Arguellos that Inter-Mac "ha[d] complied with all the requirements established" in the AFD Program regulations and after promising to issue subsidies to Inter-Mac of up to L 180 million (approx. US $7.6 million). Honduras' conduct was particularly egregious given that the State issued subsidies under the AFD Program to other Honduran and foreign companies. For example, in 2017 alone, 14 projects owned by both Honduran and foreign developers received a total of approximately L 528 million (approximately USD $22.3 million) in subsidies to fund the construction of +5,000 houses. By that time, Claimants had already submitted (since early 2016) all the necessary documentation to receive subsidies under the AFD Program, yet CONVIVIENDA ***did not issue a single subsidy to Inter-Mac*** under that program.

Proofs:

a. **C-12** (14 February 2017) (Communication UT-H2020-012-2017 from the Secretary of State to the President of CONVIVIENDA) (evidencing the State acknowledged the existence of the 2010 Memorandum of Understanding and its commitment to honor its obligations under it).

b. **C-16** (30 March 2017) (Communication No. 295-2017 from CONVIVIENDA to Inter-Mac) (confirming that "*A la fecha* ***INTER-MAC HONDURAS, S. de R.L. ha cumplido con todos los requisitos*** *establecidos en el reglamento Operativo del Programa (ROP) y el Manual del Programa de Apoyo Financiero al Desarrollador (AFD)*") (emphasis added).

c. **C-18** (31 May 2017) (Communication CONVIVIENDA-Oficio No. 471-2017 from CONVIVIENDA to Inter-Mac) (in which Honduras informs Inter-Mac of the issuance of the "Certificado de Precalificación Técnica" for Phase II of the Project).

d. **C-104** (20 November 2017) (Letter from CONVIVIENDA to S. Galdamez (Inter-Mac)) (evidencing that a list of 14 other social housing projects had received subsidies under the AFD Program).

e. **C-105** (10 October 2023) (Article from El Heraldo, "Grupo Williams asegura que no hay fraude con bonos habitacionales," also available at: https://www.elheraldo.hn/elheraldoplus/investigaciones/grupo-williams-asegura-que-no-hay-fraude-con-bonos-habitacionales-KD15701083) (evidencing that the State issued subsidies in the amount of L 138.6 million to the Honduran developer known as "Grupo W" or "Grupo William" under the AFD Program).

f. **C-147** (Undated) (last accessed on 24 February 2025) (Facebook group for the "Residencial Los Tulipanes, Villanueva," also available at: https://www.facebook.com/residenciallostulipanes/?locale=es_LA) (evidencing that this housing project is developed by the Honduran construction and development company, known as "Grupo W" or "Grupo Williams").

g. **C-148** (Undated) (last accessed on 24 February 2025) (Facebook group for the "Del Campo Residencial, Choloma," also available at: https://www.facebook.com/residencialcasasdelcampocholoma) (evidencing that this housing project is developed by the Honduran construction and development company, known as "Grupo W" or "Grupo Williams").

h. **C-149** (Undated) (last accessed on 24 February 2025) (Facebook group for the "Honduras Pacific Residencial, Choluteca," also available at: https://www.facebook.com/HondurasPacificResidencial)

(evidencing that this housing project is developed by the Honduran construction and development company, known as "Grupo W" or "Grupo Williams").

i. **C-150** (Undated) (last accessed on 24 February 2025) (Facebook group for the "Residencial Villa Bertilia, Choluteca," also available at: https://www.facebook.com/residencialvillabertilia) (evidencing that this housing project is developed by the Honduran construction and development company, known as "Grupo W" or "Grupo Williams").

j. **C-151** (Undated) (last accessed on 24 February 2025) (Facebook group for the "Residencial María Mercedes," also available at: https://www.facebook.com/p/Residencial-Mar%C3%ADa-Mercedes-100057515646325/) (evidencing that this housing project is developed by the Costa Rican construction and development company, known as "INMARC").

k. **C-152** (9 September 2019) (Article from El Heraldo, "Honduras: Destinan 3 mil millones de lempiras en bonos para vivienda," also available at: https://www.elheraldo.hn/honduras/honduras-destinan-3-mil-millones-de-lempiras-en-bonos-para-vivienda-HXEH1317220#image-1) (evidencing that CONVIVIENDA issued a report confirming that the State issued subsidies totaling L 622.3 million under the AFD Program although only 2,973 houses were completed).

275. In light of the above, the Arguellos, as United States investors, received treatment less favorable than that afforded to Honduran and foreign developers in like circumstances. Thus, Honduras breached the National Treatment and MFN Treatment standards included in Articles 10.3 and 10.4 of the Treaty.[2]

Proofs:

a. *See supra*.

3. Claimants Benefit From More Favorable Treatment Afforded to Other Foreign Investors

276. Claimants are also entitled to use the MFN Treatment clause in the Treaty to benefit from wider protections afforded by other investment protection treaties ratified by Honduras. There is ample arbitral case law and commentators showing that MFN Treatment provisions can be used by claimant investors to "import" substantive rights from other investment treaties, including more favorable FET standards and umbrella clauses not otherwise present in the treaty in dispute.

[2] Claimants reserve the right to further develop their claim that Honduras breached the National Treatment and MFN Treatment standards included in Articles 10.3 and 10.4 of the Treaty as additional evidence becomes available during the arbitration proceedings.

Proofs:

a. **CL-23** (R. Dolzer, U. Kriebaum and C. Schreuer, Principles of International Investment Law, Third Edition, Oxford University Press, January 2022, p. 269: "Although the application of MFN clauses to dispute settlement is highly controversial, it is widely accepted that investors may rely on MFN clauses to claim a better substantive treatment accorded by a host State to investors of third States. **There is ample practice to demonstrate that tribunals have allowed the importation, by operation of an MFN clause, of substantive standards of protection not contained in the basic treaty**") (emphasis added).

b. **CL-75** (*Arif v. Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013, ¶ 396: "Therefore, **the Tribunal finds that the MFN clause of the BIT can import an "umbrella" clause** (which is substantive in nature), from either the Moldova-UK or Moldova-USA BIT, thereby extending the more favourable standard of protection granted by the "umbrella" clause in either one of these BIT's into the BIT at hand. Respondent's arguments to the contrary are rejected. The Tribunal therefore has jurisdiction over Claimant's "specific commitments" claim via the MFN clause of Article 4") (emphasis added).

c. **CL-76** (*OAO Tatneft v. Ukraine*, PCA Case No. 2008-8, Award, 29 July 2014, ¶ 426: "Another aspect which the Tribunal must note in the context of this discussion is that the issue of failure to guarantee the legal protection envisaged might equally bring in a close relationship with fair and equitable treatment. Article 2(2) of the Ukraine-UK BIT, **also applicable in this case by virtue of the operation of the most favoured nation clause under Article 3. 1. of the Ukraine-Russia BIT (MFN)** appears to have this link in mind when guaranteeing both "fair and equitable treatment" and "full protection and security") (emphasis added).

277. Honduras granted more favorable treatment to other foreign investors under separate investment agreements. For example, Article 2 of the Honduras-UK BIT, titled "Promotion and Protection of Investment," provides that:

> (2) Investments of nationals or companies of each Contracting Party shall **at all times be accorded fair and equitable treatment** and shall **enjoy full protection and security** in the territory of the other Contracting Party. **Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments** in its territory of nationals or companies of the other Contracting Party. Each Contracting Party **shall observe any obligation it may have entered into with regard to investments** of nationals or companies of the other Contracting Party. (emphases added).

Proofs:

a. **CL-77** (1993) (Honduras-UK BIT, Article 2).

b. **CL-78** (2001) (Honduras-Netherlands BIT, Article 3).

278. If the Tribunal were to consider that the FET and full protection and security standards of protection are restricted by the confines of the MST under international law (which we deny), the Tribunal should still apply Article 2.2 of the Honduras-UK BIT through which Honduras has granted unrestricted FET and full protection and security standards of protection to UK investors, including specific treaty protections against arbitrary conduct. Through the operation of the MFN Treatment clause in the Treaty, Honduras is bound to afford treatment to Claimants that is not less favorable than that afforded to UK investors, with respect to their Investment in Honduras.

Proofs:

a. *See* Claimants' Statement of Claim, Section V.

b. **CL-77** (1993) (Honduras-UK BIT, Article 2).

279. In addition, Honduras committed to observe ***any obligation*** entered into with respect to UK investors through the operation of an umbrella clause contained in the same Article 2.2 of the Honduras-UK BIT ("**Umbrella Clause**"). Umbrella clauses are treaty clauses designed to afford "extra protection" to contractual and other commitments of a state by bringing them under the "umbrella" of an investment treaty. As a consequence, through the operation of the MFN Treatment clause in the Treaty, Honduras is bound to observe any obligation it entered into with respect to Claimants that relates to their Investment.

Proofs:

a. **CL-79** (*Garanti Koza v. Turkmenistan*, ICSID Case No. ARB/11/20, Award, 19 December 2016, ¶ 328: "Article 2(2) of the BIT requires each Contracting Party to 'observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.' **Such treaty provisions are commonly referred to as "umbrella clauses," because they bring contractual and other commitments under the protective umbrella of a bi-lateral investment treaty**") (emphasis added).

b. **CL-80** (*LG&E v. Argentina*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006), ¶¶ 169-170: "Article II(2)(c) of the Treaty provides that '[e]ach party shall observe any obligation it may have entered into with regard to investments.' Such clause, referred to as an "umbrella clause," is a general provision included in a fairly large number of bilateral treaties that **creates a requirement for the host State to meet its obligations towards foreign investors, including those that derive from a contract. Hence such obligations receive extra protection by virtue of their consideration under the bilateral treaty**") (emphasis added).

c. **CL-77** (1993) (Honduras-UK BIT).

280. As described below, several commitments made to the Arguellos with respect to their Investment were breached by Honduras, including, but not limited to, the following:

- Honduras breached the 2010 Memorandum of Understanding by failing to issue subsidies and mortgages to low-income residents.

- Honduras, through CONVIVIENDA, breached the 2015 Cooperation Agreement by failing to provide subsidies to the residents of the Project.

- Honduras breached the commitments made by the Secretary of State on 23 February 2015 by failing to issue subsidies and mortgages to the residents of the Project.

- Honduras breached the commitments made by CONVIVIENDA on 10 July 2015 by failing to issue subsidies to any family that Inter-Mac would propose and that would comply with the applicable rules under the ABA Program.

- Honduras breached the commitments made by CONVIVIENDA on 31 May 2017 by failing to provide Inter-Mac with an upfront subsidy in the amount of up to L 180 million (approx. US $7.6 million) as part of the AFD Program to fund the construction of Phase II of the Housing Project.

- Honduras breached the commitments made by BANHPROVI in the 2015 and the 2018 Intermediation Agreements by failing to provide subsidies and mortgages to the residents of the Project under the Social Housing Programs.

Proofs:

a. **C-13** (23 January 2015) (Convenio de Concertación y Cooperación para la Masificación de Proyectos de Vivienda Social between CONVIVIENDA, Inter-Mac and Hola Realty) (evidencing CONVIVIENDA's agreement to provide the necessary subsidies to residents of the Housing Project, Article 4).

b. **C-15** (23 February 2015) (Communication SECM No. 111-2015 from the Honduran Secretary of State to the United States Ambassador in Honduras) (evidencing that Honduras provided assurances to the United States that it would honor its commitments related to the Project).

c. **C-18** (31 May 2017) (Communication CONVIVIENDA-

Oficio No. 471-2017 from CONVIVIENDA to Inter-Mac) (in which Honduras informs Inter-Mac of the issuance of the "Certificado de Precalificación Técnica" for Phase II of the Project).

d. **C-20** (10 September 2018) ("Contrato Privado de Intermediación de Recursos del Bono de Vivienda" executed between BANHPROVI and Inter-Mac) (indicating that the 2018 Intermediation Agreement had no expiration).

e. **C-78** (10 July 2015) (Letter from CONVIVIENDA to Inter-Mac) (assuring Inter-Mac that CONVIVIENDA would issue subsidies to ***any*** family of the Housing Project that met the requirements of the ABA Program).

f. **C-82** (13 November 2015) ("Contrato privado de intermediación especial para el otorgamiento de bono para los programas de vivienda para una vida mejor") (confirming the transfer of funds from BANHPROVI to Inter-Mac).

281. In sum, the breach of these commitments also constitutes a breach of the Umbrella Clause, which Claimants are entitled to rely on through the MFN Treatment clause in the Treaty.

Proofs:

a. *See* Claimants' Statement of Claim, Sections V.

VI.
HONDURAS MUST COMPENSATE CLAIMANTS FOR ALL THE DAMAGES SUFFERED AS A RESULT OF ITS VIOLATIONS OF THE TREATY AND INTERNATIONAL LAW

282. Honduras, through its conduct, prevented Claimants from being able to carry out the Project, or even obtain the fruits of their Investment. Claimants also lost access to the revolving facility OPIC had granted them under the OPIC Loan to carry out the Global Project. As set forth in this section, Claimants' entitlement to damages include the following: (i) damages due to Claimants as a result of Honduras' violations of the Treaty; (ii) interest; (iii) moral damages; and (iv) the arbitration costs and attorneys' fees arising out of these proceedings.

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, ¶¶ 2.12-2.26).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 51-55).

c. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 111-116).

A. Honduras Must Provide Full Reparation to Claimants for Its Breaches of the Treaty

283. The standard of compensation for international wrongful acts is the principle of full reparation. As established by the Permanent Court of International Justice in Chorzów Factory, "reparation must, as far as possible, **wipe out all the consequences of the illegal act** and **re-establish the situation which would, in all probability, have existed if that act had not been committed**." (emphasis added).

Proofs:

a. **CL-50 (***Factory at Chorzów* (Germany v Poland) (Merits), PCIJ Rep. Ser. A. (No. 17), 13 September 1928, p. 47 (quoted above)).

284. This standard is codified in Article 31 of the ILC Articles on State Responsibility ("**ILC Articles**"), which provides that a State responsible for an internationally wrongful act is "under an obligation to make **full reparation** for the injury caused by the internationally wrongful act." (emphasis added).

Proofs:

a. **CL-42** (International Law Commission, Commentaries to the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, Article 31 (quoted above)).

285. ILC Article 35 goes on to establish that, when it comes to making full reparation for an internationally wrongful act, a State's primary obligation is to provide restitution. Where restitution is impractical—as it is here given Claimants' dispossession of the Project – ILC

Article 36(1) provides that the State responsible for the internationally wrongful act is "under an obligation to compensate for the damage caused thereby […]".

Proofs:

a. **CL-42** (International Law Commission, Commentaries to the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, Articles 35-36).

286. The Treaty provides that an investor may submit claims to arbitration provided that it has "incurred loss or damage by reason of, or arising out of" breaches of a provision of Chapter Ten (Investment) of the Treaty. The only compensation standard expressly set out in the Treaty is that for a lawful expropriation carried out in accordance with the criteria set out in Article 10.7 of the Treaty. Thus, the Treaty establishes no express compensation standard for Honduras' treaty breaches described above: namely, for Honduras' (i) unfair and inequitable treatment of Claimants' Investment in breach of Article 10.5; (ii) failure to provide full protection and security to Claimants' Investment in breach of Article 10.5; (iii) ***unlawful*** expropriation of Claimants' Investment in breach of Article 10.7; or (iv) breaches of the national treatment and most favored nation standards set out in Articles 10.3 and 10.4 of the Treaty.

Proofs:

a. *See* Claimants' Statement of Claim, Section V.

b. **CL-1** (5 August 2004) (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter), Article 10.7.2).

287. In the absence of a treaty compensation standard for those breaches, customary international law provides the standard for Honduras' unlawful conduct. Thus, a monetary award to Claimants should put them in a position that they would have been in had Honduras' internationally wrongful acts never occurred. As the tribunal in *Vivendi v. Argentina II* reasoned:

> Based on these principles [of international law], and absent limiting terms in the relevant treaty, it is generally accepted today that, regardless of the type of investment, and regardless of the nature of the illegitimate measure, the level of damages awarded in international investment arbitration is supposed to be **sufficient to compensate the affected party fully and to eliminate the consequences of the state's action**. (emphasis added).

Proofs:

a. **CL-51** (*Compañia de Aguas del Aconquija S.A and Vivendi Universal S.A. v. Argentina*, ICSID Case. No. ARB/97/3, Award II, 20 August 2007, ¶8.2.7 (quoted above)).

b. **CL-28** (*Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 122: "*El laudo que concede a Metalclad el costo de su*

inversión en el confinamiento es congruente con los principios establecidos en Chorzow Factory (Reclamo de indemnización) (Fondos), Alemania c. Polonia, P.C.I.J. Serie A, No. 17 (1928), pág. 47, a saber, cuando el Estado hubiera incumplido sus obligaciones, cualquier laudo favorable al demandante debería, en la medida de lo posible, borrar todas las consecuencias del acto ilegítimo y restablecer la situación que probablemente imperaría de no haberse cometido dicho acto (el status quo ante).").

c. **CL-52** (*CMS Gas Transmission Company v. The Republic of Argentina*, ICSID Case No. ARB/01/8, Award, 12 May 2005, ¶¶ 399-402: "It is broadly accepted in international law that there are three main standards of reparation for injury: restitution, compensation and satisfaction. . . . Restitution is the standard used to reestablish the situation which existed before the wrongful act was committed, provided this is not materially impossible and does not result in a burden out of proportion as compared to compensation. . . . Compensation is designed to cover any 'financially assessable damage including loss of profits insofar as it is established.' . . . The loss suffered by the claimant is the general standard commonly used in international law in respect of injury to property, including often capital value, loss of profits and expenses.").

d. **CL-43** (*ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 484: "The customary international law standard for the assessment of damages resulting from an unlawful act is set out in the decision of the PCIJ in the Chorzów Factory case […].").

288. Tribunals tend to use the "fair market value" standard to calculate damages payable for breaches of expropriation and breaches of other standards of treatment established in bilateral investment treaties, namely "the **price that a willing buyer would pay to a willing seller** in circumstances in which each had good information, **each desired to maximize his financial gain, and neither was under duress or threat**." (emphasis added).

Proofs:

a. **CL-53** (*Starrett Housing Corporation, Starrett Systems, Inc, and others v. The Government of the Islamic Republic of Iran et al.*, Iran-US Claims Tribunal Case No. 24, Final Award, 14 August 1987, ¶ 277 (quoted above)).

b. **CL-54** (*CME Czech Republic B.V. (The Netherlands) v. Czech Republic (UNCITRAL)*, Final Award 14, March 2003, ¶¶ 501-502, setting out the rationale for applying the standard of "fair market value" to calculate damages).

c. **CL-55** (*Bernardus Henricus Funnekotter and others v. Zimbabwe*, ICSID Case No. ARB/05/6, Award, 22 April 2009, ¶ 124: "[U]nder general international law as well as under the

> BIT, investors have a right to indemnities corresponding to the value of their investment, independently of the origin and past success of their investment, as well as of the number and aim of the expropriations done").

289. Applying these principles to the present case, Claimants are entitled to reparation for the full market value of their Investment so that they are put in the situation they would have been but-for Honduras' breaches of the Treaty. In order to compute the fair market value of Claimants' Investment but-for Honduras' unlawful conduct, the fair market value must be computed just prior to Honduras' unlawful conduct that irremediably put an end to Claimants' hope to develop the Housing Project. Claimants have instructed Messrs. Garrett Rush and Paul Baez from Secretariat Advisors LLC ("**Secretariat**") to compute the damages that they suffered as a result of Honduras' breaches ("**Secretariat Expert Report**").

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, ¶¶ 1.8, 2.12-2.26).

b. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 52-55).

c. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 111).

290. The Secretariat Expert Report quantifies Claimants' loss as of 4 October 2022 (the "**Valuation Date**"). On this Valuation Date, BANHPROVI issued the 2022 Resolution which terminated, with immediate effect, the possibility for BANHPROVI to issue mortgages to residents of the Housing Project. This action materially prevented residents of the Project from purchasing their homes, and ultimately prevented Claimants from moving to Phase II of the Project or carrying out the Global Project elsewhere.

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, ¶¶ 2.12 and 4.7).

b. *See* Claimants' Statement of Claim, Section III.

291. As set out in the table below, the Secretariat Expert Report concludes that the amount of damages owed to Claimants, including interest up to the expected date of issuance of the award in December 2027, amounts to **USD $230,396,319**:[3]

[3] As set out in the Secretariat Expert Report, if Messrs. Rush and Baez use a second set of assumptions for the Continuing Value, the total damages decreases from USD $230.4 million to USD $181.9 million (Secretariat Expert Report, footnote 294).

(in USD)

Component	Phase I & II	Continuing Value	Total
But-for Equity Value	50,682,682	92,363,358	143,046,040
less Actual Equity Value	(3,265,170)	0	(3,265,170)
Damages as of 4 Oct 2022	**53,947,852**	**92,363,358**	**146,311,210**
Pre-award Interest to 31 Dec 2027	31,003,851	53,081,257	84,085,109
Damages as of 31 Dec 2027	**84,951,703**	**145,444,615**	**230,396,319**

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, Table 2).

292. Secretariat's valuation is conservative and remains subject to revision as new information becomes available over the course of the arbitration. In any event, Secretariat's valuation is not inconsistent with a contemporaneous appraisal of the Project commissioned by the Honduran Government in June 2024. Upon Claimants' information and belief, the State's appraisal, which encompassed only the land and the residential and commercial units, places the value of the Project in excess of USD $160 million. Claimants intend to seek a copy of the Honduran Government's appraisal at the appropriate procedural time (*i.e.* during the document production phase).

Proofs:

a. **C-189 (**First Declaration of Juan Carlos Arguello, at ¶ 123).

1. The Value of Claimants' Damages on the Valuation Date

293. The Secretariat Expert Report assesses Claimants' damages on the Valuation Date by comparing the actual financial performance of Claimants' Investment ("**Actual Scenario**") with the hypothetical financial performance Claimants would have derived from their Investment but-for Honduras' breaches of the Treaty ("**But-For Scenario**").

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, ¶ 4.2).

294. In the Actual Scenario, Claimants were prevented from enjoying the use of their Investment or from realizing any value from it. Specifically, Claimants have lost (i) the possibility to sell Phase I homes to their residents; (ii) the ability to continue to develop and sell Phase II of the Project; (iii) the USD $70 million revolving facility they had been granted under the OPIC Loan, and consequently were impeded from developing the Global Project. Claimants have received no compensation for their losses as a result of Honduras' breaches of the Treaty.

Proofs:

a. **C-190** (First Declaration of Ernesto Arguello, at ¶¶ 51-55).

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶ 111).

295. Conversely, in the But-For Scenario, 100% of the cash flows available to shareholders, after covering costs (financial, operating, development), would have been paid directly to Claimants as Claimants held a 100% equity interest in Hola Realty and the Inter-Mac Entities. Specifically:

(i) Claimants would have managed to successfully complete Phase I by selling the 1,864 residential units and 137 commercial units built in Phase I from July 2021 to July 2022;

(ii) Claimants would have successfully completed Phase II by constructing and selling an additional 1,836 residential units and 188 commercial units from January 2022 until the end of January 2025;

(iii) Claimants would have successfully completed an expansion of Phase II by constructing and selling an additional 1,100 residential units and 100 commercial units from January 2024 until the end of January 2026; and

(iv) Claimants would have developed similar social housing projects in Honduras and other countries, as planned in the Global Project, by using the USD $70 million revolving facility available under the OPIC Loan from 2026 onwards.

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, ¶¶ 6.2-6.5).

b. *See* Claimants' Statement of Claim, ¶ 63 (describing the Global Project, which consisted of building 10,000 homes throughout Central America).

c. **C-54** (2013) (OPIC's annual report for 2013) (evidencing that OPIC described the loan to Inter-Mac International Inc. as "one of OPIC's most striking successes in Latin America […] to support construction and financing for up to 10,000 homes for low-wage workers throughout Central America," pp. 7, 11).

d. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 24 and 52).

296. In terms of methodology, Secretariat uses an income-based approach to value Claimants' Investment in this case, namely the Discounted Cash Flow ("**DCF**") methodology, which "requires the valuation practitioner to project **the future cash flows that the business would have generated**, **determine an appropriate discount rate** that reflects the level of risk or uncertainty associated with those cash flows, and **then discount the expected future cash**

flows to present value as of the relevant date." (emphasis added).

Proofs:

a. C-192 (Damages Expert Report of Secretariat Advisors, ¶ 4.19) (quoted above).

297. Specifically, Secretariat assesses the equity value of Claimants' Investment on the basis of the Free Cash Flows to Equity ("**FCFE**") measure, which represents the cash flow that would have been available to Claimants after all costs (i.e., cash needed to cover operating expenses, working capital, capital investments) and debt investments have been paid:

FCFE = Net Income + Depreciation – Capex – Change in Working Capital + Net Borrowing

Proofs:

a. C-192 (Damages Expert Report of Secretariat Advisors, ¶¶ 4.20-4.21 and 6.6).

298. In order to calculate the fair market value of the Project as of the Valuation Date, Secretariat then applies a discount rate of 10.77% to reduce the future value of cash flows to their equivalent value on the Valuation Date:

Component	Phase I and II
Risk-free Rate	3.62%
Unlevered Beta	0.395
D/E Ratio	51%
Tax Rate	25%
Re-levered Beta	0.547
Equity Risk Premium	4.92%
Adjusted ERP	**2.69%**
Country Risk Premium	4.45%
Cost of Equity	**10.77%**

Proofs:

a. C-192 (Damages Expert Report of Secretariat Advisors, ¶¶ 6.54-6.60 and Table 17).

299. Additionally, Secretariat assesses the terminal or continuing value of Claimants' Investment beyond the completion of the Project by calculating the average annual Earnings Before Interest and Taxes ("**EBIT**") that would have been obtained by the Project in Phase II between January 2022 to January 2025 and multiplying it with an average EV/EBIT multiple (Enterprise Value to EBIT) for real estate development companies in emerging markets of 10.1

and then applying a discount rate of 13.11%. This results in a terminal or continuing value of USD $103 million at the Valuation Date. Secretariat then deducts 10% for withholding taxes to that amount, which results in an after-tax equity value of **USD $92.4 million** as of the Valuation Date.

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, ¶¶ 6.65-6.69).

300. Consequently, and as explained in detail in the Secretariat Expert Report, Secretariat quantifies the nominal damages suffered by Claimants as of the Valuation Date at **USD $146,311,210**:

(in USD)

Component	Phase I & II	Continuing Value	Total
But-for Equity Value	50,682,682	92,363,358	143,046,040
less Actual Equity Value	(3,265,170)	0	(3,265,170)
Damages as of 4 Oct 2022	**53,947,852**	**92,363,358**	**146,311,210**

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, Table 19).

2. Claimants are Entitled to Pre-Award Interest

301. Claimants are entitled to receive interest on the amount of damages due in order to provide full reparation. It is well-established that tribunals enjoy a wide margin of discretion to determine the applicable interest rate in order to ensure full reparation. Tribunals have sought to award "generally prevailing rates of interest" or reasonable and fair rates. In so doing, tribunals have frequently applied a benchmark (or reference) interest rate.

Proofs:

a. **CL-56** (*Murphy Exploration and Production Company International v. Republic of Ecuador [II]*, PCA Case No. 2012- 16 (formerly AA 434), Partial Final Award, 6 May 2016, ¶ 514: "[I]t is well established that the Tribunal enjoys a wide margin of discretion to determine the rate of interest applicable and whether it shall be simple or compound in order to ensure full reparation to the damaged party.").

b. **CL-67** (*Energía y Renovación Holding, S.A. c. República de Guatemala*, ICSID Case No ARB/21/56, Laudo, 31 marzo 2025, ¶ 480: "*[E]l Tribunal reconoce que el principio de reparación integral impone la concesión de intereses previo al laudo como forma de compensar el capital inmovilizado por ocasión de la violación del Tratado.*").

302. As noted in the Secretariat Expert Report, the PRIME rate, which represents the interest rate that commercial banks charge their most creditworthy borrowers, is one of the most referenced rates used by lenders. An increase to the PRIME rate by a few percentage points can be made to account for the fact that not all enterprises can borrow money from the banks at the prime rate. Here, Secretariat applies a PRIME rate plus 2% which is "indicative of a 'normal' commercial rate of interest."

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, ¶¶ 7.3-7.5).

303. The approach followed by Secretariat in this case has been endorsed by numerous tribunals. For example, in *TECO v. Guatemala*, the tribunal observed that "**Claimant's right to be made whole in respect of losses sustained as a result of Respondent's breach of its obligations under DR-CAFTA necessarily implies that Claimant should be awarded interest on sums that should have been available to it**, calculated from the dates when it should have received those sums" and upheld a pre- and post-award interest at PRIME plus 2% finding such rate to "reflect a rate that is **broadly available** to" the borrowing market in the United States. (emphasis added).

Proofs:

a. **CL-58** (*TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award (Resubmission Proceedings), 13 May 2020, ¶¶ 126 (quoted above), 129, quoting from the original tribunal; and 135, endorsing the US PRIME rate of interest plus 2%).

b. **CL-59** (*Nachingwea U.K. Limited, Ntaka Nickel Holdings Limited and Nachingwea Nickel Limited v. United Republic of Tanzania*, ICSID Case No. ARB/20/38, Award, 14 July 2023, ¶ 384: "[T]he Tribunal is satisfied that interest at a rate of USD Prime + 2%, compounded annually, constitutes a normal commercial rate.").

304. Secretariat applies the PRIME rate plus 2%[4] to Claimants' nominal damages on an annual compound basis from 4 October 2022 to 31 December 2027 (being an estimate date for the final award). This amounts to a pre-award interest to 31 December 2027 of USD $84.1 million and total damages including pre-award interest of **USD $230.4 million**.

Proofs:

a. **C-192** (Damages Expert Report of Secretariat Advisors, Table 20).

[4] As set out in the Secretariat Expert Report, Messrs. Rush and Baez assume that the 2024 PRIME rate will decrease by 1% each year to estimate the future PRIME rate for 2025-2027. In the event of a favourable award, they would update their calculations with the actual PRIME rates as of the date of the award (Secretariat Expert Report, footnote 293).

3. Claimants are Entitled to Post-Award Interest

305. Interest should also run post-award, until the date Honduras makes payment of the full sum awarded. As noted in *Tenaris v. Venezuela (I)*, this is "another important element of quantum in order to attempt to eliminate, as far as possible, the effects of the unlawful taking." Only the prospect of fully compensatory pre- and post- award interest can eliminate any incentive Honduras may have to postpone payment of any damages awarded to Claimants.

Proofs:

a. **CL-60** (*Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Award, 5 October 2012, ¶ 847).

b. **CL-61** (*Tenaris S.A. and Talta-Trading e Marketing Sociedade Unipessoal Lda v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/26, Award, 29 January 2016, ¶ 595).

306. Accordingly, Claimants request post-award interest at a rate of PRIME plus 2%. While there are no general rules regarding compounding intervals, tribunals tend to differentiate between the intervals applicable to pre- and post-award interest. Many tribunals have accepted to compound post-award interest monthly where pre-award interest was compounded annually. The same position should be followed in this case.

Proofs:

a. **CL-60** (*Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Award, 5 October 2012, ¶¶ 843 and 849, pre-award interest was compounded annually and post-award interest monthly).

b. **CL-28** (*Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 131, pre-award interest was compounded annually and post-award interest monthly after a 45 day grace period).

c. **CL-62** (*Emilio Agustín Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Award (Merits), 13 November 2000, ¶¶ 96-97, pre-award interest was compounded annually and post-award interest monthly after a 60 day grace period).

B. Claimants Are Entitled to Be Compensated for Their Moral Damages

307. Claimants' damages also include moral damages. The State's failure to provide protection and security to the Arguellos and their Investment against the harassment and defamatory campaign orchestrated by the Patronato resulted in significant harm to Claimants' reputation and their companies, compromising their standing in the local community. The Arguellos were repeatedly falsely labeled as foreign "criminals," a label that was later maliciously echoed and propagated by the President of BANHPROVI, Mr. Araque, to justify the issuance of the 2022 Resolution. Claimants have suffered significant stress and emotional

trauma as a result of the State's actions and omissions.

Proofs:

a. **C-128** (4 October 2022) (Resolution adopted during BANHPROVI's ordinary session No. CD-39-2002) (incomplete, pages 4 to 7 only)) (evidencing that the State excluded financing for residents purchasing used homes under the State's social housing programs and disregarded the applications submitted by Inter-Mac on behalf of residents of "Los Castaños de Choloma").

b. **C-153** (Undated) (Video from the "Perro Amarillo" during Mr. Benítez's Honduran presidential campaign) (referring to Claimants as American criminals).

c. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 79, 80-81, 108, 123).

d. **C-191** (First Declaration of Mr. Claudio Antonio Discua, at ¶¶ 24-25, 28-30, 34-35).

308. As detailed in the declaration of Juan Carlos, the State's repeated inaction to control the Patronato led to multiple incidents of violence, extortion, and intimidation, some of which directly targeted the Arguellos and their Investment, causing them to fear for their safety and physical integrity as well as that of their families. Indeed, their anxiety is such that neither Juan Carlos nor Ernesto have been able to return to Honduras.

Proofs:

a. *See* Claimants' Statement of Claim, Section III.

b. **C-189** (First Declaration of Juan Carlos Arguello, at ¶¶ 79-84, 123).

c. **C-190** (First Declaration of Ernesto Arguello, at ¶ 58).

d. **C-191** (First Declaration of Mr. Claudio Antonio Discua, at ¶¶ 24-25, 28, 30, 36-38, 46, 49, 57-58).

309. Consequently, the Arguellos call on this Tribunal to exercise its discretion—well-established under international law—to award them moral damages in an amount **not less than USD $2 million**. Claimants reserve their right to revise this amount throughout the proceedings.

Proofs:

a. **CL-63** (*Desert Line Projects LLC v. The Republic of Yemen*, ICSID Case No. ARB/05/17, Award, dated 6 February 2008, ¶ 290: "The Arbitral Tribunal finds that the violation of the BIT by the Respondent, in particular the physical duress exerted on the executives of the Claimant, was malicious and is therefore constitutive of a fault-based liability. Therefore, the Respondent shall be liable to reparation for the injury suffered by the Claimant, whether it be bodily, moral or material in

nature. **The Arbitral Tribunal agrees with the Claimant that its prejudice was substantial since it affected the physical health of the Claimant's executives and the Claimant's credit and reputation**. . . . The Arbitral Tribunal considers that, based on the information at hand and the general principles, an amount of USD 1,000,000 should be granted for moral damages, including loss of reputation.") (emphasis added).

b. **CL-42** (International Law Commission, Commentaries to the Draft Articles on the Responsibility of States for Internationally Wrongful Acts 2001, pp. 91-92: "The responsible State's obligation to make full reparation relates to the 'injury caused by the internationally wrongful act.' . . . This formulation is intended both as inclusive, **covering both material and moral damage broadly understood**. . . . **'Moral' damage includes such items as individual pain and suffering**, loss of loved ones or personal affront associated with an intrusion on one's home or private life.") (emphasis added).

C. Claimants Are Entitled to Be Compensated For All the Costs and Fees Incurred In This Arbitration

310. In accordance with Article 61(2) of the ICSID Convention and Rule 52 of the ICSID Arbitration Rules, the Tribunal has discretion to decide how and by whom the arbitration costs should be allocated.

Proofs:

a. **CL-2** (ICSID Convention, Article 61(2)).

b. **CL-4** (ICSID Arbitration Rules, Rule 52).

311. The principle of full reparation also requires that Claimants be made whole for the fees and costs of the arbitration proceedings. Claimants were forced to incur these costs in order to enforce their rights against Honduras. Tribunals have recognized that this "costs follow the event" approach according to which the losing party is to pay for the costs and fees is the most consistent with the principle of full reparation.

Proofs:

a. **CL-64** (*Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017, ¶ 1060: "Applying the broad discretion conferred by Article 61(2), the Tribunal finds that the "costs follow the event" approach is the most appropriate in the present case. As pointed by Karkey, awarding costs to the prevailing party is consistent with the general damages principle articulated in the Chorzow Factory case, which require that the injured party be restored to the position in which it would have been, had the breach not occurred. The

Tribunal also notes that investment tribunals are increasingly favouring the 'cost follows the event approach.").

b. **CL-65** (*Guardian Fiduciary Trust, Ltd, f/k/a Capital Conservator Savings & Loan, Ltd v. Macedonia*, ICSID Case No. ARB/12/31, Award, 22 September 2015, ¶ 150: "The Tribunal considers that in the circumstances of the present case, it is appropriate to apply the "costs follow the event" approach and award the costs of the prevailing party. However, the Tribunal does not consider that the conduct of either Party in the course of the proceedings should form an additional basis for awarding costs.").

c. **CL-66** (M. Weiniger & M. Page, "Treaty Arbitration and Investment Dispute: Adding up the Costs," 1:3 Global Arb. Rev. 44, 2006: "Recently, […] some tribunals have adopted a more robust approach, seeing no reason to depart from the principle that the successful party should have its costs paid by the unsuccessful party, as adopted in commercial arbitration.").

312. It follows that Claimants are entitled to recover all costs incurred for defending their claims in these proceedings. Claimants will provide a detailed list of such costs at the appropriate procedural stage.

Proofs:

a. **CL-2** (ICSID Convention, Article 61(2)).

D. Claimants Are Entitled to Receive Compensation Net of All Applicable Taxes

313. The principle of full reparation also requires that any compensation awarded to Claimants be net of any applicable taxes. In this case, compensation for violations of the Treaty must be effective, fully realizable, and freely transferable. Arbitral case law interpreting analogous provisions affirms that compensation awarded to investors must be paid net of taxes. Failure to do so would render a compensation less than the amount established by an arbitral award, thereby undermining its "effectiveness" and "full realizability." Accordingly, to ensure that Claimants receive full reparation for the damages resulting from Honduras' breaches of the Treaty, the awarded damages: (i) must be awarded net of Honduran taxes; and (ii) must be subject to a tax gross-up equivalent to the tax obligations of Claimants in the United States.

Proofs:

a. **CL-1** (Central America-Dominican Republic-United States Free Trade Agreement, Chapter 10 (Investment Chapter)), Article 10.7.

b. **CL-82** (*Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela II*, ICSID Case No. ARB/12/23, Award, 12 December 2016 [Spanish]), ¶ 789 ("Si la indemnización pudiera quedar sujeta a tributación en Venezuela, y Venezuela pretendiera aplicar una compensación entre la indemnización

y el tributo, la indemnización efectivamente pagada sería menor a la establecida en este Laudo").

c. **CL-83** (*Smurfit Holdings B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024), ¶ 765).

d. **CL-84** (*Sociedad Aeroportuaria Kuntur Wasi S.A. and Corporación América S.A. v. Republic of Peru*, ICSID Case No. ARB/18/27, Award, 9 May 2024), ¶¶ 35-46).

e. **CL-85** (Internal Revenue Service, Federal Income Tax Rates and Brackets) (showing that income above USD 609,351 is subject to a 37% federal tax rate in the United States).

VII.
REQUEST FOR RELIEF

314. For the reasons set out in this Statement of Claim, Claimants respectfully request an award containing the following relief:

a) A declaration that the dispute is within the jurisdiction and competence of the Arbitral Tribunal;

b) A declaration that the Republic of Honduras breached the Treaty, international law, and in particular:

(i) That the State violated its obligations under the Treaty to treat Claimants' Investment fairly and equitably;

(ii) That the State violated its obligations under the Treaty to grant Claimants' Investment full protection and security;

(iii) That the State expropriated Claimants' Investment in contravention of the Treaty and international law, without a public purpose, in a discriminatory manner, without payment of prompt, adequate and effective compensation, and without due process; and

(iv) That the State violated its obligations under the Treaty not to treat Claimants, or their Investment, less favourably than the State's own investors and/or third-party investors, or their investments.

c) An order directing the State to pay damages to Claimants in the amount of **USD $230,396,319**, an amount that may be further modified during the course of these arbitral proceedings;

d) An order directing the State to pay moral damages to Claimants in an amount presently estimated at not less than **USD $2 million**, an amount that may be further modified during the course of these arbitral proceedings;

e) An order directing the State to pay pre-award and post-award interest to Claimants at the applicable rate until the date of the State's full and effective payment;

f) An order directing the State to pay all of Claimants' fees and costs relating to the present arbitration proceedings, including, but not limited to, Arbitral Tribunal fees and costs, ICSID administrative fees and costs, attorneys' fees and legal expenses, expert fees, and consultant fees; and

g) An order granting any further relief the Arbitral Tribunal deems just and proper under the circumstances.

VIII.
RESERVATION OF RIGHTS

315. Claimants reserve the right to seek interim or conservative measures at the appropriate time or as necessary. Claimants also reserve their right to alter, amend and/or supplement the foregoing claims during the course of this arbitral proceeding, and to submit such further pleadings, arguments, exhibits, and evidentiary materials as may be appropriate or necessary in connection with these proceedings.

Respectfully submitted,

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