

Statement of Dissent to the President's letter dated 27 November 2013.

1. In the above letter the President on behalf of the majority of the Tribunal, namely by two votes to one, rejects the requests made by the Respondent's letter of 20 November 2013 asking the Tribunal (i) to grant respondent 314 days for the filing of its Rejoinder Memorial on Phase 2, i.e. to extend the deadline to 9 October 2013, and (ii) to revisit its decision on discontinuance of the proceedings with respect to a group of claimants as per President's letter of 4 November 2013. I cannot join my colleagues in their summary dismissal of what I consider reasonable and justified requests bearing in mind the unfolding of the present proceedings as a whole.

1. The request to extend the deadline for the filing of the Rejoinder Memorial

2. The majority rejects this request through the following assumption and belief: (i) that it would be inappropriate to assume that Claimants enjoyed 314 days to prepare their Reply Memorial; and (ii) that the Tribunal believes (namely the majority) that a period of 10.5 weeks as of the receipt of the Claimants' Reply is sufficient for the Respondent to prepare its Rejoinder. Both, namely the assumption and the belief, are based upon the appreciation by the majority that it would not be "justified or appropriate" to grant to the Respondent "an exactly same amounts of days for the filing of the Rejoinder Memorial" as the Claimants had had at their disposal for the filing of their Reply. I am of a different view.

3. The majority does not question the fact that the Respondent duly filed its Counter-Memorial on 26 December 2012 (Claimants receiving the corresponding English translation on 9 January 2013) and that, consequently, Claimants had about 314 days for the preparation of their Reply. But, the majority endorses the argument, as indicated above, that it would be inappropriate to assumed that Claimants enjoyed 314 days to prepare their Reply Memorial apparently because as explained by the Claimants themselves, in their comments of 24 November 2013 on Respondent's requests, they "were occupied for much of the last year with the document production phase and the lengthy Database expert verification process".

4. This argument however ignores the essentials, namely that *Claimants became acquainted with the contents of the Respondent's Counter-Memorial about 314 days before filing its Reply Memorial*. But, the majority grants only 10.5 weeks (about 73.5 days) to the Respondent for the filing of the Rejoinder since it became acquainted with the contents of Claimants' Reply. The difference between 314 days and 73.5 days speaks by itself, but it seems apparently an insignificant detail for my colleagues. For my part, I consider it to be, under any applicant standard whatsoever, a serious departure from a fundamental rule of procedure, namely of the rule that the parties shall be treated equally in all phases of the proceedings before an arbitral tribunal.

5. Two additional elements make still more unbalanced those figures. In the first place, the time devoted by the Parties in the course of the current year to Database expert verification process is consequential of the Claimants' fact of the mass aspects of their Request for arbitration and not the result of an act or omission attributable to the Respondent. And secondly, the majority decided, as reflected in the present updated calendar, to allow Claimants to submit an additional

Rejoinder Memorial on Jurisdiction regarding new arguments or documents (if any) following the filing of Respondent's Rejoinder.

6. Furthermore, in the present case we are far away from the doctrinal issue of whether or not "equal treatment" and "identical treatment" are in the context same or different standards. In any case, the majority's letter not only rejects "an exactly same amount of days for the filing of the Rejoinder Memorial" but also any extension of the 10.5 weeks granted at present to the Respondent for such a filing. In other words, the majority rejects not only "identical treatment" but "equal treatment" as well, for those who make distinctions between such standards.

7. It is beyond comprehension that the majority "believes" that a time-limit of 10.5 weeks is "sufficient" for the Respondent to prepare a proper Rejoinder, namely a document supposed to give a legal answer to a Claimants' Reply of 393 pages (preparing along 314 days) with 20 accompanying witness statements and expert reports and 16 boxes containing exhibits and legal authorities in aggregated proceedings involving thousands of Claimants.

2. The request to revisit the decision on discontinuance of a group of Claimants

8. On this Respondent's request I disagree with the conclusion of the majority for reasons which I have already explained in my Statement of Dissent joined to the President's letter of 4 November 2013 applicable likewise, *mutatis mutandis*, to the relevant decision of the present letter. I will just recall: that the prior decision of the majority on the matter was a blind decision adopted without any element of proof as to the will of the individual Claimants concerned; that it was adopted without the necessary Respondent's consent as required by the ICSID Rule 44; that deletion of Claimants' names from the Database by Claimants does not amount to discontinuance under ICSID Rules; that these Rules do not provide for an "initial discontinuance" followed by a "full and final discontinuance" whatever it may mean for the majority; and that the previous decision was not cast in the form of a Procedural Order as provided by Rule 44.

9. Thus, the Parties should be aware that at the least for the present arbitrator the Claimants concerned continue for the time being to be Parties to the proceedings notwithstanding their deletion from the Database.

Signed: Santiago Torres Bernárdez.