

INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES (ICSID)

**GLENCORE INTERNATIONAL A.G.,
C.I. PRODECO S.A.,
CONSORCIO MINERO UNIDO S.A., AND
CARBONES DE LA JAGUA S.A.**

Claimants,

v.

THE REPUBLIC OF COLOMBIA,
Respondent.

ICSID CASE NO. ARB/23/50

**SUMMARY OF THE REPUBLIC OF COLOMBIA'S POSITION
ON JURISDICTION AND ADMISSIBILITY**

19 October 2026

Arnold & Porter

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I. INTRODUCTION

1. In accordance with Procedural Order No. 1 (“**PO1**”), the Republic of Colombia presents this summary of its jurisdictional and admissibility objections in the present arbitration. On 23 March 2026, Colombia filed its Summary of Its Position on the Merits (“**Colombia’s Merits Summary**”),¹ which ICSID made public.²
2. As explained in Colombia’s Merits Summary, Claimants present two distinct sets of claims. Colombia briefly recalls those claims as context for the jurisdictional and admissibility objections discussed below.
3. Claimants’ *first* set of claims concerns the liquidation of the three Operative Contracts (“**Contracts**”) governing the Mines (“**Contract Claims**”). These Contracts were held by Glencore’s Colombian subsidiaries, Prodeco, CMU, and CDJ. Following Claimants’ unilateral relinquishment of the Contracts, the ANM needed to “liquidate,” years earlier than planned, two of the country’s largest mining projects – a task unprecedented in its scale and complexity. The crux of Claimants’ case is that the liquidation process took too long, requiring them to bear excessive care-and-maintenance costs.³
4. Claimants’ *second* set of claims – introduced in their Submission of Ancillary Claim – challenges Judgment T-375, a decision of Colombia’s Constitutional Court (“**Judgment Claims**”). That judgment was issued in a *tutela* proceeding brought by members of the Yukpa indigenous community, against the Subsidiaries, another mining company, and various State entities. The Court concluded that the Yukpa’s constitutional right to prior consultation had been violated in relation to mining activities in El César, including the Mines. It ordered a consultation process between the Yukpa, Prodeco, and other actors to determine appropriate remedial measures. The consultation process concluded without agreement, so the first-instance court will now determine

¹ Capitalized terms have the meaning defined in Colombia’s Merits Summary.

² https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C11602/DS21480_En.pdf.

³ Colombia’s Merits Summary, ¶¶ 3–9, 14–25.

reparations. Claimants request that the Tribunal order Colombia to indemnify them for any damages they might suffer as a result of such future reparations.⁴

II. THE CONTRACT CLAIMS FALL OUTSIDE THE TRIBUNAL'S JURISDICTION AND ARE INADMISSIBLE

5. The Contract Claims fall outside the Tribunal's jurisdiction and, in any case, are inadmissible for three reasons. *First*, they are contractual in nature and thus fall outside the Treaty's dispute resolution clause (**Section II.A**). *Second*, they are inadmissible because, under the Contracts, disputes arising thereunder must be referred exclusively to the domestic courts or domestic arbitration (**Section II.B**). *Third*, the Contract Claims are abusive and thus inadmissible because Claimants are pursuing duplicative claims in domestic fora (**Section II.C**).

A. The Contract Claims fall outside Treaty Article 11 because they are contractual in nature

6. The Treaty's dispute-resolution clause (Article 11) restricts the Tribunal's jurisdiction to "investment dispute[s]" concerning "measure[s]" allegedly "inconsistent with an obligation of th[e] Agreement." This clause and public international law preclude claims for mere contractual breaches. Although the Treaty includes an umbrella clause, it expressly limits the scope of that clause and, importantly, withholds consent to international arbitration for disputes "with regard to" the umbrella clause.
7. To decide whether the Contract Claims may be properly characterized as an "investment dispute," the Tribunal must determine whether Colombia undertook the challenged conduct in its sovereign capacity, rather than as a mere contractual party. It must conduct an objective analysis and look beyond Claimants' characterization of the Contract Claims. Here, Claimants challenge the ANM's performance of a contractually mandated process governed solely by the Contracts and Colombian legal framework. Claimants' allegations do

⁴ Colombia's Merits Summary, ¶¶ 10-13, 26-34.

not implicate any exercise of Colombia's sovereign authority. Therefore, the Contract Claims fall outside the Tribunal's jurisdiction *ratione materiae*.

B. The Contracts' exclusive forum-selection clauses render the Contract Claims inadmissible

8. In addition, the Contract Claims are inadmissible because each Contract requires disputes concerning its interpretation or execution—including liquidation-related disputes—to be referred exclusively to Colombian courts or domestic arbitration. As the *SGS v. Philippines* tribunal held, a tribunal “should not exercise its jurisdiction over a contractual claim when the parties have already agreed on how such a claim is to be resolved, and have done so exclusively.”
9. Here, Prodeco's Contract requires that disputes concerning its “execution” or matters arising “after its termination” be “submitted to the jurisdiction of the Colombian judicial branch;” CMU's Contract refers “[a]ny dispute[s] or difference[s] relating to the Contract and its execution” to “an Arbitration Tribunal . . . in Bogotá;” and CDJ's 285 Contract incorporates the Mining Code “[f]or all relevant purposes,” which assigns exclusive jurisdiction to Colombia's administrative courts.
10. The Contract Claims ultimately rest on the single allegation that the ANM failed to comply with its liquidation obligations under the Contracts and Colombian law. As such, these claims fall entirely within the scope of the Contracts' exclusive forum-selection clauses.

C. Claimants' pursuit of parallel domestic proceedings also renders the Contract Claims inadmissible

11. The Contract Claims are also inadmissible because they are abusive. International tribunals may declare investment-treaty claims inadmissible for abuse of process where the claimant and/or related parties have initiated duplicative parallel proceedings.
12. Here, shortly after Claimants filed their Request for Arbitration, each Subsidiary initiated a domestic proceeding against the ANM, raising

substantially the same allegations and seeking the same relief as in this arbitration. This conduct is abusive *inter alia* because it seeks to circumvent the Treaty's fork-in-the-road provision (Article 11(2)), forces Colombia to defend duplicative proceedings before multiple tribunals, and risks inconsistent decisions and double recovery.

III. THE JUDGMENT CLAIMS FALL OUTSIDE THE TRIBUNAL'S JURISDICTION AND ARE INADMISSIBLE

13. The Judgment Claims also fall outside the Tribunal's jurisdiction and, in any event, are inadmissible for three reasons. *First*, they fall squarely within the Treaty's fork-in-the-road bar and therefore must be dismissed for lack of jurisdiction (**Section III.A**). *Second*, because they are premature, they fail for lack of jurisdiction under Treaty Article 11 and, in any case, are inadmissible (**Section III.B**). *Third*, they are inadmissible because they do not meet the ICSID Convention's requirements for ancillary claims (**Section III.C**).

A. The Judgment Claims fall afoul of the Treaty's fork-in-the-road provision

14. Before raising the Judgment Claims in this arbitration, Prodeco petitioned the Constitutional Court to annul Judgment T-375, invoking substantially the same arguments that Claimants advance here, namely that Judgment T-375 departed from the Court's jurisprudence, lacked an evidentiary basis, and disregarded Prodeco's legitimate expectations. The Judgment Claims are thus precluded by the Treaty's fork-in-the-road provision. The applicable test is "whether or not 'the fundamental basis of a claim' sought to be brought before the international forum is autonomous of claims to be heard elsewhere."⁵ Here, the claims are not autonomous: Prodeco's annulment petition and Claimants' Treaty claims share the same normative source (including the legal framework on prior consultation) and pursue the same aim (nullifying Judgment T-375's effect on Prodeco). Having elected to submit the dispute to a domestic tribunal, Prodeco cannot now litigate it as well in this arbitration.

⁵ *Pantechniki v. Albania*, ICSID Case No. ARB/07/21, Award, 30 July 2009, ¶ 61.

B. Because they are premature, the Judgment Claims fall outside Treaty Article 11 and are inadmissible

15. Under Treaty Article 11, an investor may submit an arbitration claim only where a measure “has caused loss or damage” to the investor or its investment. Judgment T-375 identifies a violation of the Yukpa’s fundamental rights but does not order Prodeco to pay any specific amount or define any concrete financial or operational obligation that Prodeco must assume. All such questions were expressly subject to future administrative and judicial proceedings. Consequently, to date, Claimants have suffered no “loss or damage,” and their Judgment Claims thus fall outside the Tribunal’s jurisdiction.
16. The premature nature of the Judgment Claims also renders them inadmissible. Given that Colombia’s judiciary has not imposed any specific reparations on Claimants, the Judgment Claims are not ripe for resolution. Claimants confirm that any loss will only “materialize once the [first-instance] court specifies the concrete reparations” – a decision that “may not [occur] during the course of this arbitration” and whose outcome “remains unclear.” As the tribunal held in *Infinito v. Costa Rica*, claims concerning future conduct of the host State are “premature and thus inadmissible.”

C. The Judgment Claims fall outside the scope of ancillary jurisdiction under the ICSID Convention

17. Contrary to what ICSID Convention Article 46 and Arbitration Rule 48(1) require, the Judgment Claims, introduced as an “ancillary claim,” do not “aris[e] directly out of the subject-matter” of Claimants’ original contract-liquidation dispute. As the ICSID Secretariat’s Explanatory Notes underscore, to meet the requirement under the ICSID provisions, “the factual connection between the original and the ancillary claim” must be “so close as to require the adjudication of the latter in order to achieve the final settlement of the dispute.” Here, the Contract Claims and the Judgment Claims concern *two independent and distinct disputes*, involving different State actors (the ANM and the judiciary), different legal frameworks, and unconnected alleged losses.

Judgment T-375 did not affect the timing of the Contracts' liquidation, and Claimants' damages model for the Contract Claims contains no component tied to Judgment T-375. The Judgment Claims therefore fall outside the scope of ancillary jurisdiction under the ICSID Convention.

IV. REQUEST FOR RELIEF

18. For the reasons set forth in its Counter-Memorial, the Republic of Colombia respectfully requests that the Tribunal:

- i. dismiss all of Claimants' claims for lack of jurisdiction, lack of competence, and/or on the basis that the claims are inadmissible; or
- ii. in the event that the Tribunal were to exercise jurisdiction over any of Claimants' claims, declare that Colombia did not breach any of its obligations under the Treaty; or
- iii. in the event that the Tribunal were to exercise jurisdiction over any of Claimants' claims, and then also to find Colombia liable for one or more Treaty violations, declare that Claimants are not entitled to any compensation;
- iv. order Claimants to pay, on a joint and several basis, all costs of the arbitration, including the totality of Colombia's outside counsel legal fees and expenses, expert fees and expenses, arbitrator and institutional fees and expenses, and any other expenses incurred in connection with Colombia's defense in this arbitration, plus interest on such amounts from the date of the Award until the date of payment, calculated at the one-year risk-free US Treasury Bill rate; and
- v. award Colombia any additional relief that the Tribunal may consider just and appropriate.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Paolo Di Rosa', with a stylized flourish at the end.

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